EUROPEAN
COMMISSION

Brussels, 26.11.2015
C(2015) 8147 final

COMMISSION DELEGATED DECISION (EU) …/…

of 26.11.2015

on the equivalence of the solvency regime for insurance and reinsurance undertakings in force in Japan to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The Solvency II Directive (Directive 2009/138/EC), as modified by the Omnibus II Directive (Directive 2014/51/EU), due to be fully applied from 1 January 2016, introduces a modernised risk-based prudential and supervisory regime for insurance and reinsurance undertakings in the European Union.

Solvency II provides for equivalence determination of third countries in three areas:

1) An insurer or reinsurer located in a third country enters into a reinsurance arrangement with an insurer or reinsurer in the EEA (Article 172 Solvency II Directive);

2) An insurer or reinsurer is headquartered within the EEA and has participations or subsidiaries (collectively known as related undertakings) located outside the EEA (Article 227 Solvency II Directive);

3) An insurer or reinsurer is headquartered within a third country and has related undertakings located within the EEA (Article 260 Solvency II Directive).

If a solvency regime of a third country is deemed equivalent under Article 172, reinsurance contracts concluded with undertakings having their head office in that jurisdiction shall to be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with the Solvency II Directive.

If a solvency regime of a third country is deemed equivalent under Article 227, EU insurance groups can carry out their EU prudential reporting for a subsidiary in that third country under local rules instead of Solvency II, if they are authorised to use deduction and aggregation as the method of consolidation of group accounts. If a prudential regime of a third country is deemed equivalent under Article 260, its insurance groups which are active in the EU are exempted from some aspects of group supervision in the EU.

For each of the three areas, equivalence can be determined for an unlimited period (if complete equivalence has been determined) or for a limited period (where progress is being made towards equivalence). In the latter case, the duration of the fixed-term equivalence is not discretionary, but laid down in the relevant Solvency II Article; a period ending on 31 December 2020 (non-renewable) for reinsurance and for third country groups operating in the EEA (known as temporary equivalence), and 10 years (renewable) for EEA groups operating in the third jurisdiction (known as provisional equivalence). There is no difference in effect between full, temporary and provisional equivalence; only the duration differs.

Temporary equivalence under article 172(4) and provisional equivalence under article 227(5) are the object of the present decision.

The criteria related to the determination of temporary equivalence under article 172(4) are laid down as follows in Solvency II:

(a) The jurisdiction in question has given a commitment to the Union to adopt and apply a solvency regime that is capable of being assessed equivalent in accordance with paragraph 2, before the end of that limited period and to engage in the equivalence assessment process;

(b) it has established a work programme to fulfil the commitment referred to in point (a);

(c) it has allocated sufficient resources to fulfil the commitment referred to in point (a);

(d) it has a solvency regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency;

(e) it has entered into written arrangements to cooperate and exchange confidential supervisory information with EIOPA and supervisory authorities;

(f) it has an independent system of supervision; and

(g) it has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities, in particular on the exchange of information with EIOPA and supervisory authorities.

A determination of temporary equivalence under article 172(4) is valid for a period ending on 31 December 2020. At the end of that period, the European Commission should carry out an assessment of the developments in the third country's regime, resulting in either a determination of full equivalence according to article 172(2), or non-renewal of temporary equivalence. The period of temporary equivalence may be extended by up to one year where necessary for EIOPA and the Commission to carry out the assessment.

The criteria related to the determination of provisional equivalence under article 227(5) are laid down as follows in Solvency II:

(a) it can be shown that a solvency regime capable of being assessed equivalent in accordance with paragraph 4[1] is currently in place or may be adopted and applied by the jurisdiction in question;

(b) it has a solvency regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency;

(c) its law, in principle, allows cooperation, and exchange of confidential supervisory information, with EIOPA and supervisory authorities;

(d) it has an independent system of supervision; and

(e) it has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities.

A determination of provisional equivalence under article 227(5) is valid for a period of ten years. At the end of that period, the European Commission should carry out an analysis of the developments in the third country's regime, resulting in either a determination of full equivalence according to article 227(4) or a renewed determination of provisional equivalence under article 227(5), or non-renewal of provisional equivalence.

The European Insurance and Occupational Pensions Authority (EIOPA) has provided advice to the European Commission on Solvency II equivalence of the Japanese reinsurance prudential regime under article 172[2]; this advice has been published on EIOPA's website. EIOPA has also assisted the Commission and provided input with regard to the assessment of the Japanese insurance sector under article 227[3]. The Commission has taken full account of

[1] Paragraph 4 of Article 227 of Directive 2009/138/EC

[2] Equivalence assessment of the Japanese supervisory system in relation to Article 172 of the Solvency II Directive, 30 January 2015

[3] Gap analysis of the Japanese life insurance sector's solvency regime, 3 August 2015

the information provided by EIOPA in making the present determination under the procedures set out in Article 172(4) and Article 227(5).

The Commission will continue to monitor, with the technical assistance of EIOPA, the evolution of the regulatory regime for insurance and reinsurance in force in Japan and the fulfilment of the conditions on the basis of which the provisional equivalence Decision and the temporary equivalence Decision have been adopted. The Commission, with the technical assistance of EIOPA, before the expiry of the temporary equivalence decision, if necessary extended by one year, will carry out an assessment of the evolution of the regulatory regime for reinsurance in force in Japan and the fulfilment of the conditions for full equivalence laid down in Article 378 of Commission Delegated Regulation 2015/35 of 10 October 2014.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Expert Group of member States on Banking Insurance and Payments was consulted in its meeting of 14 July 2015 and again in writing on 10 September 2015 regarding the Commission's intention to adopt a positive temporary equivalence determination for Japan under Article 172(4) and a positive provisional equivalence determination under 227(5) of Solvency II. The Expert Group did not object to the Commission's intentions in this area.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The legal basis for the present Commission Delegated Decision consists of Articles 172(4) and 227(5) of the Solvency II Directive.

Even though the Solvency II Directive will be fully applied from 1 January 2016, the Commission may already adopt the present Delegated Decision as indicated under Article 311 of the Solvency II Directive.

COMMISSION DELEGATED DECISION (EU) …/…

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on the equivalence of the solvency regime for insurance and reinsurance undertakings in force in Japan to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)[4] , and in particular Articles 172(4) and 227(5) thereof,

Whereas:

(1) Directive 2009/138/EC establishes a risk-based solvency regime for insurance and reinsurance undertakings in the Union. Full application of Directive 2009/138/EC to insurers and reinsurers in the Union will commence on 1 January 2016.

(2) In accordance with Article 311 of Directive 2009/138/EC the Commission may also adopt delegated acts provided for in that Directive prior to the date of its application.

(3) Article 172 of Directive 2009/138/EC relates to equivalence of the solvency regime of a third country or jurisdiction applied to reinsurance activities of undertakings with their head office in that third country. A positive equivalence determination allows reinsurance contracts concluded with undertakings having their head office in that jurisdiction to be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with that Directive.

(4) Paragraph 4 of Article 172 of Directive 2009/138/EC provides for a determination of fixed-duration temporary equivalence for third countries or jurisdictions whose reinsurance solvency regimes meet certain criteria. A determination of temporary equivalence is valid until 31 December 2020 with possibility of renewal for a maximum of one year, as laid down in article 172(5).

(5) Article 227 of Directive 2009/138/EC relates to equivalence for third-country insurers that are part of groups headquartered in the Union. A positive equivalence determination allows such groups, when deduction and aggregation is authorised as the consolidation method for their group reporting, to take into account the calculation of capital requirements and available capital (own funds) under the rules of the non-Union jurisdiction rather than calculating them on the basis of Directive 2009/138/EC, for the purposes of calculating the group solvency requirement and eligible own funds.

(6) Paragraph 5 of Article 227 of Directive 2009/138/EC provides for a determination of fixed-duration provisional equivalence for third countries or jurisdictions whose insurance solvency regimes meet certain criteria. A determination of provisional equivalence is valid for a period of 10 years with possibility of renewal.

[4] OJ L 335, 17.12.2009, p. 1.

(7) A number of criteria are to be considered to assess temporary equivalence under Article 172(4) of Directive 2009/138/EC and provisional equivalence under 227(5) of Directive 2009/138/EC. Those criteria include certain common requirements, particularly concerning the solvency regime in place and the powers resources and responsibilities of the supervisor. Other criteria are different for the two types of equivalence, in particular those concerning the convergence towards an entirely equivalent regime, the exchange of information with supervisory authorities, and professional secrecy.

(8) The Japanese solvency regime is laid down in the Insurance Business Act and Insurance Business Ordinance, as last amended in 2010. A comprehensive licencing regime exists for authorisation of insurers. To carry out the business of reinsurance in Japan, a non-life insurance license is necessary. Governance, risk management and disclosure standards are partly laid down in Supervisory Guidelines of Japan Financial Services Agency (JFSA). Supervisory Guidelines do not have the force of law, but are closely monitored by the JFSA, which has the power to impose remedial actions if it deems them appropriate.

(9) In March 2015, the European Insurance and Occupational Pensions Authority (EIOPA) delivered advice according to Article 33(2) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council[5] to the Commission on the regulatory and supervisory system for reinsurance and insurance undertakings in force in Japan. Subsequently, EIOPA has also assisted the Commission and provided further input with regard to the assessment of the Japanese insurance sector under Article 227(5) of Directive 2009/138/EC. The Commission has based its assessment on the information provided by EIOPA.

(10) Japan has an independent insurance supervisor, the JFSA, with the necessary powers and resources to carry out its tasks. In 2013 the JFSA had about 100 staff dedicated full-time to insurance supervision, with others available from elsewhere in the organisation. Investigative powers include on-site inspections, and sanctions include administrative orders going as far as license withdrawal and individual sanctions. JFSA can also submit files to public prosecutors.

(11) Insurers and reinsurers must submit extensive reporting material to the JFSA, and the JFSA has wide-ranging powers to restructure or wind-up insurers and reinsurers in difficulties, which were used effectively to deal with a number of life insurers in severe difficulties during the recent decades.

(12) The JFSA has a number of cooperation arrangements in place with other supervisors around the world. Since 2011, it is a signatory to the International Association of Insurance Supervisors Multilateral Memorandum of Understanding on exchange of information between insurance supervisors. It has a number of bilateral or multilateral cooperation agreements in place with other supervisors, including several supervisors in the Union.

(13) JFSA staff are subject to stringent professional secrecy requirements. JFSA rules and practices adequately protect confidential information provided by foreign supervisors. All present or former JFSA staff are required to keep confidential any information which they receive in the course of their duties. Unauthorised disclosure can result in

[5] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

disciplinary sanctions, criminal investigations and punishment. Information received from foreign supervisors and indicated as confidential is treated accordingly, and will only be used for the purposes agreed with the foreign supervisor.

(14) The valuation of assets for both life and non-life insurance companies is done in accordance with Japanese Generally Accepted Accounting Principles. Most but not all assets are valued at fair value. Under certain circumstances, some assets classes (such as bonds and loans) are valued at book value. When assets are valued at historical cost, most of the unrealised gains and losses are taken into account for determining the available own funds. Technical provisions of life and long term non-life are discounted. The discount rate that is to be used for discounting the technical provisions is periodically set by the JFSA. Starting from the contract date onwards, technical provisions can only be reassessed upwards (they are never valued below the value determined at contract date). So market and other developments that would result in a decrease in technical provisions (such as an increase in interest rates), are disregarded. Insurance undertakings are also required to carry out future cash flow analysis at every fiscal year from the perspective of the appropriateness of technical provisions and, where deemed necessary, to accumulate additional reserves.

(15) For both life and non-life undertakings, supervisory intervention can be triggered by three different thresholds, defined as different "Solvency Margin Ratios" (SRM), expressed as a ratio of double the own funds divided by a capital requirement named the "Total Risk". The "Total Risk" metric covers underwriting risks, interest rate and market risks, operational risk and the catastrophe risk. Internal models are accepted for catastrophe and minimum guarantee risks. The JFSA has the power to impose certain remedial measures even if the highest threshold for supervisory intervention (SRM above 200%) is not breached, for instance by requiring insurers to adopt measures in order to improve their profitability, credit risk, stability or liquidity risk. When the SRM is below 0%, the JFSA may order the total or partial suspension of the business.

(16) Via an enterprise risk management plan Japanese insurers are required to manage risks individually and comprehensively. Insurers are required to conduct appropriate risk management in a systematic and comprehensive manner. This includes looking at whether relevant risks are addressed, verifying the objectivity and appropriateness of the standards for quantification, and analysing future capital adequacy in the light of matters related to medium and long-term business strategies and the business environment. JFSA also requires insurers to carry out an Own Risk and Solvency Assessment and to report its results to the board of directors.

(17) Japanese insurers are required by law to submit semi-annual and annual business reports to the JFSA. In addition each year an insurer is required to prepare some explanatory documents and keep them available to the public at its head office.

(18) The Japanese solvency regime is evolving. Group-level solvency requirements were introduced in 2010. Since the start of the equivalence assessment of the Japanese supervisory system in relation to Article 172 of Directive 2009/138/EC in 2011 by EIOPA, Japan is engaged in reforms which will improve its solvency regime. Several reports and field tests have been carried out in 2011, 2012 and 2014 on a balance sheet based on economic valuations. Amendments under consideration give reasons to believe that future evolutions of the Japanese solvency regime will produce enhanced convergence with Directive 2009/138/EC.

(19) Following this assessment, the insurance and reinsurance solvency regime of Japan should be considered to meet the criteria for temporary equivalence laid down in

Article 172(4) of Directive 2009/138/EC, and for provisional equivalence laid down in Article 227(5) of Directive 2009/138/EC.

(20) The period of the temporary equivalence determined by this Decision is to end on 31 December 2020, in accordance with Article 172(5) of Directive 2009/138/EC.

(21) The period of the provisional equivalence determined by this Decision should be ten years, in accordance with Article 227(6) of Directive 2009/138/EC,

HAS ADOPTED THIS DECISION:

Article 1

The solvency regime in force in Japan that applies to the reinsurance activities of undertakings with their head offices in Japan and regulated by the Insurance Business Act shall be considered as temporarily equivalent to the regime laid down in Title I of Directive 2009/138/EC.

The temporary equivalence referred to in the first paragraph shall end on 31 December 2020.

Article 2

The solvency regime in force in Japan that applies to the insurance activities of undertakings with their head offices in Japan and regulated by the Insurance Business Act shall be considered as provisionally equivalent to the regime laid down in Chapter VI of Title I of Directive 2009/138/EC.

The provisional equivalence referred to in the first paragraph shall be granted for a period of 10 years from 1 January 2016.

Article 3

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at Brussels, 26.11.2015

For the Commission
The President
Jean-Claude JUNCKER