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DRAFT REPORT

on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (recast)
(COM(2008)0119 – C6-0231/2007 – 2007/0143(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Peter Skinner

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (recast) (COM(2008)0119 – C6-0231/2007 – 2007/0143(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2007)0361) and the amended proposal (COM(2008)0119),
 - having regard to Article 251(2) and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0231/2007),
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - [– having regard to the letter of ... of the Committee on Legal Affairs to the Committee on Economic and Monetary Affairs in accordance with Article 80a(3) of its Rules of Procedure [*in the event of a favourable opinion by JURI*],]
 - [– having regard to the letter of ... from the Committee on Legal Affairs to its President in accordance with Article 80a(4) of its Rules of Procedure ,
 - having regard to the letter of ... in which the President of the Commission indicated that it would not withdraw its proposal [*in the event of a non-favourable opinion by JURI*],]
 - having regard to Rules 51 and 80a of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0000/2008),
1. Approves the Commission proposal as amended and as aligned with the recommendations of the groupe consultatif des services juridiques du Parlement, du Conseil et de la Commission
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

Text proposed by the Commission

Amendments by Parliament

¹ OJ C 77, 28.3.2002, p.1.

Amendment 1
Recital 23

(23) It is necessary to promote supervisory convergence not only in respect of supervisory tools but also in respect of supervisory practices. The Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2004/6/EC should play an important role in this respect and report regularly on the progress made.

(23) It is necessary to promote supervisory convergence not only in respect of supervisory tools but also in respect of supervisory practices. The Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2004/6/EC should play an important role in this respect and report regularly **to the European Parliament and the Commission** on the progress made.

Justification

It is important that the Parliament as co-legislator is being kept fully informed of developments that concern the effective and efficient application of this Directive.

Amendment 2
Recital 29 a (new)

(29a) It is practice in some Member States that insurance companies sell life insurance products where the policy holders and beneficiaries contribute to the risk capital of the company in exchange for all or part of the return on the contributions. Those accumulated profits are surplus funds as defined in Article 90(1) and can be used to absorb any losses that may arise in accordance with Article 90(2),.

Justification

Introducing a definition of surplus funds for the purpose of this directive as well as for the purpose of their use to cover any losses, which may occur.

Amendment 3
Recital 43

(43) It is necessary that the Minimum Capital Requirement is calculated in

(43) It is necessary that the Minimum Capital Requirement is calculated in

accordance with a simple formula, ***on the basis of*** data which can be audited.

accordance with a simple formula, ***which is fully consistent with the risk-based approach of the Solvency Capital Requirement and is based on the*** data which can be audited.

Justification

We need to ensure consistency of the MCR calculation with the overall economic approach of the directive, the MCR's reflection of the undertaking's risk profile as well as consistency between MCR and (solo) SCR across different undertakings.

Amendment 4
Recital 70

(70) It is necessary to ensure that own funds are appropriately distributed within the group and available to protect policyholders and beneficiaries where needed. To this end insurance and reinsurance undertakings within a group should have sufficient own funds to cover their solvency capital requirement, unless the objective of protection of policyholders and beneficiaries can effectively be achieved otherwise. Insurance and reinsurance undertakings within a group should therefore be authorised to cover their Solvency Capital Requirement with group support declared by their parent undertaking, under defined circumstances. In order to assess the need for and prepare any possible future revision of the group support regime, the Commission should report on the rules of the Member States and the practices of the supervisory authorities in this field.

(70) It is necessary to ensure that own funds are appropriately distributed within the group and available to protect policyholders and beneficiaries where needed. To this end insurance and reinsurance undertakings within a group should have sufficient own funds to cover their solvency capital requirement, unless the objective of protection of policyholders and beneficiaries can effectively be achieved otherwise. Insurance and reinsurance undertakings within a group should therefore be authorised to cover their Solvency Capital Requirement with group support declared by their parent undertaking, under defined circumstances. In order to assess the need for and prepare any possible future revision of the group support regime, the Commission should report ***to the European Parliament*** on the rules of the Member States and the practices of the supervisory authorities in this field.

Justification

It is important that the Parliament as co-legislator is being kept fully informed of developments that concern the effective and efficient application of this Directive.

Amendment 5
Recital 70 a (new)

(70a) All supervisors involved in group supervision should be able to understand the decisions made, in particular when those decisions are made by the group supervisor. It is therefore necessary that when it becomes available to one of the supervisors, all information is immediately shared with the other supervisors, in order for all supervisors to be able to establish an opinion based on the same amount of information. In the event that the supervisors concerned cannot reach an agreement, qualified advice from the Committee of European Insurance and Occupational Pensions Supervisors should be sought to resolve the situation.

Justification

The group support mechanism is based on mutual trust. However, the involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved in should be able to judge a situation based on the same amount of information. Where concerned supervisors cannot come to an agreement, it useful to receive a qualified advice from a third party that provides an independent view. The agency / governance problem that arose in the original proposal has therewith been eliminated.

Amendment 6
Recital 93 a (new)

(93a) Recasting the applicable instruments and, consequently, repealing Directive 2002/83/EC should not lead to pension funds becoming subject to new solvency rules. The review of Directive 2003/41/EC, which was due in 2007, should be carried out by the Commission as quickly as possible. The Commission should also consider the consequences of applying a similar solvency system as Solvency II to institutions for occupational retirement provision (IORPs), taking full account of the differences in products and institutions between IORPS and insurance companies.

Justification

It is important that the legal framework for IORPs remains unchanged, considering that a review of that Directive is about to be carried out by the Commission.

Amendment 7
Recital 95 a (new)

..

(95a) Further work on insurance guarantee schemes in the European Union should be conducted and divergencies between the national regimes of Member States should be reduced as far as possible.

Justification

Insurance guarantee schemes are vital for the protection of policyholders in case of winding-up of an insurance undertaking. There is currently lack of harmonisation in this area and more should be done to achieve the same level of protection across all Member States.

Amendment 8
Article 4

Article 4

deleted

Exclusion from scope due to size

- 1. Without prejudice to Articles 5 to 10 this Directive shall not apply to insurance undertakings whose annual premium income does not exceed EUR 5 million.***
- 2. If the amount set out in paragraph 1 is exceeded for three consecutive years this Directive shall apply from the fourth year.***

Justification

The proportionality principles as they are laid down in the Directive can be applied without any problem to any company. There is no reason to believe that this principle could not be applied to very small companies. Bringing those very small companies within the scope of the Directive also eliminates potential problems for small companies in border areas serving clients across the frontier. With the deletion they know exactly which rules apply, and will not be subject to discriminatory rules that do not contribute to the establishing of an internal market and would even jeopardise a level playing field.

Amendment 9

Article 28, paragraph 3 a (new)

3a. The Commission shall adopt implementing measures relating to paragraph 3, specifying the proportional application of the Directive, in particular to very small insurance undertakings. Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Justification

The principle of proportionality requires further clarification through implementing measures.

Amendment 10

Article 37, paragraph 1, introductory part

1. Following the supervisory review process supervisory authorities may ***in exceptional circumstances*** set, a capital add-on for an insurance or reinsurance undertaking by a decision stating the reasons. That possibility shall only exist in the following cases:

1. Following the supervisory review process supervisory authorities may set a capital add-on for an insurance or reinsurance undertaking by a decision stating the reasons. That possibility shall only exist in the following ***exceptional circumstances***:

Justification

There is no need to for stating the same thing twice. However, the expression "exceptional circumstances" should be kept, to avoid any misinterpretation of the article.

Amendment 11

Article 43, paragraph 1, subparagraph 1

1. Insurance and reinsurance undertakings shall have in place an effective risk management system comprising strategies, processes and reporting procedures necessary to monitor, manage and report, on a continuous basis the risks, on an individual and aggregated level, to which they are or could be exposed, and their interdependencies.

1. Insurance and reinsurance undertakings shall have in place an effective risk management system comprising strategies, processes and reporting procedures necessary to ***measure***, monitor, manage and report, on a continuous basis the risks, on an individual and aggregated level, to which they are or could be exposed, and their interdependencies.

Justification

In order to be able to monitor, manage or report on risks, it is necessary to measure them first.

Amendment 12
Article 51, paragraph 3

3. The Committee of European Insurance and Occupational Pensions Supervisors shall provide the information referred to in paragraph 2 to the Commission, together with a report outlining the degree of supervisory convergence in the use of capital add-ons between supervisory authorities in the different Member States.

3. The Committee of European Insurance and Occupational Pensions Supervisors shall provide the information referred to in paragraph 2 to the ***the European Parliament and*** the Commission, together with a report outlining the degree of supervisory convergence in the use of capital add-ons between supervisory authorities in the different Member States.

Justification

It is important that the Parliament as co-legislator is being kept fully informed of developments that concern the effective and efficient application of this Directive.

Amendment 13
Article 74, paragraph 1, subparagraph 2

When valuing liabilities, no adjustment to take account of the own credit standing of the insurance or reinsurance undertaking ***shall be made.***

When valuing liabilities, no adjustment ***shall be made*** to take account of the own credit standing of the insurance or reinsurance undertaking, ***the group to which it belongs as defined in Article 210, or the ultimate parent undertaking.***

Justification

Where the undertaking is part of a group, the undertaking itself may not have a rating, but the group or the ultimate parent may have a rating. It must be clarified that these ratings can also not be taken into account.

Amendment 14
Article 77, paragraph 3

(3) all payments to policyholders and beneficiaries, including future discretionary bonuses, which insurance and reinsurance undertakings expect to make,

(3) all payments to policyholders and beneficiaries, including future discretionary bonuses, which insurance and reinsurance undertakings expect to make,

whether or not these payments are contractually guaranteed, unless those payments fall under *Article 90*.

whether or not these payments are contractually guaranteed, unless those payments fall under *Article 90(2)*.

Justification

Ensuring consistency with amendment to Article 90.

Amendment 15
Article 90

1. Surplus funds shall be deemed to be accumulated profits, which are assigned either individually or collectively to policyholders and beneficiaries in the form of future discretionary bonuses.

In so far as authorised under national law, **realised profits appearing as surplus funds in the statutory annual accounts** shall not be considered as insurance and reinsurance liabilities, **to the extent that these surplus funds may be used to cover any losses which may arise and where they have not been made available for distribution to policyholders and beneficiaries.**

2. In so far as authorised under national law **and where they have not been assigned individually to policyholders and beneficiaries and have not been made available for distribution to policyholders and beneficiaries**, surplus funds shall not be considered as insurance and reinsurance liabilities **to the extent that they are available to absorb losses on an ongoing concern basis.**

Justification

Introducing a definition of surplus funds for the purpose of this directive as well as for the purpose of their use to cover any losses, which may occur.

Amendment 16
Article 96, point 1

(1) surplus funds falling under Article 90 shall be classified in **Tier 1**;

(1) surplus funds falling under Article 90 shall be classified in **Tier 2**;

Justification

As surplus funds do not provide for full absorption of any losses in all circumstances, it seems necessary to limit their recognition for supervisory purposes..

Amendment 17

Article 96, point 3

(3) any future claims which ***Protection and Indemnity Associations*** may have against their members by way of a call for supplementary contributions, within the ***financial year***, shall be classified in Tier 2.

(3) any future claims which ***mutual or mutual-type associations of shipowners with variable contributions solely insuring risks listed in classes 6, 12 and 17 in point A of Annex I*** may have against their members by way of a call for supplementary contributions, ***due*** within the ***next 12 months***, shall be classified in Tier 2.

Justification

EU law does not define P&I Associations. To make the exemption in this paragraph readable and understandable across the EU it is necessary to clarify this legal form in more generic terms using the Directive's references. In addition, it should be clarified that the claim that such an undertaking may have against its members (shipowners) might also be due in the following year, in particular when the date of assessment is close to the end of the current financial year.

Amendment 18
Article 97

1. The Commission shall adopt implementing measures laying down the following:

(a) ***where it is necessary to ensure the overall quality of own funds and cross-sectoral consistency, the division of tiers into sub-tiers;***

(b) ***the criteria used to classify own fund items into the sub-tiers referred to in point (a) based on the characteristics set out in Article 93;***

(c) a list of own fund items deemed to meet the criteria, set out in Article 94 ***and in point (b) of this paragraph***, which contains for each own fund item a precise description of the features which determined its classification;

(d) the methods to be used by supervisory authorities, when approving the assessment and classification of own fund items which are not covered by the list referred to in

1. The Commission shall adopt implementing measures laying down the following:

(a) a list of own fund items deemed to meet the criteria, set out in Article 94, which contains for each own fund item a precise description of the features which determined its classification;

(b) the methods to be used by supervisory authorities, when approving the assessment and classification of own fund items which are not covered by the list referred to in

point (c).

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

2. The Commission shall regularly review and, where appropriate, update the list referred to in ***point (c)*** of paragraph 1 in the light of market developments.

point (a).

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

2. The Commission shall regularly review and, where appropriate, update the list referred to in ***point (a)*** of paragraph 1 in the light of market developments.

Amendment 19
Article 98

1. As far as the Solvency Capital Requirement is concerned, the amounts of Tier 2 and Tier 3 items shall be subject to the following limits:

(a) ***in order to ensure that*** the proportion of Tier 1 items in the eligible own funds is higher than one third of the total eligible own funds, ***the eligible amount of Tier 2 together with the eligible amount of Tier 3 shall be limited to twice the total amount of Tier 1 items;***

(b) ***in order to ensure that the proportion of*** Tier 3 items in the eligible own funds is less than one third of the total eligible own funds, ***the eligible amount of Tier 3 shall be limited to half the total amount of Tier 1 and eligible amount of Tier 2 items.***

2. As far as the Minimum ***Capital*** Requirement is concerned, ***in order to ensure that the proportion of*** Tier 1 items in the eligible basic own funds shall be higher than ***one half of the total*** eligible basic own funds, ***the amount of basic own fund items eligible to cover the Minimum Capital Requirement*** which are classified in Tier 2 ***shall be limited to the total amount of Tier 1 items.***

1. As far as the Solvency Capital Requirement is concerned, the amounts of Tier 2 and Tier 3 items shall be subject to the following limits:

(a) the proportion of Tier 1 items in the eligible own funds is higher than one third of the total eligible own funds; ***and***

(b) Tier 3 items in the eligible own funds is less than one third of the total eligible own funds.

2. As far as the Minimum Requirement is concerned, Tier 1 items in the eligible basic own funds shall be higher than ***the*** eligible basic own funds which are classified in Tier 2.

2a. Surplus funds in accordance with Article 90 should never be eligible to cover the Minimum Capital Requirement.

3. Where sub-tiers have been introduced, in accordance with point (a) of Article 97 (1), specific limits shall apply to the amount of own fund items classified in those sub-tiers.

4. The eligible amount of own funds to cover the Solvency Capital Requirement set out in Article 100 shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.

5. The eligible amount of basic own funds to cover the Minimum Capital Requirement set out in Article 126 shall be equal to sum of the amount of Tier 1 and the eligible amount of basic own fund items classified in Tier 2.

Justification

Surplus funds in accordance with Article 90 (paragraph 2) can only be used to cover losses in the case of a breach of the undertaking's Solvency Capital Requirement, but not in the case of a breach of Minimum Capital Requirement. Regardless of the tier classification.

Amendment 20

Article 99

Article 99

deleted

Implementing measures

The Commission shall adopt implementing measures laying down the specific limits applicable to sub-tiers, where sub-tiers have been introduced,

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Justification

There is no need for sub-tiers. Limits applicable to Tier 1, 2, 3 in the composition of SCR and MCR are written in an unclear manner.

Amendment 21
Article 105, paragraph 5, subparagraph 1

5. The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking. ***It shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof.***

5. The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking.

Justification

Reflecting the duration of liabilities in the market risk module would seriously be inconsistent with the objective to achieve a 99.5% confidence level over a 1 year time horizon for the SCR, and therewith significantly endangering the improvement in consumer protection brought about.

Amendment 22
Article 107, paragraph 1

The adjustment referred to in point (c) paragraph 1 of Article 103 for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions and deferred taxes.

The adjustment referred to in point (c) paragraph 1 of Article 103 for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions and deferred taxes, ***unless they were recognised as surplus funds in accordance with Article 90(2).***

Justification

Alignment with changes to Article 90.

Amendment 23
Article 110, paragraph 5

5. Supervisory authorities shall give approval to the application only if they are satisfied that the systems of the insurance or reinsurance undertaking concerned for monitoring and managing risk are adequate and in particular, that the internal model

5. Supervisory authorities shall give approval to the application only if they are satisfied that the systems of the insurance or reinsurance undertaking concerned for ***measuring***, monitoring and managing risk are adequate and in particular, that the

complies with the requirements referred to in paragraph 3.

internal model complies with the requirements referred to in paragraph 3.

Justification

In order to be able to monitor, manage or report on risks, it is necessary to measure them first.

Amendment 24

Article 127, paragraph 1, point d a (new)

..

(da) it shall be fully consistent with the risk-based approach of the Solvency Capital Requirement in order to allow for gradually increasing ladder of supervisory intervention.

Justification

We need to ensure consistency of the MCR calculation with the overall economic approach of the directive, the MCR's reflection of the undertaking's risk profile as well as consistency between MCR and (solo) SCR across different undertakings.

Amendment 25

Article 130, paragraph 2, subparagraph 1

2. With respect to the whole portfolio of assets, insurance and reinsurance undertakings shall only invest in assets and instruments whose risks the undertaking concerned can properly monitor, manage and control.

2. With respect to the whole portfolio of assets, insurance and reinsurance undertakings shall only invest in assets and instruments whose risks the undertaking concerned can properly **measure**, monitor, manage and control.

Justification

In order to be able to monitor, manage or report on risks, it is necessary to measure them first.

Amendment 26

Article 132

1. With respect to insurance risks situated in the Community, Member States shall **ensure** that the assets held to cover the

1. With respect to insurance risks situated in the Community, Member States shall **not require** that the assets held to cover the

technical provisions related to those risks are localised within the Community.

Member States shall not require insurance undertakings to localise those assets in any particular Member States.

However, with respect to recoverables from reinsurance contracts against undertakings authorised in accordance with this Directive or having their head office in a third country whose solvency regime is deemed to be equivalent in accordance with Article 170, Member States shall not require the localisation within the Community of the assets representing those recoverables.

The requirement concerning the localisation of assets as referred to in the first paragraph shall not be construed as involving a requirement that movable assets be deposited or that immovable assets be subjected to restrictive measures such as the registration of mortgages. Assets represented by claims against debtors shall be regarded as situated in the Member State where they are realisable.

technical provisions related to those risks are localised within the Community ***or*** in any particular Member States.

With respect to recoverables from reinsurance contracts against undertakings authorised in accordance with this Directive or having their head office in a third country whose solvency regime is deemed to be equivalent in accordance with Article 170, Member States shall ***also*** not require the localisation within the Community of the assets representing those recoverables.

Justification

A requirement to localise assets in the EU contradicts the prudent person investment principle, and may in times of distress even be detrimental to the interests of policyholders. To the extent that this could increase risk exposure, this is catered for in the SCR.

Amendment 27 Article 170, paragraph 1

1. The Commission ***shall, in accordance with the advisory procedure referred to in Article 304(2)***, adopt decisions, as to whether the solvency regime of a third-country applied to re-insurance activities of undertakings with their head office in that third-country is equivalent to that laid down in ***this Directive***.

Those Decisions shall be regularly reviewed.

1. The Commission ***may*** adopt decisions, as to whether the solvency regime of a third-country applied to re-insurance activities of undertakings with their head office in that third-country is equivalent to that laid down in ***Title I, Chapter VI***.

Those Decisions, ***designed to amend non-essential elements of this Directive***, shall

be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3). They shall be regularly reviewed to take into account any changes to the solvency regime laid down in Title I, Chapter VI, and to the solvency regime in the third country concerned.

Justification

A Decision concerning the third country equivalence of standards is a political decision where the co-legislators should be treated equally. As a result the advisory procedure foreseen in Article 304(2) becomes obsolete.

Amendment 28
Article 183 a (new)

Article 183a

In addition to the information referred to in Article 183, the use of surplus funds under Article 90(2) shall be communicated to the policyholder for solvency requirement purposes. before the life insurance contract is concluded

Justification

The use of collectively assigned realised profits for any breaches of Standard Capital Requirement should be communicated to the policy holders as part of the information before signing the contract. The importance of this was also shown in the case of the inquiry of Equitable Life.

Amendment 29
Article 208, paragraph 1

1. Member States shall ensure that insurance and reinsurance undertakings which conclude finite reinsurance contracts or carry on finite reinsurance activities are able to properly monitor, manage, control and report the risks arising from those contracts or activities.

1. Member States shall ensure that insurance and reinsurance undertakings which conclude finite reinsurance contracts or carry on finite reinsurance activities are able to properly **measure**, monitor, manage, control and report the risks arising from those contracts or activities.

Justification

In order to be able to monitor, manage or report on risks, it is necessary to measure them first.

Amendment 30

Article 212, paragraph 2, subparagraph 4

Where the group supervisor **does not include** an insurance or reinsurance undertaking in the group supervision under one of the cases provided for in points (b) and (c) of the first subparagraph, the supervisory authorities of the Member State in which that undertaking is situated may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance or reinsurance undertaking concerned.

Where the group supervisor **is of the opinion that** an insurance or reinsurance undertaking **should not be included** in the group supervision under one of the cases provided for in points (b) and (c) of the first subparagraph, **it shall consult** the supervisory authorities of the Member State in which that undertaking is situated **before taking a decision. The supervisory authorities of the Member State in which that undertaking is situated** may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance or reinsurance undertaking concerned.

Justification

The group support mechanism is based on mutual trust. However, the involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved in should be able to judge a situation based on the same amount of information. Where concerned supervisors cannot come to an agreement, it useful to receive a qualified advice from a third party that provides an independent view. The agency / governance problem that arose in the original proposal has therewith been eliminated.

Amendment 31

Article 220, paragraph 2, subparagraph 1

2. Without prejudice to paragraph 1, **the following** may only be included in the calculation in so far as **they are** eligible for covering the Solvency Capital Requirement of the related undertaking concerned:

2. Without prejudice to paragraph 1, **any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated** may only be included in the calculation in so far as **it is** eligible for covering the Solvency Capital Requirement of the related undertaking concerned.

(a) profit reserves and future profits arising in a related life insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated;

(b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

Justification

Profit reserves and future profits are accounting concepts that are not in line with the realistic valuation principles to which undertakings are subject according to this Directive. It therefore needs to be eliminated.

Amendment 32

Article 225, paragraph 2, subparagraph 2

The group supervisor shall consult the other supervisory authorities concerned, and the Committee of European Insurance and Occupational Pensions Supervisors, ***before taking a decision on equivalence.***

In doing so, the group supervisor shall consult the other supervisory authorities concerned, and the Committee of European Insurance and Occupational Pensions Supervisors.

Justification

In paragraph 2 it is said that the group supervisor decides on equivalence, whereas in paragraph 3 this power is given to the Commission. In order to clarify that such power belongs to the Commission, paragraph 2 needs to be modified.

Amendment 33

Article 225, paragraph 3

3. The Commission ***shall*** adopt, ***after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the procedure referred to in Article 304(2)***, a decision as to whether the solvency regime in a third country is equivalent to that laid down in Title I, Chapter VI.

These decisions shall be regularly reviewed

3. The Commission ***may*** adopt a decision as to whether the solvency regime in a third country is equivalent to that laid down in Title I, Chapter VI.

Those decisions, ***designed to amend non-***

to take into account any changes to the solvency regime laid down in Title I, Chapter VI, and to the solvency regime in the third country.

essential elements of this Directive, shall be **adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3)**. They shall be regularly reviewed to take into account any changes to the solvency regime laid down in Title I, Chapter VI, and to the solvency regime in the third country.

Justification

A Decision concerning the third country equivalence of standards is a political decision where the co-legislators should be treated equally. As a result the advisory procedure foreseen in Article 304(2) becomes obsolete.

Amendment 34

Article 228, paragraph 2, subparagraph 1

2. The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in ***Title I, Chapter VI, Section 4, Subsections 1 and 2*** and Title I, Chapter VI, Section 4, ***Subsections 1 and 3***.

2. The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in Title I, Chapter VI, Section 4, ***Subsections 1, 2 and 3***.

Justification

No substantial changes: clarification.

Amendment 35

Article 228, paragraph 2, subparagraph 2, point b

(b) the proportional share of the Minimum Capital Requirement of the related insurance ***or*** reinsurance undertakings.

(b) the proportional share of the Minimum Capital Requirement of the related insurance ***and*** reinsurance undertakings.

Justification

Technical adaptation to reflect that the proportional shares in both insurance and reinsurance undertakings has to be added, and that there is no choice, which the word "or" could imply.

Amendment 36
Article 229, paragraph 3

3. During the period referred to in paragraph 2, the group supervisor shall, at the request of the participating undertaking, or of any of the other supervisory authorities concerned, consult the Committee of European Insurance and Occupational Pensions Supervisors. The group supervisor may consult the Committee on its own initiative.

When the Committee is consulted, the period referred to in paragraph 2 shall be extended by two months.

3. The group supervisor shall transmit the joint decision, set out in a document containing the fully reasoned decision, to the applicant. The supervisory authorities concerned shall comply with the joint decision.

Justification

The group support mechanism is based on mutual trust. However, the involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved in should be able to judge a situation based on the same amount of information. Where concerned supervisors cannot come to an agreement, it useful to receive a qualified advice from a third party that provides an independent view. The agency / governance problem that arose in the original proposal has therewith been eliminated.

Amendment 37
Article 229, paragraph 4

4. Where the Committee of European Insurance and Occupational Pensions Supervisors has been consulted, the supervisory authorities concerned shall duly consider such advice before taking their joint decision.

4. In the absence of a joint decision between the supervisory authorities concerned within six months from the date of receipt of the complete application by the group supervisor, the group supervisor shall request the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), within a further eight weeks, to deliver its advice to all supervisory authorities concerned. The group supervisor shall take a decision within one week of the transmission of the CEIOPS' advice, taking full account of that advice. The group supervisor's decision shall be set out in a document containing the full reasons for the decision and shall take into account the views of the other supervisory authorities concerned expressed within a six month

period. The group supervisor shall provide its decision to the applicant and the other supervisory authorities concerned. The supervisory authorities concerned shall comply with the decision.

The group supervisor shall provide to the applicant the joint decision referred to in paragraph 2 in a document containing the fully reasoned decision and an explanation of any significant deviation from the positions adopted by the Committee of European Insurance and Occupational Pensions Supervisors.

That joint decision shall be recognised as determinative and applied by the supervisory authorities concerned.

Justification

The group support mechanism is based on mutual trust. However, the involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved in should be able to judge a situation based on the same amount of information. Where concerned supervisors cannot come to an agreement, it useful to receive a qualified advice from a third party that provides an independent view. The agency / governance problem that arose in the original proposal has therewith been eliminated.

Amendment 38 Article 229, paragraph 5

5. In the absence of a joint decision within the periods set out in paragraphs 2 and 3 respectively, the group supervisor shall make its own decision on the application. *deleted*

In making its decision, the group supervisor shall duly take into account the following:

(a) any views and reservations of the other supervisory authorities concerned expressed during the applicable period;

(b) where the Committee of European Insurance and Occupational Pensions Supervisors has been consulted, the advice of that Committee.

The decision shall be set out in a document containing the fully reasoned

decision and an explanation of any significant deviation from the positions adopted by the Committee of European Insurance and Occupational Pensions Supervisors.

The group supervisor shall transmit the decision to the applicant and the other supervisory authorities concerned.

That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

Justification

The group support mechanism is based on mutual trust. However, the involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved in should be able to judge a situation based on the same amount of information. Where concerned supervisors cannot come to an agreement, it useful to receive a qualified advice from a third party that provides an independent view. The agency / governance problem that arose in the original proposal has therewith been eliminated.

Amendment 39
Title, Subsection 6

SUBSECTION 6 – GROUP SUPPORT

SECTION 1a – GROUP SUPPORT

Justification

Group support is a concept that can be applied independently of the application of methods to prevent double gearing by a group.

Amendment 40
Article 234, introductory part

Member States shall provide that the rules laid down in Articles 236 to 241 shall apply to any insurance or reinsurance undertaking which is the subsidiary of an insurance or reinsurance undertaking, **on request of the latter**, where all of the following conditions are satisfied:

Member States shall provide that the rules laid down in Articles 236 to 241 shall apply to any insurance or reinsurance undertaking which is the subsidiary of an insurance or reinsurance undertaking, where all of the following conditions are satisfied:

Justification

The deleted words only provide confusion in relation to paragraph d) of this Article as to who

requests group support.

Amendment 41
Article 234, point a

(a) the subsidiary, ***in relation to which the group supervisor has not made any decision under Article 212(2)***, is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with this Title;

(a) the subsidiary ***has not been excluded from the scope of Article 212(2) and*** is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with this Title;

Justification

No substantial changes: clarification.

Amendment 42
Article 234, point c

(c) the parent undertaking has declared, in writing and in a legally binding document accepted by the group supervisor in accordance with Article 237, that it guarantees that own funds eligible under Article 98(5) will be transferred ***where necessary*** and up to the limit resulting from the application of Article 237;

(c) the parent undertaking has declared, in writing and in a legally binding document accepted by the group supervisor in accordance with Article 237, that it guarantees that own funds eligible under Article 98(5) will be ***rapidly*** transferred and up to the limit resulting from the application of Article 237;

Justification

The group support mechanism is a very innovative tool that provides groups with additional rights. Such rights should be complemented with clear responsibilities to transfer capital without hesitation on demand. This modification also improves the consistency of wording throughout the text.

Amendment 43
Article 234, point c a (new)

(ca) group support is provided from eligible own funds available in the parent undertaking to its subsidiary insurance or reinsurance undertaking;

Justification

The proposal foresees the possibility of providing to a subsidiary group support from funds present in another subsidiary. In principle, a legal entity cannot provide a financial guarantee based on funds available and at the disposal of another legal entity. Company law aspects, in particular as to the responsibility of directors for the continuity of their legal entity, may imply that transfers may not be that easy to transfer and also not as rapidly as requested. Insurance supervisors are not qualified to make a value judgement on the legal possibility to transfer funds between companies, possibly even established in different jurisdictions. This change does not impair the ability to provide group support, but only enhances legal certainty.

Amendment 44

Article 235, paragraph 2, subparagraph 3

The joint decision shall be set out in a document containing the fully reasoned decision which shall be transmitted to the applicant by the group supervisor. The joint decision referred to above shall be ***recognised as determinative and applied*** by the supervisory authorities in the Member States concerned.

The joint decision shall be set out in a document containing the fully reasoned decision which shall be transmitted to the applicant by the group supervisor. The joint decision referred to above shall be ***complied with*** by the supervisory authorities in the Member States concerned.

Justification

No substantial changes: clarification.

Amendment 45

Article 235, paragraph 3

3. In the absence of a joint decision between the supervisory authorities concerned within six months, the group supervisor shall ***make its own decision on the application. The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other supervisory authorities concerned expressed within a six months period. The decision shall be provided to the applicant and the other supervisory authorities concerned by the group supervisor. That decision shall be recognised as determinative and applied*** by the

3. In the absence of a joint decision between the supervisory authorities concerned within six months ***of the date of receipt of the complete application by the group supervisor***, the group supervisor shall ***request the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), within a further eight weeks, to deliver its advice to all the supervisory authorities concerned. The group supervisor shall take a decision within one week of the transmission of the CEIOPS' advice, taking full account of that advice. The group supervisor's decision shall be set out in a document***

supervisory authorities concerned.

containing the full reasons for the decision and shall take into account the views of the other supervisory authorities concerned. The group supervisor shall provide its decision to the applicant and the other supervisory authorities concerned. The supervisory authorities concerned shall comply with the decision.

Justification

The group support mechanism is based on mutual trust. However, the involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved in should be able to judge a situation based on the same amount of information. Where concerned supervisors cannot come to an agreement, it useful to receive a qualified advice from a third party that provides an independent view. The agency / governance problem that arose in the original proposal has therewith been eliminated.

Amendment 46 Article 236, paragraph 2

2. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 229 and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose to the group supervisor to impose a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model, or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The supervisory authority shall communicate the grounds for such proposals to both the subsidiary and the group supervisor.

2. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 229 and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose to the group supervisor to impose a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model, or, in exceptional circumstances where such capital add-on would not be appropriate, ***propose to the group supervisor*** to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The supervisory authority shall communicate the grounds for such proposals to both the subsidiary and the group supervisor.

Justification

No substantial changes: clarification.

Amendment 47
Article 236, paragraph 4, subparagraph 2

The group **supervisor shall duly consider such advice before taking its** final decision. The decision shall be submitted to the subsidiary and the supervisory authority by the group supervisor.

The group **supervisor's** final decision **must fully take into account that advice**. The decision shall be submitted to the subsidiary and the supervisory authority by the group supervisor.

Justification

The group support mechanism is based on mutual trust. However, the involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved in should be able to judge a situation based on the same amount of information. Where concerned supervisors cannot come to an agreement, it useful to receive a qualified advice from a third party that provides an independent view. The agency / governance problem that arose in the original proposal has therewith been eliminated.

Amendment 48
Article 236, paragraph 4, subparagraph 3

In the absence of a final decision from the group supervisor within one month from the date of the advice of the Committee of European Insurance and Occupational Pensions Supervisors, the **proposal** from **the supervisory authority** shall be deemed to have been accepted.

The group supervisor **shall take a decision** within one month from the date of the advice of the Committee of European Insurance and Occupational Pensions Supervisors. **In the absence of such a final decision**, the **advice** from **the Committee of European Insurance and Occupational Pensions Supervisors** shall be deemed to have been accepted.

Justification

The group support mechanism is based on mutual trust. However, the involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved in should be able to judge a situation based on the same amount of information. Where concerned supervisors cannot come to an agreement, it useful to receive a qualified advice from a third party that provides an independent view. The agency / governance problem that arose in the original proposal has therewith been eliminated.

Amendment 49

Article 237, paragraph 1, subparagraph 2

The group support shall, for the purposes of the classification of own funds into tiers in accordance with Articles 93 to 96, be treated as **ancillary own funds**.

The group support shall, for the purposes of the classification of own funds into tiers in accordance with Articles 93 to 96, be treated as **Tier 2 capital**.

Justification

Ancillary own funds can be both Tier 2 and Tier 3 and is therefore less precise as Tier 2 capital.

Amendment 50
Article 237, paragraph 2

2. The group support shall take the form of a declaration to the group supervisor, expressed in a legally binding document and constituting a commitment to transfer own funds eligible under Article 98(5).

2. The group support shall take the form of a declaration to the group supervisor, expressed in a legally binding document and constituting a commitment to transfer own funds eligible under Article 98(5), **notwithstanding any provisions of relevant company law**.

Justification

It is important to clarify in this paragraph that company law may prohibit the effective transfer own funds and that the parent undertaking is responsible in assuring that such prohibition does not exist.

Amendment 51
Article 237 paragraph 3, point b

(b) that there is no current or foreseeable **material** practical or legal impediment to the **prompt** transfer of the eligible own funds referred to in paragraph 2;

(b) that there is no **material** current or foreseeable practical or legal impediment to the **rapid** transfer of the eligible own funds referred to in paragraph 2;

Justification

The group support mechanism is a very innovative tool that provides groups with additional rights. Such rights should be complemented with clear responsibilities to transfer capital without hesitation on demand. This modification also improves the consistency of wording throughout the text.

Amendment 52

Article 238, paragraph 1

**1. By way of derogation from Article 136, *deleted*
the supervisory authority having
authorised the subsidiary shall not be
responsible for enforcing its Solvency
Capital Requirement by taking measures
at the level of the subsidiary.**

***That supervisory authority shall however
continue to monitor the Solvency Capital
Requirement of the subsidiary as set out
in paragraphs 2 and 3.***

Justification

This paragraph is inconsistent with the responsibilities as laid down in Article 262(1), where it is said that the group supervisor is not responsible enforcement of compliance by insurance and reinsurance undertakings. Splitting monitoring and enforcement for supervision does not improve the effective supervision. By deleting this paragraph is sufficient clear that the monitoring and enforcement of subsidiary insurance or reinsurance undertakings is the task and responsibility of the local supervisory This also enables the local supervisory authority to uphold its accountability towards national parliaments in case of a bankruptcy.

Amendment 53
Article 239

When the subsidiary is ***being wound up and*** found to be insolvent, the supervisory authority having authorised the subsidiary shall, on its own initiative or at the request of any other authority competent for the winding-up procedure by application of TITLE IV, call on the parent undertaking to transfer eligible own funds to the subsidiary, in so far as they are necessary to meet policyholder liabilities, up to the limit of the group support resulting from the most recent declaration accepted.

When the subsidiary is found to be insolvent ***and being wound up***, the supervisory authority having authorised the subsidiary shall, on its own initiative or at the request of any other authority competent for the winding-up procedure by application of TITLE IV, call on the parent undertaking to transfer eligible own funds to the subsidiary, in so far as they are necessary to meet policyholder liabilities, up to the limit of the group support resulting from the most recent declaration accepted.

Justification

No substantial changes: clarification.

Amendment 54
Article 240, paragraph 2

2. Group support may be provided from eligible own funds present in the parent undertaking **or in any subsidiary**, subject to that **subsidiary**, where it is an insurance or reinsurance undertaking, having eligible own funds in excess of its **minimum** capital requirement. **The supervisory authority having authorised that subsidiary shall not prevent the transfer of such excess eligible own funds.**

However, where such transfer would lead to the Solvency Capital Requirement of that subsidiary being no longer complied with, it shall be subject to a declaration by the parent undertaking of the necessary level of group support and acceptance by the group supervisor.

2. Group support may **only** be provided from eligible own funds present in the parent undertaking, subject to that **parent undertaking**, where it is an insurance or reinsurance undertaking, having eligible own funds in excess of its **solvency** capital requirement.

Justification

The proposal foresees the possibility of providing to a subsidiary group support from funds present in another subsidiary. In principle, a legal entity cannot provide a financial guarantee based on funds available and at the disposal of another legal entity. Company law aspects, in particular as to the responsibility of directors for the continuity of their legal entity, may imply that transfers may not be that easy to transfer and also not as rapidly as requested. Insurance supervisors are not qualified to make a value judgement on the legal possibility to transfer funds between companies, possibly even established in different jurisdictions. This change does not impair the ability to provide group support, but only enhances legal certainty.

Amendment 55

Article 244, paragraph 1, subparagraph 1

1. Where several requests to transfer eligible own funds are addressed to the parent undertaking **and the group supervisor** in accordance with Articles 238 or 239, and the **group** does not have sufficient eligible own funds to meet all of those together, the amounts **resulting from the most recent declarations accepted** shall be reduced where necessary.

1. Where several requests to transfer eligible own funds are addressed to the parent undertaking in accordance with Articles 238 or 239, and the **parent undertaking** does not have sufficient eligible own funds to meet all of those together, the amounts **requested** shall be reduced where necessary.

Justification

According to Article 238-239 the request is only made by from the local supervisor to the parent. A request is not made to the group supervisor, which is only informed about. it is to be

clarified that the requested amounts are reduced, not the declaration itself. In addition, it is to be clarified that the commitment from the parent remains a commitment to transfer the full amount.

Amendment 56

Article 244, paragraph 1, subparagraph 2 a (new)

The parent undertaking shall not, however, be released from the commitments to transfer the full amounts resulting from the most recent declarations accepted.

Justification

According to Article 238-239 the request is only made by from the local supervisor to the parent. A request is not made to the group supervisor, which is only informed about. it is to be clarified that the requested amounts are reduced, not the declaration itself. In addition, it is to be clarified that the commitment from the parent remains a commitment to transfer the full amount.

Amendment 57

Article 246, first paragraph

The Commission shall submit to the European Insurance and Occupational Pensions Committee, at the latest five years after the date referred to in Article 310(1), a report on Member States' rules and supervisory authorities' practices adopted pursuant to this Subsection.

The Commission shall submit to the European Insurance and Occupational Pensions Committee ***and the European Parliament***, at the latest five years after the date referred to in Article 310(1), a report on Member States' rules and supervisory authorities' practices adopted pursuant to this Subsection.

Justification

It is important that the Parliament as co-legislator is being kept fully informed of developments that concern the effective and efficient application of this Directive.

Amendment 58

Article 251, paragraph 5

5. The Committee of European Insurance and Occupational Pensions Supervisors shall inform the Commission, at least once a year, of any major difficulties with the application of paragraphs 2, 3 and 4.

5. The Committee of European Insurance and Occupational Pensions Supervisors shall inform the Commission ***and the European Parliament***, at least once a year, of any major difficulties with the

application of paragraphs 2, 3 and 4.

Justification

It is important that the Parliament as co-legislator is being kept fully informed of developments that concern the effective and efficient application of this Directive.

Amendment 59

Article 253, paragraph 1, subparagraph 1

1. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, ***including*** in cases where an insurance or reinsurance undertaking encounters financial difficulties.

1. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, ***in particular*** in cases where an insurance or reinsurance undertaking encounters financial difficulties.

Justification

No substantial changes: clarification.

Amendment 60

Article 253, paragraph 1, subparagraph 2

Without prejudice to their respective responsibilities, ***those authorities***, whether or not established in the same Member State, shall provide one another with ***any essential or relevant*** information ***which may allow or*** facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In this regard, the supervisory authorities concerned and the group supervisor shall communicate ***on request*** all ***relevant*** information ***and shall communicate on their own initiative all essential information.***

With the objective of ensuring that those supervisory authorities, including the group supervisor, have the same amount of information available to them, without prejudice to their respective responsibilities, ***and*** whether or not established in the same Member State, ***they*** shall provide one another with ***all*** information ***available in order to*** allow ***and*** facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In this regard, the supervisory authorities concerned and the group supervisor shall communicate ***immediately to one another*** all information ***when it becomes available. The information referred to in this subparagraph includes, but is not limited to, information about actions of the group and supervisors, and information provided by the group.***

Justification

The group support mechanism is based on mutual trust. However, the involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved in should be able to judge a situation based on the same amount of information. Where concerned supervisors cannot come to an agreement, it useful to receive a qualified advice from a third party that provides an independent view. The agency / governance problem that arose in the original proposal has therewith been eliminated

Amendment 61

Article 263, paragraph 2, subparagraph 1

2. The Commission may adopt, ***after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the procedure referred to in Article 304(2), a decision*** as to whether the prudential regime in a third country for the supervision of groups ***is*** equivalent to that laid down in this Title. Those decisions shall be regularly reviewed to take into account any changes to the prudential regime for the supervision of groups laid down in this Title and to the prudential regime in the third country for the supervision of groups.

2. The Commission may adopt ***decisions*** as to whether the prudential regime in a third country for the supervision of groups ***are*** equivalent to that laid down in this Title. Those decisions, ***designed to amend non-essential elements of this Directive***, shall be ***adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3)***. They shall be regularly reviewed to take into account any changes to the prudential regime for the supervision of groups laid down in this Title and to the prudential regime in the third country for the supervision of groups ***and to any other change in regulation that may affect the decision of equivalence***.

Justification

A Decision concerning the third country equivalence of standards is a political decision where the co-legislators should be treated equally. As a result the advisory procedure foreseen in Article 304(2) becomes obsolete.

Amendment 62

Article 263, paragraph 2 a (new)

2a. The decisions referred to in paragraph 2 can only enter into force after the third country concerned have recognised the prudential regime of the Community as equivalent to theirs (mutual recognition).

Justification

It is only fair to ensure mutual recognition, which is also the basis of the intra-EU supervisory regime, which would be effectively a definition of equivalence.

Amendment 63
Article 263, paragraph 2 b (new)

2b. The decisions referred to in paragraph 2 may be adopted only if the third country concerned guarantees the freedom to transfer funds to the Community under all circumstances.

Justification

Group supervision and in particular group support may work within the Community because of the whole legislative framework, including the Treaty, which has been built up during the last 50 years, some of the provisions which may not have any connection with a supervisory regime. Nonetheless, some of these provisions are vital in order for the whole system to work properly. This is particularly the case with the possibility to transfer funds, the liberalisation of which is laid down in the Treaty and became effectively enforceable in 1986. Such a provision may not be part of the verification by supervisors and therefore needs specific mentioning.

Amendment 64
Article 263 a (new)

Article 263a

Parent undertakings outside the Community: equivalence

In the event of equivalent supervision referred to in Article 263, Member States shall apply Articles 216 to 262 to insurance and reinsurance undertakings, by analogy.

The general principles and methods set out in Articles 216 to 262 shall apply at the level of the insurance holding company, third-country insurance undertaking or third-country reinsurance undertaking.

For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in TITLE I, Chapter VI, Section 3, Subsections 1, 2 and 3 as regards the own

funds eligible for the Solvency Capital Requirement and to either of the following:

(a) a Solvency Capital Requirement determined in accordance with the principles of Article 224 where it is an insurance holding company; or

(b) a Solvency Capital Requirement determined in accordance with the principles of Article 225, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

Justification

The Directive is silent on the situation where equivalence has been established. This new Article clarifies the situation, in particular with regard to the use of group support, which should be possible unless effective transfer of funds from the third country to the Community cannot be guaranteed under all scenarios.

Amendment 65 Article 303

1. As far as life insurance is concerned, every two years from the entry into force of this Directive, the Commission shall submit to the European Parliament and to the Council a review of the amounts expressed in euro in this Directive taking into account the evolution of the economic and monetary situation of the Community accompanied, where appropriate, by the necessary proposals

As from 1 January 2012, the amounts expressed in euro in this Directive shall be annually adapted in order to take account of changes in the general Harmonised Indices of Consumer Prices of all Member States as published by Eurostat. The amounts shall be adapted automatically, by increasing the base amount in euro by the percentage change in that index over the period between 1 January 2012 and the review date and rounded up to a multiple of EUR 100 000. In the event that the percentage change since the previous adaptation is less than 5 %, no adaptation shall take place. The Commission shall inform the European Parliament and the Council annually of the adaptation and the adapted amounts.

2. As far as non-life insurance is concerned, every five years from the entry into force of this Directive, the Commission shall submit to the European Parliament and to the Council a review of

the amounts expressed in euro in this Directive, taking into account changes in the economic and monetary situation of the Community accompanied, where appropriate, by the necessary proposals.

Justification

An automatic adaptation of amounts already exists in the present Directives and works satisfactorily. It avoids that undertakings are suddenly subject to higher minimum amounts, as from experience it is well known that review obligations by the Commission are not always executed. An automatic mechanism avoids this problem.

Amendment 66
Article 304, paragraph 2

2. Where reference is made to this paragraph, Articles 3 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof. ***deleted***

Justification

A Decision concerning the third country equivalence of standards is a political decision where the co-legislators should be treated equally. As a result the advisory procedure foreseen in Article 304(2) becomes obsolete.

Amendment 67
Article 311, paragraph 1 a (new)

1a. Notwithstanding paragraph 1, references to Articles 27 and 28 of Directive 2002/83/EC in Article 17 of Directive 2003/41/EC shall continue to be read as references to those Articles.

Justification

The new paragraph clarifies the intention of the Commission not to apply Solvency II at this stage to IORPs.

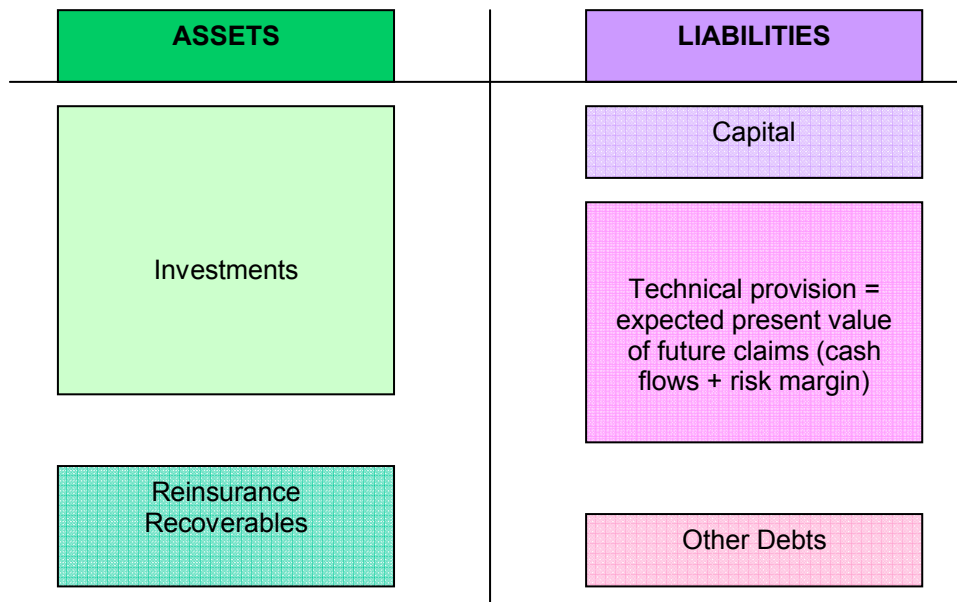
EXPLANATORY STATEMENT

Background of the proposal

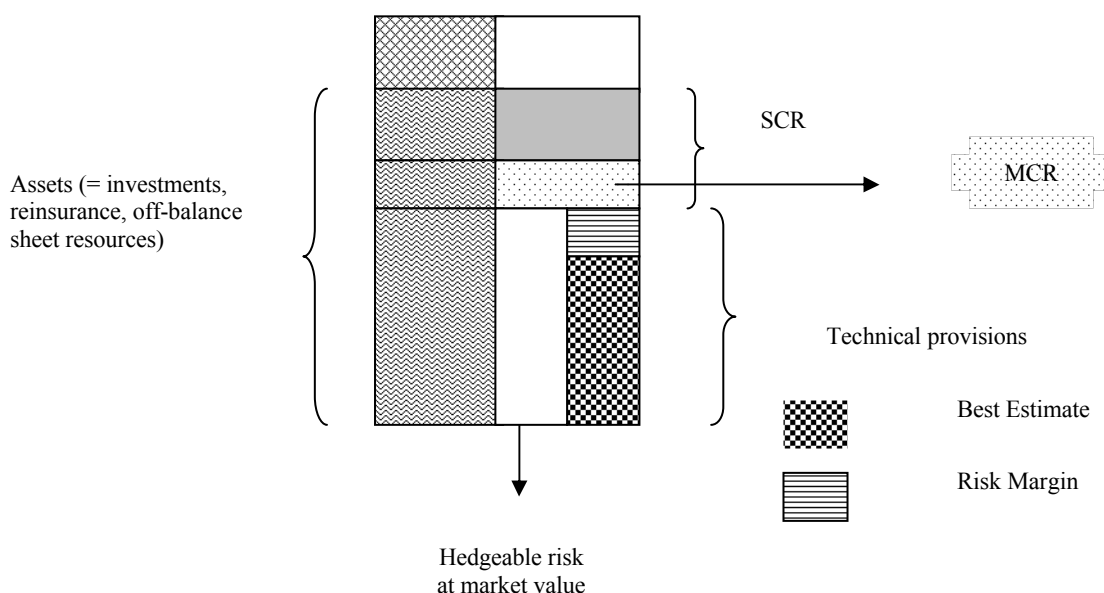
With this new solvency framework, as outlined in the proposal for a Directive ("draft Directive") on the taking up and pursuit of the business of Insurance and Reinsurance (COM(2008)0119 final), also called Solvency II, the Commission intends to introduce a risk sensitive approach with incentives for risk management. This approach will lead to a better (optimal) allocation of capital, taking into account market-consistent valuation of assets and liabilities. It also aligns solvency rules with a realistic valuation according to the present market assessment of assets and liabilities of a company.

The legal form is one of the re-cast and codification with 80% of the old text being subject to a re-cast into the "new" language (subject to the review of the Legal Affairs Committee) and the rest being the new text, introducing the new Solvency II rules. The new text is a principle based and Lamfalussy compliant approach, with the basis for adoption of implementing measures at Level 2 and with instructions for supervisory work at Level 3 of the Lamfalussy legislative process.

It is structured in the form of three pillars. The main objective of pillar I requirements is to ensure that insurance and reinsurance companies are able to meet their obligations when due, with a 0.5% probability of ruin on a one year time horizon. Therefore the Solvency II framework is structured on a holistic "total balance sheet approach", balancing all the liabilities with all assets the company needs to hold and not valuing balance sheet items in isolation.



Companies thus need to hold enough assets to meet the following: solvency capital requirements (SCR), minimum capital requirements (MCR), and technical provisions (best estimate of future claims as well as a risk margin plus the risks that can be secured / assured (Hedgeable risks)).



Pillar I

Minimum Capital Requirement (MCR)

There are currently three different approaches when calculating the MCR, which are the modular approach, the compact approach and the linear approach.

- The modular approach calculates the MCR by adding together different risk modules (market risk and insurance risk) to come up with an overall figure. Essentially it is a significantly simplified version of the SCR, but it is an independent requirement calculation.
- The compact approach sets the MCR as a percentage of the SCR, it is simple, but fails to achieve the criteria of independent calculation of MCR, although it has not been proven that such independence is necessary to satisfy all the criteria defined in the current draft directive.
- The linear approach calculates the MCR as a fixed percentage of insurers' technical provisions. It is somewhere in between the two approaches described above. This approach is not risk sensitive; therefore it is inconsistent with the overall objective of the directive. However, it will still be tested as part of fourth Quantitative Impact Study (QIS4) exercise

undertaken during 2008 by Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS).

Solvency Capital Requirement

The group solvency (defined as the difference between eligible own funds and SCR (Solvency Capital Requirement) can be **calculated in 3 ways**:

1. Accounting consolidation-based method (Method 1), where eligible own funds and consolidated SCR are based on consolidated accounts;
2. Deduction and aggregation method (Method 2), where the SCR is the sum of the SCR's of all group companies;
3. A combination of methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

If supervisors do not decide differently, Method 1 has to be applied. Method 2 does not provide diversification benefits to groups. The methods itself are based on the existing legislation (Solvency I).

The consolidated SCR (Method 1) and the SCR's of group companies (Method 2) may be calculated either by the standard formula or by an approved (partial) internal model. Capital add-ons are possible where the risk profile of the group is not adequately reflected in the standard formula or (partial) internal model.

In case the group wants to use a (partial) **internal model** to calculate the consolidated group SCR, the supervisory authorities concerned shall cooperate to decide whether or not to grant permission. A joint decision should be reached within 6 months. In the absence of a joint decision within this period, the group supervisor makes its own decision. CEIOPS may be consulted at the request of the group or any of the concerned supervisors, which extends the period by 2 months.

Pillar II

Pillar II defines a framework of supervisory control focusing on internal processes and aspects of operational risk including an effective internal control system, risk management systems, actuarial function, internal audit and rules on outsourcing. The proposal enhances tools for supervisory activities, including definition of supervisory powers, provisions for cooperation between supervisors as well as for supervisory convergence. Given the bulk of work foreseen for the supervisory level (Level 3), the accountability of supervisors and transparency of their way of work need to be assured at Level 1. It is important for these provisions to be in line with the provisions in securities and banking sectors and hence to achieve the cross-sectoral consistency and convergence.

Pillar III

The main objective of Pillar III is the disclosure of information to underpin market discipline, supervisory reporting and transparency requirements. On the supervision side, it encourages supervisory cooperation and convergence, enhances the role of CEIOPS, introduces an early-warning mechanism and outlines a framework for a more effective Group supervision. There is a need to converge the rules on supervisory reporting in order to deliver a comparable format and content, especially important when talking of Group supervision as well as reporting obligations via national authorities to CEIOPS. The proposal does not address this issue in detail and it remains to be seen whether sole guidance at Level 3 is a sufficient tool to guarantee such a convergence and even perhaps to lead to a common supervisory reporting data base.

Group supervision and Group support

Group Supervision and group support are the most overriding elements in the draft framework directive. The local supervisor will play a vital role in the day-to-day supervision of a non-domestic company or subsidiary. The group supervisor will be the "home regulator" for the group, which safeguards that the group holds capital and provides group support. This will allow for a much more efficient and economic approach to the use of capital. This is particularly important as it allows the freedom to exploit the diversification of assets. The parent undertaking shall have to make any required capital available as agreed between the local supervisor and the group supervisor, and certainty of this is essential. Moreover, the proposal foresees the possibility of providing to a subsidiary group support from funds present in another subsidiary. Company law aspects may imply that transfers may not be that easy to affect and also not as timely as requested. Insurance supervisors are not qualified to make a value judgement on the legal possibility to transfer funds between companies, possibly established in different jurisdictions.

The rapporteur's opinion

The rapporteur welcomes the Commission's proposal as a positive step towards bringing clarity and legal certainty between regulators and industry. It will give a much more effective protection against the likelihood of failures by its principle and economic based approach that puts risk management up at the top of the chief tools to be used by companies in writing business. Accordingly, the rapporteur expresses his support for the Commission's proposals.

However, the rapporteur wishes to draw the attention on a number of points that need, in his opinion, to be further clarified in the current proposal:

- Consumers cannot be ignored from financial legislation just because of the complex nature of the process. However, the rapporteur does recognise that piecemeal consumer protection is not useful either. Therefore, it would be best for the Commission to make a proposal to enhance existing consumer rights at the horizontal level. With appropriate consultation and by developing good practice it is possible to seriously enhance the knowledge, awareness and decision making process for consumers.

- After the QIS 3 test results for the modular approach of the MCR calculation proved to be unsatisfactory, a new proposal to test a so-called "linear approach" as an alternative has been left for the QIS 4. According to the rapporteur, the most important objective of the MCR is to ensure that we introduce MCR values that are sensible, which provide a proper safety net and a proper relationship with the SCR. Consequently, the rapporteur believes that the compact approach is the most appropriate method to achieve this goal. Thus, the compact approach is the only proven method so far that is fully risk sensitive. It also satisfies the Commission's objectives for the MCR as being robust, simple to calculate, and auditable. The compact approach can be used across the board with success and lends itself to adaptation for all entities of insurance undertaking.

- Eligible Own Funds must be consistent for reasons of competitiveness and absorption of losses. Articles relating to this must be adapted to reflect this practice where missing from the Commission's text. In particular, a definition of Surplus Funds which is used in only a few EU Member States is necessary

- The calculation of fair value is still absent from the definition of consistent market value and the rapporteur believes that a provision to ensure that this is adequate to the task for a risk based approach is concluded in a timely manner.

- The concept of solo supervisor, which may need further attention.

- The proposal will introduce rules on the equivalence of third country solvency regimes, which will have consequences for groups with subsidiaries in or outside of the EU. Equivalence can only be agreed with sovereign Nations States and not parts of such Countries. Where the solo solvency regime of a third-country is at least equivalent to that of the EU, the group solvency calculation shall take into account, as regards that third-country (re)insurance subsidiaries, the SCR and eligible own funds as laid down by this third country. The group supervisor shall carry out the verification of equivalence and shall consult the other supervisors concerned and CEIOPS before making a decision. The Commission shall decide whether the third country solvency regime is equivalent. However, this can only be concluded by regulatory procedure with scrutiny involving the European Parliament.

The rapporteur proposes to clarify these issues in the amended text, accordingly to the above-mentioned concerns.