LORD HILL
MEMBER OF THE EUROPEAN COMMISSION

B-1049 BRUSSELS

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Mr Roberto Gualtieri
Chair of the Committee on Economic and Monetary Affairs
European Parliament
B-1047 BRUSSELS

Dear Roberto,

Thank you for your letter dated 19 December 2014 in which you express the Committee's support for Solvency II to start applying on 1 January 2016. I am grateful to you for this: the fact that the European Parliament and the Council accepted the Delegated Act as adopted by the Commission, without requesting any extension of the scrutiny period, provides legal certainty about the new prudential regime which European insurers and policyholders need.

I am also glad to see your call for a review of the calibration of capital requirements on infrastructure investments. Given the Commission's objective to boost growth and jobs in Europe, I too am eager to stimulate investment by insurers in this asset class in a sustainable way. I have asked my services to start work on an infrastructure definition to have a more risk-sensitive treatment of infrastructure investments.

With regard to EIOPA's resources, a report will be adopted. It will be an important tool in helping the Budgetary Authority determine EIOPA's future resources. I am also looking more generally into the issue of the financing of the ESAS and look forward to discussing this matter with you at one of our next meetings.

Finally I thank you for the list of other specific issues that you would like the Commission to address in future reviews. I attach my reply on each of those issues in the annex to this letter.

With best wishes as ever,

JONATHAN HILL

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ANNEX

The numbering mirrors the annex to your letter dated 19 December 2014.

I. Corrections

Thank you for pointing out those typos which we will correct at the earliest opportunity.

1. The reference to Article 126 of Directive 2009/138/EC in the legal basis for the Delegated Act is indeed superfluous and should be deleted.

2. The headline of Title I indeed includes two typos ("captal" instead of "capital" and "tranparency" instead of "transparency").

3. In Article 316(2), "2018" should indeed be replaced by "2020" in the sentence "In relation to disclosure before 31 December 2018, [...]".

II. Empowerments

1. Capital management is a cornerstone of the sound management of an insurance undertaking. As such, specific reporting and disclosure on this matter are required, for example in Articles 292(2), 297, 311, 359(e), 372(2)(c) of the Delegated Act. The intention of Article 71(1)(g) is to allow repayment or redemption of subordinated liabilities counted as Tier 1 own funds only when this would not jeopardise the undertaking's solvency position, at the time of repayment and in the foreseeable future. It is up to supervisory authorities to assess case by case the "appropriate margin" to achieve this.

2. Article 75(1) of the Solvency II Directive provides that when valuing liabilities, "no adjustment to take account of the own credit standing of the insurance or reinsurance undertaking shall be made". The word "adjustment" clearly means that this provision applies *after* initial recognition of liabilities; on subsequent valuation dates. Article 14 of the Delegated Act is therefore strictly in line with the Directive. The purpose of this set of provisions is to prevent counter-intuitive accounting mechanisms whereby an insurer's solvency position would increase thanks to its creditworthiness worsening[1].

3. By virtue of Article 97 of Directive 2009/138/EC, the Commission is empowered to adopt Delegated Acts specifying the features of own funds items that determine classification into three tiers. This mandate is not restricted to qualitative features, hence the 20% limit within Tier 1 set out in Article 82(3) of the Delegated Act for certain own funds items, e.g.

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[1] IFRS standards were amended in 2013 in a similar way.

subordinated liabilities. This quantitative limit merely has a classification purpose, it does not *per se* limit the eligibility of these items which can be eligible as Tier 2 too. In practice, quantitative impact studies revealed that this limit was far from binding on average, as less than 1% of total available own funds were actually subordinated liabilities in solo undertakings (5% in groups). Therefore, the provisions of the Delegated Act regarding the classification of subordinated debt seem both legally robust and proportionate for the EU insurance sector.

4. Article 111(4) of Directive 2009/138/EC, in combination with the sunrise clause in Article 301b, empowers the Commission to adopt a Delegated Act specifying "quantitative limits and asset eligibility criteria where those risks are not adequately covered by a sub-module". The standard formula laid down in the Delegated Act is risk-sensitive enough to adequately cover all risks stemming from investments; therefore the Commission considers there is currently no need to take up this empowerment, which could unduly restrict insurers' investment decisions. It is worth recalling that Solvency II provides insurers with full freedom of investment, subject to the "prudent person principle", in contrast to the quantitative limits imposed under Solvency I. This is widely perceived as an improvement that will unlock long-term investment capabilities of insurers, in particular into infrastructure.

5. Article 143(2) of Directive 2009/138/EC, in combination with the sunrise clause in Article 301b, empowers the Commission to adopt Delegated Acts specifying the recovery plan and the finance scheme, to be submitted by undertakings in breach of their SCR or MCR. The Commission is still reflecting on how and when best to take up those empowerments (which do not have a deadline), in the context of international developments about the recovery and resolution of insurers. In any case, Article 142 of the Directive provides for a list of information that those two plans shall include, thereby fostering harmonisation of those plans.

III. Further and future work

1. and 2. Your call for an early review of the calibration of capital requirements on infrastructure investments is well noted. The Commission is eager to pick up work in this direction (in the broader context of Capital Markets Union) and the services have therefore started the work in this respect.

3. The Commission fully shares your concern for proportionality. In the Delegated Acts we have welcomed a number of proportionality-minded provisions suggested by the European Parliament. Examples of proportionality provisions include:

- simplified methods for the calculation of technical provisions;
- simplified methods for the calculation of the capital requirement;

- asset-by-asset data is not required for collective investments; data may be grouped under certain conditions;
- exemptions are introduced from the use of International Financial Reporting Standards (IFRS) in the valuation of assets and liabilities for undertakings that do not already use IFRS for their financial statements;
- with respect to governance, key functions may be shared, including the internal audit function, in certain circumstances;
- with respect to reporting by smaller insurers:
    - quarterly reporting is of core data only;
    - supervisors can waive quarterly reporting partly or entirely, and some of the annual reporting for smaller undertakings;
    - supervisors can decide to require narrative reporting only every three years (though it would normally be annually)

4. When EIOPA submits a draft Implementing Technical Standard to the Commission, the Commission immediately forwards it to the Parliament and to the Council, in accordance with Article 15 of the EIOPA Regulation (EU) No 1094/2010. Within three months, the Commission indeed checks whether the draft technical standard has a sound legal basis and whether it can be endorsed as is. Mere drafting amendments made in the course of the ordinary legal review in the run-up to the endorsement of draft technical standards are not shared with the co-legislators since they are considered non substantive and relate only to language and drafting. In contrast, should the Commission suggest any substantive changes to the draft technical standards, the amended text must again be shared with the co-legislators. The Commission is committed to full transparency towards the Parliament and the Council in line with the EIOPA Regulation.

As regards EIOPA guidelines, they are developed and adopted independently, under EIOPA's own responsibility. The Commission has no formal role in the development of EIOPA guidelines and no power to amend them. We do however monitor their development and communicate our legal views informally where appropriate, from technical working groups up to the Board of Supervisors, where the Commission is a non-voting member.

5. The Commission fully appreciates the urgency of adopting equivalence decisions and the importance of ensuring a level playing field for European insurers operating abroad. It will not however be practically possible to adopt any equivalence decision by the end of January. We are still awaiting some of the input from EIOPA to complete our assessments of third-country regimes. The decisions will be put forward as soon as possible, with those relating to European insurers operative abroad and the major jurisdictions being prioritised. I take note of your preference for adoption of equivalence delegated acts separately.

6. The Commission takes the monitoring of the "long-term guarantees" package very seriously. The effect on competition in the Single Market is explicitly in the scope of the monitoring tasks conferred by the Co-legislators, as laid down in Article 77f(3) of Directive 2009/138/EC.

7. Data series supporting the calibrations of capital requirements are all publicly available on EIOPA's website, which keeps track of every piece of technical advice[2]. EIOPA's advice was updated with regard to certain long-term asset classes in a specific report in December 2013[3]. The impact assessment for the Delegated Act[4], and the Frequently Asked Questions document (MEMO/15/3120) available on the Commission's website, also include relevant information supporting certain calibrations, in particular securitisation[5].

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2 https://eiopa.europa.eu/publications/solvency-ii-final-l2-advice

3 https://eiopa.europa.eu/Publications/Reports/EIOPA_Technical_Report_on_Standard_Formula_Design_and_Calibration_for_certain_Long-Term_Investments__2_.pd

4 http://ec.europa.eu/finance/insurance/docs/solvency/solvency2/delegated/141010-impact-assessment_en.pdf

5 See question 14 in MEMO/15/3120 (http://europa.eu/rapid/press-release_MEMO-15-3120_en.htm)