

# EUROPEAN PARLIAMENT

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## **\*\*\*I** **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

(Recast - Rule 80a of the Rules of Procedure)

### ***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 - recast)**

*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 acts<sup>1</sup>,
  - having regard to Rules 80 and 51 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A6-0413/2008),
- A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the Proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission (and incorporating the technical amendments approved by the Committee on Legal Affairs) and as amended below;
  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.

### **Amendment 1**

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<sup>1</sup> OJ C 77, 28.3.2002, p.1.

**Proposal for a directive**  
**Citation 1**

*Text proposed by the Commission*

Having regard to the Treaty establishing the European Community, and in particular **Articles 47(2) and 55** thereof,

*Amendment*

Having regard to the Treaty establishing the European Community, and in particular **Article 47(2) and Articles 55 and 95** thereof,

*Justification*

*This change ensures for the Commission to be able to propose either level 2 implementing directive or level 2 implementing regulation on the basis of this framework directive.*

**Amendment 2**

**Proposal for a directive**  
**Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) References in this Directive to insurance or reinsurance undertakings, should include captive insurance and captive reinsurance undertakings, except where specific provision is made for those undertakings.***

*Justification*

*To take account of the captive insurance sector.*

**Amendment 3**

**Proposal for a directive**  
**Recital 10**

*Text proposed by the Commission*

(10) The protection of policyholders presupposes that insurance and reinsurance undertakings are subject to effective solvency requirements. In light of market developments the current system is no longer adequate. It is therefore necessary to introduce a new regulatory framework.

*Amendment*

(10) The protection of policyholders presupposes that insurance and reinsurance undertakings are subject to effective solvency requirements. In light of market developments the current system is no longer adequate. It is therefore necessary to introduce a new regulatory framework

*which optimises the efficiency of capital in the European Union with proper policyholder safeguards.*

#### **Amendment 4**

##### **Proposal for a directive Recital 12**

*Text proposed by the Commission*

(12) The new solvency regime should not be too burdensome for small and medium-sized insurance undertakings.

*Amendment*

(12) The new solvency regime should not be too burdensome for small and medium-sized insurance undertakings. ***One of the tools to achieve this objective is a proper application of the proportionality principle. That principle should be applied both to the requirements for insurance and reinsurance undertakings and to the exercise of supervisory powers.***

*Justification*

*The proportional exercise of powers by the supervisor is a key element of proportionality.*

#### **Amendment 5**

##### **Proposal for a directive Recital 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***(12a) In particular, the Solvency II regime should take account of the specific nature of captive insurance and reinsurance undertakings. As those undertakings cover only risks associated with the industrial or commercial group to which they belong, appropriate approaches should be provided, in accordance with the principle of proportionality to reflect the nature, scale and complexity of their business.***

*Justification*

*Due to the size and type of their business and the specific nature of the risks they (re)insure, captive (re)insurance companies often lack sufficient data and information of appropriate quality enabling them to produce representative historical loss experiences and to apply a reliable actuarial method. There is an evident need for simplifications for Captives. The*

*simplifications proposed for ‘common’ insurance and reinsurance undertakings may however not take account of the specificities of the Captive business.*

#### **Amendment 6**

##### **Proposal for a directive Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) The Solvency II regime is expected to result in even better protection for all concerned and will require the Member States to provide the authorities responsible for financial supervision with adequate resources.***

#### **Amendment 7**

##### **Proposal for a directive Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(14a) Basing supervision on qualitative as well as quantitative risk management principles is likely to require an increase in supervisory resources.***

#### *Justification*

*The supervisory requirements established under Pillars 2 and 3, such as the approval of internal models, their monitoring and regular review, and the consequent closer cooperation and engagement with other supervisors and companies, is likely to mean national supervisors will need more resources to fulfil their enhanced responsibilities properly.*

#### **Amendment 8**

##### **Proposal for a directive Recital 14 b (new)**

*Text proposed by the Commission*

*Amendment*

***(14b) The supervision of reinsurance activity should take account of the special characteristics of reinsurance business, notably its global nature and the fact that***



***the policyholders are themselves insurance or reinsurance undertakings.***

*Justification*

*With the introduction of Solvency II the purpose of the RID to provide a tailor-made regime for reinsurance thus disappears. It is crucial to reiterate the special nature of reinsurance in the Solvency II Directive. Reference should be made to the IAIS Standard on Reinsurance supervision. With this new recital it is clarified that the proportionality principle requires consideration of the special nature of reinsurance business.*

**Amendment 9**

**Proposal for a directive  
Recital 23**

*Text proposed by the Commission*

(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.

*Amendment*

(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 (*CEIOPS*) 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 10**

**Proposal for a directive  
Recital 29 a (new)**

*Text proposed by the Commission*

*Amendment*

***(29a) It is current practice in the Community that insurance companies sell life insurance products in relation to which 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, which are the property of the legal entity in which they are generated. Within the group support regime, surplus funds are not transferable to other legal entities of the group.*

*Justification*

*Introducing a definition of surplus funds for the purpose of this directive reflecting a product specific business model which is known across Europe. In addition, the recital clarifies that surplus funds cannot be used as group support because of their legal nature.*

**Amendment 11**

**Proposal for a directive  
Recital 35**

*Text proposed by the Commission*

(35) The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). Both capital requirements should be harmonised throughout the Community in order to achieve a uniform level of protection for policyholders.

*Amendment*

(35) The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). ***The Minimum Capital Requirement should be linked to the Solvency Capital Requirement.*** Both capital requirements should be harmonised throughout the Community in order to achieve a uniform level of protection for policyholders. ***For the good functioning of the Solvency II regime, there should be an adequate ladder of intervention between the Minimum Capital Requirement and the Solvency Capital Requirement.***

*Justification*

*The purpose of the SCR is ultimately to act as an early warning signal to both supervisors and companies that if breached will result in enhanced supervisory involvement. The MCR acts as a last level of intervention that hopefully will be avoided through the SCR alert. It*

*should be risk sensitive so as to adequately reflect the true risk of the company and thus exposure of risk to policyholders and the best calculation of risk is provided by the SCR.*

## **Amendment 12**

### **Proposal for a directive Recital 35 a (new)**

*Text proposed by the Commission*

*Amendment*

***(35a) In order to prevent pro-cyclicality, in particular in equity markets during times of financial distress, supervisory authorities need to be given a greater degree of flexibility in the adoption and execution of their supervisory measures. Such greater flexibility, however, should be of exceptional nature, aiming to stabilise rather than increase the negative effects of a financial crisis.***

*Justification*

*Financial crises may require flexible supervisory approaches tailored to specific developments, thereby deviating from the overall approach of the directive. Interventions should nevertheless only be applied in times of financial crises and be seen as temporary.*

## **Amendment 13**

### **Proposal for a directive Recital 43**

*Text proposed by the Commission*

*Amendment*

(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.

(43) It is necessary that the Minimum Capital Requirement is calculated in accordance with a simple formula, ***which is consistent with the risk-based approach of the Solvency Capital Requirement and is based on the*** data which can be audited. ***The Minimum Capital Requirement should ensure a minimum level below which the amount of financial resources should not fall. The Minimum Capital Requirement and the Solvency Capital Requirement should be harmonised throughout the Community in order to***

***achieve a uniform level of protection for policyholders.***

*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 14**

**Proposal for a directive  
Recital 65 a (new)**

*Text proposed by the Commission*

*Amendment*

***(65a) The consolidated Solvency Capital Requirement for a group should take into account the global diversification of risks that exists across all the insurance entities in that group in order to reflect properly the risk exposures of that group.***

*Justification*

*According to the Commission,<sup>1</sup> the Directive allows diversification effects to be taken into account across a whole group, and not just within the EU, when calculating the SCR on a consolidated basis. This recital emphasises that there should not be any arbitrary exclusion of diversification benefits from non-EU insurance operations.*

**Amendment 15**

**Proposal for a directive  
Recital 69 a (new)**

*Text proposed by the Commission*

*Amendment*

***(69a) Lead supervisors should operate without discrimination at a Community level. In particular, with regard to the settling of claims and winding-up situations where group support arrangements have been in place, assets should be distributed on an equitable***

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<sup>1</sup> Letter from Jorgen Holmquist, Director-General, DG Markt, to Thomas Steffen, CEIOPS Chairman, dated 23 January 2008

***basis to all relevant policy holders,  
regardless of nationality or domicile.***

*Justification*

*It is important to ensure that policyholders in all Member States have fair and equal rights in the case of an insurance company becoming insolvent.*

**Amendment 16**

**Proposal for a directive  
Recital 70**

*Text proposed by the Commission*

(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.

*Amendment*

(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 17**

**Proposal for a directive**  
**Recital 70 a (new)**

*Text proposed by the Commission*

*Amendment*

***(70a) Member States should ensure that when a supervisory authority acts as a group supervisor it is recognised as doing so in a non-discriminatory manner. Legitimate actions taken as a group supervisor, including but not limited to transfers of capital, should therefore not be regarded, on the basis of that supervisor's national mandate, as contrary to the interests of the Member State or of policyholders in that Member State.***

*Justification*

*To take account of the captive insurance sector.*

**Amendment 18**

**Proposal for a directive**  
**Recital 70 b (new)**

*Text proposed by the Commission*

*Amendment*

***(70b) 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. When it becomes available to one of the supervisors, the relevant information should therefore immediately be shared with the other supervisors, in order for all supervisors to be able to establish an opinion based on the same relevant information. In the event that the supervisors concerned cannot reach an agreement, qualified advice from CEIOPS 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 relevant 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.*

## **Amendment 19**

### **Proposal for a directive Recital 70 c (new)**

*Text proposed by the Commission*

*Amendment*

***(70c) In the context of the approval of internal models and the functioning of the group support regime, this Directive provides a consultative role for CEIOPS. Within that framework, CEIOPS' advice should be fully taken into account by the supervisory authority having the power to take the final decision, so that a 'comply or explain' mechanism is implemented.***

*Justification*

*A "comply or explain" mechanism should be the overriding principle governing the operation of the "group support" regime.*

## **Amendment 20**

### **Proposal for a directive Recital 74**

*Text proposed by the Commission*

*Amendment*

(74) All insurance or reinsurance groups subject to group supervision should have a group supervisor appointed from among the supervisory authorities involved. The rights and duties of the group supervisor should comprise appropriate coordination and decision-making powers. The authorities involved in the supervision of insurance and reinsurance undertakings belonging to the same group should establish coordination ***arrangements***.

(74) All insurance or reinsurance groups subject to group supervision should have a group supervisor appointed from among the supervisory authorities involved. The rights and duties of the group supervisor should comprise appropriate coordination and decision-making powers. The authorities involved in the supervision of insurance and reinsurance undertakings belonging to the same group should establish ***colleges of supervisors as their coordination mechanism***.

### *Justification*

*To enhance the involvement of all supervisory authorities in the supervision of cross-border insurance groups, colleges of supervisors need to be set up. These provide for a permanent, but flexible, structure for cooperation and coordination. They meet regularly, with the objectives to facilitate the exchange of information, enable supervisors to develop a common understanding of the risk profile of the groups, achieve coordination and to coordinate decisions taken by individual authorities.*

## **Amendment 21**

### **Proposal for a directive**

#### **Recital 75**

*Text proposed by the Commission*

***(75) The supervisory authorities should have access to all the information relevant to the exercise of*** group supervision. Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established.

*Amendment*

***(75) Supervisors from all Member States in which an undertaking in the group is established should be involved in*** group supervision ***through a college of supervisors. They should all have access to documentation as a matter of routine and should be dynamically involved in decision-making.*** Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established.

### *Justification*

*Supervisors would form a College.*

## **Amendment 22**

### **Proposal for a directive**

#### **Recital 75 a (new)**

*Text proposed by the Commission*

*Amendment*

***(75a) Advice by CEIOPS to the group supervisor is not binding on that supervisor when taking its decision. When taking a decision, the group supervisor should take full account of that advice***



***and shall explain any significant deviation therefrom. It is advice that supervisors may not wish to ignore.***

*Justification*

*Financial crises may require flexible supervisory approaches tailored to specific developments, thereby deviating from the overall approach of the directive. Interventions should nevertheless only be applied in times of financial crises and be seen as temporary.*

**Amendment 23**

**Proposal for a directive**

**Recital 93 a (new)**

*Text proposed by the Commission*

*Amendment*

***(93a) Article 17(2) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision<sup>1</sup> refers to the existing legislative provisions on solvency margins. Those references should be retained in order to maintain the status quo. The Commission should conduct its review of Directive 2003/41/EC under Article 21(4) thereof, as quickly as possible. The Commission, supported by CEIOPS, should develop a proper system of solvency rules for pension provision, whilst fully reflecting the essential distinctiveness of insurance and reinsurance undertakings.***

<sup>1</sup> *OJ L 235, 23.9.2003, p. 10.*

*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 24**

**Proposal for a directive**

**Recital 95 a (new)**

***(95a) Given the increasing cross-border nature of insurance business, further work on insurance guarantee schemes in the European Union should be conducted and divergences between Member State' regimes should be reduced to the greatest extent possible, taking account of the supervisory structures. Although such ongoing work will be conducted outside the scope of this Directive, there is a need to go further than what is suggested in the studies already carried out by the Commission and to propose, as soon as possible, an insurance guarantee mechanism at the European Union level, in particular for life assurance. The purpose of such a mechanism should be to ensure a high level of harmonised protection for all policyholders.***

*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 25**

**Proposal for a directive  
Article 4**

*Text proposed by the Commission*

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.

*Amendment*

1. Without prejudice to **Articles 3 and 5 to 10**, this Directive shall not apply to insurance undertakings **where the:**

- (a) undertaking's*** annual premium income does not exceed EUR 5 million;
- (b) total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts***

*and Special Purpose Vehicles, as referred to in Article 75, does not exceed EUR 25 million;*

*(c) total of the group's technical provisions, gross of the amounts recoverable from reinsurance contracts and Special Purpose Vehicles, does not exceed EUR 25 million;*

*(d) business of the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of Article 16(1);*

*(e) the undertaking's reinsurance obligations do not exceed EUR 0,5 million or more than 10 % of their gross written premium income or 10 % of their total technical provisions.*

2. If the **amount** set out in paragraph 1 *is* exceeded for three consecutive years this Directive shall apply from the fourth year.

2. If the **amounts** set out in paragraph 1 *are* exceeded for three consecutive years this Directive shall apply from the fourth year.

*2a. In the event that the annual premium income of insurance undertaking steadily declines in three consecutive years below the amount set out in paragraph 1(a), the insurance undertaking shall no longer fall within the scope of this Directive.*

*2b. Paragraphs 1 and 2 shall not prevent any undertaking from applying for authorisation or continuing to be authorised under this Directive.*

## Amendment 26

### Proposal for a directive Article 13 – point 1 a (new)

*Text proposed by the Commission*

*Amendment*

*(1a) 'captive insurance undertaking' means an insurance undertaking owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings to which Title III of this Directive applies, or by a non-*

*financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which the captive insurance undertaking is a member;*

*Justification*

*It is important to provide a definition for captive insurance undertakings specifying that they are insurance undertakings underlying the present Directive.*

**Amendment 27**

**Proposal for a directive  
Article 13 – point 4 a (new)**

*Text proposed by the Commission*

*Amendment*

*(4a) 'dedicated reinsurer' means an insurer:  
(a) the insurance business of which is restricted to the reinsurance of a cedant (syndicate or undertaking that transfers risk to the dedicated reinsurer) and the cedant's subsidiaries on terms that allow the cedant at any time to cancel the reinsurance arrangements and upon any such cancellation immediately transfer the assets and liabilities of the reinsurer to the cedant; and  
(b) which, directly or indirectly:  
(i) is wholly owned by the cedant or the members of the cedant; or  
(ii) wholly owns the cedant;*

**Amendment 28**

**Proposal for a directive  
Article 13 – point 10 – introductory part**

*Text proposed by the Commission*

*Amendment*

(10) 'Member State where the risk is situated' means any of the following *as of*

(10) 'Member State where the risk is situated' means any of the following:

*the date of conclusion of the non-life insurance contract:*

*Justification*

*The amendment shall avoid unintentional tax implications.*

## **Amendment 29**

### **Proposal for a directive**

#### **Article 13 – point 11 – introductory part**

*Text proposed by the Commission*

(11) 'Member State of the commitment' means the Member State in which any of the following is situated ***as of the date of conclusion of the life insurance contract:***

*Amendment*

(11) 'Member State of the commitment' means the Member State in which any of the following is situated:

*Justification*

*The amendment shall avoid unintentional tax implications.*

## **Amendment 30**

### **Proposal for a directive**

#### **Article 13 – point 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) 'intra-group transaction' means any transaction by which an insurance or reinsurance undertaking relies either directly or indirectly on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment. Those transactions concern in particular:***

***(a) loans;***

***(b) guarantees and off-balance-sheet transactions;***

***(c) elements eligible for covering the solvency margin;***

***(d) investments;***

- (e) reinsurance operations; and*
- (f) agreements to share costs;*

*Justification*

*The Intra-Group Transaction discipline is an important area of supervision due to the typical inverted production cycle of the insurance business, which may create room for conflict of interest in the relationship of the supervised entity with its related parties. As the Commission proposal is not complete in this regard we should insert a definition of IGT.*

**Amendment 31**

**Proposal for a directive**  
**Article 14 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. Article 4 shall not prevent any undertaking from applying, or continuing, to be authorised under this Directive.**

**deleted**

**Amendment 32**

**Proposal for a directive**  
**Article 27**

*Text proposed by the Commission*

*Amendment*

Main objective of supervision

Main objective of supervision ***under this Directive***

Member States shall ensure that the supervisory authorities are provided with the necessary means to achieve the main objective of supervision, namely the protection of policyholders and beneficiaries.

Member States shall ensure that the supervisory authorities are provided with the necessary means, ***and have the relevant expertise and capacity, and mandate*** to achieve the main objective of supervision, namely the protection of policyholders and beneficiaries ***in accordance with Community and national law.***

*Justification*

*The supervisory requirements established under Pillars 2 and 3, such as the approval of internal models, their monitoring and regular review, and the consequent closer cooperation and engagement with other supervisors and companies, is likely to mean national supervisors*

*will need more resources to fulfil their enhanced responsibilities properly.*

### **Amendment 33**

#### **Proposal for a directive Article 28 – paragraph 3**

*Text proposed by the Commission*

3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, complexity and scale of the risks inherent in the business of an insurance or reinsurance undertaking.

*Amendment*

3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, complexity and scale of the risks inherent in the business of an insurance or reinsurance undertaking ***as well as with a view to maintaining financial stability in the Community as a whole, in particular in times of financial distress.***

*Justification*

*All business should be regulated - regardless of the size, since the impact of a failure is not always linear to the size, but depends on the type of insurance a company underwrites and the geography of their activities.*

### **Amendment 34**

#### **Proposal for a directive Article 28 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***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 35

### Proposal for a directive

#### Article 29 – paragraph 2 – subparagraph 1

##### *Text proposed by the Commission*

Financial supervision pursuant to paragraph 1 shall include verification, with respect to the entire business of the insurance and reinsurance undertaking, of its state of solvency, of the establishment of technical provisions and of the eligible own funds, in accordance with the rules laid down or practices followed in the Member State under provisions adopted at Community level.

##### *Amendment*

Financial supervision pursuant to paragraph 1 shall include verification, with respect to the entire business of the insurance and reinsurance undertaking, of its state of solvency, of the establishment of technical provisions, **of its assets** and of the eligible own funds, in accordance with the rules laid down or practices followed in the Member State under provisions adopted at Community level.

##### *Justification*

*Supervision of investments is an essential piece of solvency assessment. There is no rationale to omit a reference to the supervision of assets, since they are an essential part of insurance activity. Since this article corresponds to recasting and the reference to assets is in the current directives, such a reference should be maintained due its importance. Supervision of assets is fully compatible with the freedom of investments and the prudent person principle stated in the proposal of Solvency 2 directive. Furthermore such supervision becomes more crucial when Solvency 2 come into force, having in mind the maximum degree of freedom provided to insurers regarding this point.*

## Amendment 36

### Proposal for a directive

#### Article 30 – paragraph 2 – point e a (new)

##### *Text proposed by the Commission*

##### *Amendment*

**(ea) any quantitative tools developed under the supervisory review process.**

##### *Justification*

*Article 34 allows supervisors to develop ‘quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing’, but does not give details of what such instruments might*



*contain; this could result in a lack of harmonisation of supervisory practices and distortion of the capital requirements demanded or of the levels and degree of intervention.*

## **Amendment 37**

### **Proposal for a directive Article 34 – paragraph 4**

*Text proposed by the Commission*

4. Member States shall ensure that supervisory authorities have the power to develop, in addition to the calculation of the Solvency Capital Requirement and where **appropriate**, quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. The supervisory authorities shall require that such tests are performed by the undertakings.

*Amendment*

4. Member States shall ensure that, **in exceptional cases**, supervisory authorities have the power to develop, in addition to the calculation of the Solvency Capital Requirement and where **necessary**, quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. The supervisory authorities shall require that such tests are performed by the undertakings.

*Justification*

*Supervisory authorities should not, per se, have the right to impose quantitative measures in addition to the SCR calculation on insurance companies. These measures should only be applied in exceptional cases, if deemed necessary.*

## **Amendment 38**

### **Proposal for a directive Article 34 – paragraph 6**

*Text proposed by the Commission*

6. Supervisory powers shall be applied in a timely and proportionate manner.

*Amendment*

6. Supervisory powers shall be applied in a timely and proportionate manner.  
***Supervisors shall take account of actions that might be pro-cyclical in times of market-wide stress, at all times taking full account of the interests of the policyholder.***

## Amendment 39

### Proposal for a directive Article 36 – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. Supervisors may take account of the effects on risk and asset management of voluntary codes of conduct and transparency adhered to by the relevant institutions dealing in unregulated or alternative investment instruments.***

## Amendment 40

### Proposal for a directive Article 38 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

2. The Member State where the service provider is located shall permit the supervisory authorities of the insurance or reinsurance undertaking to carry out themselves, or through the intermediary of persons they appoint for that purpose, *on-site-inspections* at the premises of the service provider, after having first informed its own appropriate authorities. In the case of a *non supervised* entity the appropriate authority shall be the supervisory authority.

2. The Member State where the service provider is located shall permit the supervisory authorities of the insurance or reinsurance undertaking to carry out themselves, or through the intermediary of persons they appoint for that purpose, *on-site inspections* at the premises of the service provider, after having first informed ***the insurance or reinsurance undertaking and*** its own appropriate authorities. In the case of a *non-supervised* entity the appropriate authority shall be the supervisory authority.

*Justification*

*The purpose of the extra phrase is to safeguard the company's right to information in an inspection process and uphold supervisory transparency.*

## Amendment 41

**Proposal for a directive**  
**Article 38 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. Outsourcing to service providers situated in third countries shall be permitted in accordance with the conditions of paragraphs 1 and 2.***

*Justification*

*The new paragraph is essential and aims to make it clear that outsourcing of services to third countries will not in any event be restricted, even if the preceding paragraphs 1 and 2 are strictly interpreted.*

**Amendment 42**

**Proposal for a directive**  
**Article 41 – paragraph 1 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***A function is an internal capacity to undertake practical tasks. The manner in which insurance and reinsurance undertakings implement the governance functions set out in Articles 43, 45, 46 and 47 is left to their discretion.***

*Justification*

*There is no clarification within the text saying that the mentioned functions only represent areas of responsibility and not organisational units. The latter would mean intervening deeply in company-specific organisational structures and thus can only be implemented with tremendous effort by small insurance companies, in particular. The insertion of a definition of function is essential for SMEs. Otherwise the costs for new departments would have to be paid by higher premiums of policyholders.*

**Amendment 43**

**Proposal for a directive**  
**Article 42 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) their professional qualifications,

(a) their professional qualifications,

knowledge and experience are adequate to enable sound and prudent management (fit);

knowledge and experience are adequate to enable sound and prudent management (fit); **for the purpose of assessing the required level of competence, professional qualifications and experience of members of senior management may be taken into consideration as additional factors;**

*Justification*

*The addition aims at reinforcing and precision the professional requirements needed to run an insurance undertaking.*

**Amendment 44**

**Proposal for a directive  
Article 43 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

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.

*Amendment*

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

*Justification*

*Before a measurement of risk is possible, a risk should be identified. The five actions "to identify", "to assess", to manage", "to monitor", and "to report" are recommended in this combination in CEIOPS's first wave of advice.*

**Amendment 45**

**Proposal for a directive  
Article 43 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

That risk management system shall be well integrated into the organisational structure of the insurance or reinsurance undertaking. It shall contain contingency

*Amendment*

That risk management system shall be **effective and** well integrated into the organisational structure of the insurance or reinsurance undertaking, **with proper**

plans.

***consideration at high executive level.*** It shall contain contingency plans.

*Justification*

*Risk management must be joined up and effective with proper comprehension and account taken by senior management.*

**Amendment 46**

**Proposal for a directive**

**Article 44 – paragraph 1 – subparagraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

(b) the compliance, on ***a continuous*** basis, with the capital requirements, as laid down in Chapters VI, Sections 4 and 5 and with the requirements regarding technical provisions, as laid down in Chapter VI, Section 2.

(b) the compliance, on ***an ongoing*** basis, with the capital requirements, as laid down in Chapters VI, Sections 4 and 5 and with the requirements regarding technical provisions, as laid down in Chapter VI, Section 2.

*Justification*

*Goes with amendment on Article 43.*

**Amendment 47**

**Proposal for a directive**

**Article 44 – paragraph 1 – subparagraph 2 –point c**

*Text proposed by the Commission*

*Amendment*

(c) the ***extent to*** which the risk profile of the undertaking concerned deviates ***significantly*** from the assumptions underlying the Solvency Capital Requirement as laid down in Article 101(3), calculated with the standard formula in accordance with Chapter VI, Section 4, Subsection 2 or with its partial or full internal model in accordance with Chapter VI, Section 4, Subsection 3.

(c) the ***significance with*** which the risk profile of the undertaking concerned deviates from the assumptions underlying the Solvency Capital Requirement as laid down in Article 101(3), calculated with the standard formula in accordance with Chapter VI, Section 4, Subsection 2 or with its partial or full internal model in accordance with Chapter VI, Section 4, Subsection 3.

*Justification*

*In order to ensure policy holder protection, analysing possible deviations from the standard*

*formula is an important activity. The word "extent" in sub-paragraph c) implies additional quantitative requirements, which is not in line with the qualitative focus of the own risk and solvency assessment.*

## **Amendment 48**

### **Proposal for a directive Article 44 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. For the purposes of point (a) of paragraph 1, the undertaking concerned shall have in place processes which enable it to properly identify and measure the risks it faces in the short and the long term and also to identify possible events or future changes in economic conditions that could have unfavourable effects on its overall financial standing. The undertaking shall demonstrate the methods used to determine its overall solvency needs.***

***deleted***

#### *Justification*

*Quantitative measurement of solvency capital requirements is subject of the standard formula or an internal model. ORSA may not serve as a means to undermine these results and generate additional capital requirements. In fact, proactive dealing with potential risks and conscious treatment of risk tolerances shall be in the focus of ORSA.*

## **Amendment 49**

### **Proposal for a directive Article 44 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6a. Without prejudice to the above, the only solvency levels with which insurance and reinsurance undertaking must comply shall be those determined in accordance with the standard formula or, where appropriate, the internal model used, without prejudice to capital surpluses, in accordance with the provisions of this Directive.***

### *Justification*

*Como se menciona en la presente Directiva (artículos 74 a 129), el requerimiento de capital de solvencia (SCR) y el requerimiento mínimo de capital (MCR) según fórmula estándar, deben ser considerados como los únicos requerimientos de capital necesarios y/o exigidos por las autoridades de supervisión. En ningún caso, los supervisores pueden acogerse a su poder para exigir una valoración individualizada u ORSA (Own Risk Solvency Assesment), conforme a lo dispuesto en este artículo, que obligue a las empresas a desarrollar un modelo interno de capital económico que desvirtúe la necesaria separación entre el Pilar I y el Pilar II de esta Directiva.*

### **Amendment 50**

#### **Proposal for a directive Article 47 – paragraph 2**

##### *Text proposed by the Commission*

2. The actuarial function shall be carried out by persons with **sufficient** knowledge of actuarial and financial mathematics and able **where appropriate**, to demonstrate their relevant experience **and expertise with applicable professional and other standards**.

##### *Amendment*

2. The actuarial function shall be carried out by persons with knowledge of actuarial and financial mathematics, **having capacity proportionate to the complexity and risk structure of the undertaking concerned**, and able to demonstrate their relevant experience.

### *Justification*

*To ensure proper resource and knowledge.*

### **Amendment 51**

#### **Proposal for a directive Article 49 – point 1**

##### *Text proposed by the Commission*

(1) the elements of the systems referred to in **Articles 41, 43, 45 and 46**, and in particular the areas to be covered by the asset – liability management and investment policy, as referred to in Article 43(2), of insurance and reinsurance undertakings;

##### *Amendment*

(1) the elements of the systems referred to in **Articles 41, 43, 44, 45 and 46**, and in particular the areas to be covered by the asset – liability management and investment policy, as referred to in Article 43(2), of insurance and reinsurance undertakings;

### *Justification*

*La Directiva debe garantizar una armonización máxima en las prácticas y procedimientos de los distintos supervisores europeos, con el fin de evitar tratamientos desiguales, al mismo operador, en los diferentes Estados Miembros. En este sentido se propone que sea en la Comisión Europea mediante medidas de desarrollo (Nivel 2 Lamfalussy) donde se establezcan los principios generales armonizados que deben tener en cuenta los supervisores nacionales. En consecuencia y dado que el ORSA tal y como viene definido por el artículo 44, es un elemento clave en el Pilar II, se hace imprescindible contar con una definición armonizada a escala europea del alcance y la metodología a utilizar.*

### **Amendment 52**

#### **Proposal for a directive Article 49 – point 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***(4a) the scope and methods for the own-risk and solvency assessment as set out in Article 44.***

### *Justification*

*Level 2 implementing measures are needed in this field since it could comprise a major part of the changes that companies need to develop in order to get ready for Solvency II. A harmonised definition of the scope and methodology used for the assessments on a European level will create consistency and avoid the use of different supervisory practices. Implementing measures should, among other things, clarify that ORSA (Own Risk and Solvency Assessment) must not be used to undermine the principle that the SCR and the MCR, as calculated under Article. 101, are the only relevant solvency levels.*

### **Amendment 53**

#### **Proposal for a directive Article 51 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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 ***European Parliament, the Council 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 for the European Parliament and the Council, as co-legislators, to be kept fully informed of developments concerning the effective and efficient implementation of this directive.*

**Amendment 54**

**Proposal for a directive  
Article 51 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 51a**

***Decision-making by CEIOPS***

***All decisions to be taken by CEIOPS for the purposes of this Directive shall be adopted by qualified majority.***

*Justification*

*For the decision to be taken swiftly and in the most constructive manner, qualified majority voting is necessary.*

**Amendment 55**

**Proposal for a directive  
Article 52 – paragraph 1 – point (a)**

*Text proposed by the Commission*

*Amendment*

(a) if, by disclosing such information, ***the competitors of*** the undertaking ***gain significant*** undue ***advantage***;

(a) if, by disclosing such information, the undertaking ***would suffer*** undue ***commercial harm***;

*Justification*

*The test should be 'harm' to the undertaking. This may be through unfair competition or otherwise.*

**Amendment 56**

**Proposal for a directive**  
**Article 53 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

In the cases referred to in point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a recovery plan initially considered to be viable, a non compliance with the Minimum Capital Requirement has not been resolved **two months** after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure **taken**.

*Amendment*

In the cases referred to in point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a recovery plan initially considered to be viable, a non compliance with the Minimum Capital Requirement has not been resolved **three months** after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any **further** remedial measure.

*Justification*

*To align with the timeframe established in Article 136.*

**Amendment 57**

**Proposal for a directive**  
**Article 53 – paragraph 1 – subparagraph 4**

*Text proposed by the Commission*

In the case referred to in point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be viable, a significant non compliance with the Solvency Capital Requirement has not been resolved **four months** after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including

*Amendment*

In the case referred to in point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be viable, a significant non compliance with the Solvency Capital Requirement has not been resolved **six months** after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including

any remedial measure ***taken***.

any ***further*** remedial measure.

*Justification*

*To align with the timeframe established in Article 135.*

**Amendment 58**

**Proposal for a directive  
Article 70**

*Text proposed by the Commission*

Member States shall ensure that the supervisory authorities participate in the activities of the *Committee of European Insurance and Occupational Pensions Supervisors* pursuant to the second paragraph of Article 2 of Commission Decision 2004/6/EC.

*Amendment*

Member States shall ensure that the supervisory authorities participate in the activities of the *CEIOPS* pursuant to the second paragraph of Article 2 of Commission Decision 2004/6/EC, ***and that national mandates conferred on supervisors do not inhibit the performance by them of their duties as members of that Committee or under this Directive.***

*Justification*

*The advice of CEIOPS must be fair and honest and must not be politically compromised. Therefore national supervisors must be in a position to communicate and fully engage with each other. Consistent with recommendations of Equitable Life Committee of Inquiry.*

**Amendment 59**

**Proposal for a directive  
Article 70 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***CEIOPS shall, where necessary, provide for a joint interpretation of the provisions of this Directive and its implementing measures in order to enhance the convergence of supervisory practices. CEIOPS shall report regularly on the progress of the supervisory convergence in the Community.***

### *Justification*

*This amendment aims at elaborating a definition of the national mandate of the supervisors and of the role conferred on CEIOPS.*

#### **Amendment 60**

##### **Proposal for a directive Article 75 – paragraph 2**

###### **Text proposed by the Commission**

2. The *calculation of* technical provisions shall be *based on their current exit value*.

###### *Amendment*

2. The technical provisions shall be *calculated in a way which is objective, reliable and consistent with the market*.

### *Justification*

*The term 'exit value' which is not defined in the directive, could create confusion and inappropriate implementation.*

#### **Amendment 61**

##### **Proposal for a directive Article 75 – paragraph 3**

###### *Text proposed by the Commission*

3. The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on *insurance and reinsurance technical* risks (market consistency).

###### *Amendment*

3. The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on *underwriting* risks (market consistency).

### *Justification*

*Technical clarification to make it less ambiguous.*

#### **Amendment 62**

##### **Proposal for a directive Article 75 – paragraph 4**

###### *Text proposed by the Commission*

4. *Technical provisions shall be*

###### *Amendment*

*deleted*

*calculated in a prudent, reliable and objective manner.*

### **Amendment 63**

#### **Proposal for a directive**

#### **Article 76 – paragraph 2 – subparagraph 1**

##### *Text proposed by the Commission*

2. The best estimate shall be *equal to* the probability-weighted average of future cash-flows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure.

##### *Amendment*

2. The best estimate shall be *consistent with* the probability-weighted average of future cash-flows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure *so that the discount rate is consistent with market prices for observable cash flows, the characteristics of which are similar to those of liabilities as regards, inter alia, duration, currency and liquidity.*

##### *Justification*

*La expresión propuesta coincide con la recogida en el párrafo 63 del DP Fase II IFRS4 del IASB y por tanto, proporciona la necesaria convergencia con los principios contables internacionales. Además daría una mayor cabida al inciso ii) de la letra b) del apartado 1 del artículo de la Directiva 2002/83/CE, sobre el seguro de vida, que se desarrolló en algunos Estados miembros. En aquellos países en los que se ha hecho uso de la opción prevista en la anteriormente mencionada Directiva, la utilización de un tipo de descuento más acorde con la realidad económica ha permitido dotar al seguro de vida de un alto grado de avance, especialización y competitividad a nivel internacional.*

### **Amendment 64**

#### **Proposal for a directive**

#### **Article 76 – paragraph 2 – subparagraph 2**

##### *Text proposed by the Commission*

The calculation of the best estimate shall be based upon current and credible information and realistic assumptions and be performed using adequate actuarial methods and statistical techniques.

##### *Amendment*

The calculation of the best estimate shall be based upon current and credible information and realistic assumptions and be performed using adequate, *applicable and relevant* actuarial methods and statistical techniques.

### *Justification*

*Adequate is insufficient given that "applicability and relevance" appears in Article 83.*

#### **Amendment 65**

##### **Proposal for a directive Article 76 – paragraph 3**

###### *Text proposed by the Commission*

3. The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount insurance and reinsurance undertakings would be expected to require taking over and meet the insurance and reinsurance obligations.

###### *Amendment*

3. The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount insurance and reinsurance undertakings would be expected to require taking over and meet the insurance and reinsurance obligations, ***taking proper account of diversification effects.***

### *Justification*

*Diversification effects in calculating the risk margin should be allowed. These risks are likely to transfer to companies that are well diversified or would gain diversification benefit from accepting these liabilities*

#### **Amendment 66**

##### **Proposal for a directive Article 76 – paragraph 4– subparagraph 2**

###### *Text proposed by the Commission*

However, where the future cash flows associated with insurance or reinsurance obligations can be ***replicated*** using financial instruments for which a market value is directly observable, the value of technical provisions shall be determined on the basis of the market value of those financial instruments. In this case, separate calculations of the best estimate and the risk margin shall not be required.

###### *Amendment*

However, where the future cash flows associated with insurance or reinsurance obligations can be ***estimated reliably*** using financial instruments for which a market value is directly observable, the value of technical provisions shall be determined on the basis of the market value of those financial instruments ***even where exact replication is not possible.*** In this case, separate calculations of the best estimate and the risk margin shall not be required. ***Reasonable interpolations and extrapolations from directly observable market values may also be applied for the***

***purpose of that assessment.***

*Justification*

*It is important to take the best market reference (closest to economic market value) available as a guide.*

## **Amendment 67**

### **Proposal for a directive**

#### **Article 76 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

The rate used in the determination of the cost of providing that amount of eligible own funds (Cost-of-Capital rate) shall be the same for all insurance and reinsurance undertakings.

*Amendment*

The rate used in the determination of the cost of providing that amount of eligible own funds (Cost-of-Capital rate) shall be the same for all insurance and reinsurance undertakings ***and shall be reviewed periodically to reflect market conditions.***

*Justification*

*This measure should cover the cost of capital that represents non-hedgeable risks, and not the total company cost of capital. The amendment focuses on the obligations it is intended to cover.*

## **Amendment 68**

### **Proposal for a directive**

#### **Article 76 – paragraph 5 – subparagraph 3**

*Text proposed by the Commission*

The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking holding an amount of eligible own funds, as set out in Section 3, equal to the Solvency Capital Requirement ***would incur to hold those funds.***

*Amendment*

The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking ***would incur*** holding an amount of eligible own funds, as set out in Section 3, equal to the Solvency Capital Requirement ***necessary to support the insurance and reinsurance obligation over the lifetime of that obligation.***

*Justification*

*This measure should cover the cost of capital that represents non-hedgeable risks, and not the total company cost of capital. The amendment focuses on the obligations it is intended to cover.*

## **Amendment 69**

### **Proposal for a directive**

#### **Article 80 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***In calculating the technical provisions of a company reinsured by a dedicated reinsurer, the assets and liabilities of a dedicated reinsurer shall be treated as the assets and liabilities of the reinsured company, and no adjustment shall be made for the time difference between recoveries and direct payments or expected losses due to the default of the counterparty in respect of the dedicated reinsurer's contractual obligations to the reinsured company.***

## **Amendment 70**

### **Proposal for a directive**

#### **Article 85 – paragraph 1 – point h**

*Text proposed by the Commission*

*Amendment*

(h) where necessary, simplified methods and techniques to calculate technical provisions, in order to ensure the actuarial methods and statistical techniques referred to in point (a) are proportionate to the nature, scale and complexity of the risks supported by insurance and reinsurance undertakings.

(h) where necessary, simplified methods and techniques to calculate technical provisions, in order to ensure the actuarial methods and statistical techniques referred to in point (a) are proportionate to the nature, scale and complexity of the risks supported by insurance and reinsurance undertakings ***including captive insurance and reinsurance undertakings.***

#### *Justification*

*There is a need for specific simplifications to be applied to the calculation of technical provisions in the case of captives. This is in line with the general approach adopted for other small and medium sized insurance and reinsurance undertakings. QIS 4 will determine what impact these simplifications will have. The proposed amendment provides in the Directive a platform for the provision of such specific simplifications where appropriate.*



## Amendment 71

### Proposal for a directive Article 90

*Text proposed by the Commission*

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.**

*Amendment*

- 1. Surplus funds shall be deemed to be accumulated profits, which are allocated to policy holders and beneficiaries in the form of future discretionary bonuses.**
- 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 fulfil the criteria set out in Article 94(1). Surplus funds shall be subject to the restriction set out in Article 237(1).**

*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 72

### Proposal for a directive Article 96 – point -1 (new)

*Text proposed by the Commission*

*Amendment*

**(-1) at least half of the future claims which a mutual or mutual-type association with variable contributions may have against its members by way of a call for supplementary contributions, within the financial year concerned shall be classified in Tier 2;**

*Justification*

*In some countries, insurance groups are structured in such a way that a legal entity manages a group of undertakings linked by long-lasting financial relationships. This amendment aims at clarifying that half of their own funds will be classified in Tier 2.*

## Amendment 73

### Proposal for a directive Article 96 – point 1

*Text proposed by the Commission*

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

*Amendment*

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

#### *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 74

### Proposal for a directive Article 96 – point 3

*Text proposed by the Commission*

(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.

*Amendment*

(3) any future claims which **mutual or mutual-type associations with variable contributions** 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*

*It should be clarified that the claim that such an undertaking may have against its members 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 75

### Proposal for a directive Article 97

*Text proposed by the Commission*

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

*Amendment*

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 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.

**(a) a list of own fund items, including those referred to in Article 96, 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 (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 76**

### **Proposal for a directive Article 98**

*Text proposed by the Commission*

**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;**

*Amendment*

**deleted**

*(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.*

*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*

*Some form of tiering and restrictions is desirable to prevent companies being inappropriately capitalised with capital of relatively low quality. However, the eligibility limits, as proposed in the Article 98, are excessive, arbitrary and not based on a economic rationale. 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 77**

**Proposal for a directive**  
**Article 99 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

The Commission **may** adopt implementing measures **restricting Tier 2 and Tier 3 capital to the amounts that may be demonstrated to be necessary to provide an appropriate level of protection for policyholders.**

*Justification*

*As explained in more detail in the amendment to Article 98, any additional limits to own funds that can be used to cover the MCR and the SCR may be dealt with through Level 2 implementing measures. If limits to tier 2 capital are to be set they should respect the overall aim in article 98. There is no need for sub-tiers.*

**Amendment 78**

**Proposal for a directive**  
**Article 104 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

Where appropriate, diversification effects shall be taken into account in the design of each risk module.

*Amendment*

Where appropriate, diversification **or specialisation** effects shall be taken into account in the design of each risk module.

*Justification*

*There will be specialisation effects that merit consideration in addition to diversification.*

**Amendment 79**

**Proposal for a directive**  
**Article 105 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6a. The assets and liabilities of a dedicated reinsurer shall be treated as the assets and liabilities of the company that it has reinsured, so that in calculating the reinsured company's solvency, no adjustment shall be made for counterparty default risk or market risk concentrations in respect of the dedicated reinsurer's contractual obligations to the reinsured company. The risks referred to in Article 101(4) that affect the dedicated reinsurer shall, however, be taken into account in calculating the Solvency Capital Requirement of the reinsured company.***

**Amendment 80**

**Proposal for a directive**  
**Article 107 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

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 decrease in technical provisions ***or*** deferred taxes ***or a combination of both, unless they were recognised as surplus funds in accordance with Article 90(2).***

*Justification*

*Alignment with changes to Article 90.*

**Amendment 81**

**Proposal for a directive**  
**Article 108 – paragraph 1**

*Text proposed by the Commission*

Insurance and reinsurance undertakings may use a simplified calculation for a specific sub-module or risk module where the nature, scale **and** complexity of the risks they face justifies it and where it would be disproportionate to require all insurance and reinsurance undertakings to apply the standardised calculation.

*Amendment*

Insurance and reinsurance undertakings may use a simplified calculation for a specific sub-module or risk module where the nature, scale, complexity **or specialisation** of the risks they face justifies it and where it would be disproportionate to require all insurance and reinsurance undertakings to apply the standardised calculation.

*Justification*

*There will be specialisation effects that merit consideration.*

**Amendment 82**

**Proposal for a directive**  
**Article 109 – paragraph 1 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) the correlation parameters;

*Amendment*

(c) the correlation parameters **and procedures for the updating of those parameters**;

*Justification*

*As has been shown by the recent financial turmoil correlation parameters may need to be adjusted quickly.*

**Amendment 83**

**Proposal for a directive**  
**Article 109 – paragraph 1 – subparagraph 1 – point j a (new)**

*Text proposed by the Commission*

*Amendment*

***(ja) the simplified calculations provided for specific sub-modules and risk modules, as well as the criteria that captive insurance and reinsurance undertakings are required to meet in***

***order to be entitled to use each of these simplifications, as set out in Article 108.***

*Justification*

*There is also a need for specific simplifications to be applied to the calculation of the Solvency Capital Requirement in the case of captives. This is in line with the general approach adopted for other small and medium sized insurance and reinsurance undertakings. QIS 4 will determine what impact these simplifications will have. The proposed amendment provides in the Directive a platform for the provision of such specific simplifications where appropriate.*

**Amendment 84**

**Proposal for a directive  
Article 110 – paragraph 5**

*Text proposed by the Commission*

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 complies with the requirements referred to in paragraph 3.

*Amendment*

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 **identifying, measuring**, monitoring, managing **and reporting** risk are adequate and in particular, that the 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 identify and measure them before reporting them.*

**Amendment 85**

**Proposal for a directive  
Article 110 – paragraph 7**

*Text proposed by the Commission*

7. For a period of two years after having received approval from supervisory authorities to use an internal model, insurance and reinsurance undertakings **shall** provide supervisory authorities with an estimate of the Solvency Capital

*Amendment*

7. For a period of **up to** two years after having received approval from supervisory authorities to use an internal model, insurance and reinsurance undertakings **may be required to** provide supervisory authorities with an estimate of the



Requirement determined in accordance with the standard formula, as set out in Subsection 2.

Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2.

*Justification*

*To avoid any indefinite parallel calculation of the SCR, using both the standard approach and the internal model. Supervisors should have the power to require this, but should not be forced to use it. A more realistic approach would be to allow supervisors flexibility to require parallel reporting.*

**Amendment 86**

**Proposal for a directive  
Article 111 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. When assessing an application for the use of a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of an insurance or reinsurance undertaking with respect to a specific risk module, or parts of both, supervisory authorities may require the insurance and reinsurance undertakings concerned to submit a realistic transitional plan to extend the scope of the model. The transitional plan shall set out the manner in which insurance and reinsurance undertakings plan to extend the scope of the model to other sub-modules or business units, in order to ensure that the model covers a predominant part of their insurance operations with respect to that specific risk module.***

***deleted***

*Justification*

*For many companies a partial model, used in combination with the Standard Approach, may be more cost effective solution than a full internal model as it concentrates resources on the most significant risks. This option is particularly important for the proportionate treatment of small and medium-sized insurance undertakings.*

**Amendment 87**

**Proposal for a directive**  
**Article 117**

*Text proposed by the Commission*

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance and reinsurance undertakings concerned deviates significantly from the assumptions underlying the Solvency Capital Requirement, the supervisory authorities may, by a decision stating the reasons, require the undertakings concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules of thereof.

*Amendment*

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance and reinsurance undertakings concerned deviates significantly from the assumptions underlying the Solvency Capital Requirement, the supervisory authorities may, ***in exceptional circumstances***, by a decision stating the reasons, require the undertakings concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules of thereof.

*Justification*

*The powers for supervisor to require companies to develop an internal model, where their risk profile “deviates significantly from the assumptions underlying the standard approach”, should only apply in exceptional cases, as recognised in Article 37.*

**Amendment 88**

**Proposal for a directive**  
**Article 119 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

2. The methods used to calculate the probability distribution forecast shall be based on adequate actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

*Amendment*

2. The methods used to calculate the probability distribution forecast shall be based on adequate, ***applicable and relevant*** actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

*Justification*

*Adequate is insufficient given that "applicability and relevance" appears in Article 83.*

**Amendment 89**

**Proposal for a directive**  
**Article 119 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. Data used for the internal model shall be accurate, ***complete and appropriate***.

*Amendment*

3. Data used for the internal model shall be ***appropriately and sufficiently*** accurate ***and comprehensive to justify the reliance placed on it***.

*Justification*

*The requirement that the data used is "complete" could result in an inappropriate hurdle for internal models and should instead clarify the standards required from data used in an internal model.*

**Amendment 90**

**Proposal for a directive**  
**Article 127**

*Text proposed by the Commission*

The Minimum Capital Requirement shall be calculated in accordance with the following principles:  
(a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;  
(b) *the Minimum Capital Requirement* shall correspond to an amount of eligible basic own funds below which policyholders and beneficiaries are exposed to an unacceptable level of risk if insurance and reinsurance undertakings were allowed to continue their operations;

(c) *the level of the Minimum Capital Requirement* shall be calibrated to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking

*Amendment*

1. The Minimum Capital Requirement shall be calculated in accordance with the following principles:  
(a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;  
(b) *it* shall correspond to an amount of eligible basic own funds below which policyholders and beneficiaries are exposed to an unacceptable level of risk if insurance and reinsurance undertakings were allowed to continue their operations;

***(ba) it shall be calculated as a linear function of a set or sub-set of the following variables: the undertaking's technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses. The variables used shall be measured net of reinsurance;***

(c) *it* shall be ***subject to a floor and a cap calculated as a percentage of the Solvency Capital Requirement*** calibrated to the Value-at-Risk of the basic own funds of an

subject to a confidence level in the range of 80% to 90% over a one-year period;

(d) it shall have an absolute floor of **1.000.000 EUR** for non-life insurance *and reinsurance* undertakings *and 2.000.000 EUR* for life insurance undertakings.

2. Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to supervisory authorities.

insurance or reinsurance undertaking subject to *an average* confidence level in the range of 80% to 90% over a one-year period;

(d) it shall have an absolute floor of:

*(i) EUR 2 200 000* for non-life insurance undertakings, *including captive insurance undertakings, save in the event that all or some of the risks included in one of the classes 10 to 15 listed in point A of Annex 1 are covered, in which case it shall be no less than EUR 3 200 000;*

*(ii) EUR 3 200 000* for life insurance undertakings, *including captive insurance undertakings;*

*(iii) EUR 3 000 000* for reinsurance undertakings, *except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be no less than EUR 1 200 000;*

*(iv) the sum of the amounts set out in points (i) and (ii) for insurance undertakings as referred to in Article 72(2) and (5);*

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

*1a. Without prejudice to paragraph 1(d), the Minimum Capital Requirement shall neither fall below 25 %, nor exceed 45 %, of the undertaking's Solvency Capital Requirement, calculated in accordance with Chapter VI, Section 4, Sub-sections 2 or 3, and including any capital add-on imposed in accordance with Article 37.*

2. Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to supervisory authorities.

*2a. The Commission shall submit to the European Parliament and CEIOPS, five years after the date referred to in Article*

**310(1), a report on Member States' rules and supervisory authorities' practices adopted pursuant to paragraphs 1, 1a and 2. That report shall address, in particular, the use and level of a cap and floor in paragraph 1a and any problems faced by supervisory authorities and by undertakings in the application of this Article.**

*Justification*

*The Reinsurance Directive currently recognises the specific risk structure of captive business and provides that in order to take account of the specificities of captive reinsurance undertakings, provisions should be made to allow the home Member State to set the minimum guarantee fund required for captive reinsurance undertakings at a lower amount of 1 million euros. The reasons which a few years ago led Member States to adopt a specific regime for Captives in the Reinsurance Directive are still valid today.*

**Amendment 91**

**Proposal for a directive  
Article 130 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

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.

*Amendment*

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 **identify, measure,** monitor, manage, control **and report**.

*Justification*

*In order to be able to monitor, manage or report on risks, it is necessary to identify and measure them before reporting them.*

**Amendment 92**

**Proposal for a directive  
Article 130 – paragraph 2 – subparagraph 3**

*Text proposed by the Commission*

Assets held to cover the technical provisions shall also be invested in a

*Amendment*

Assets held to cover the technical provisions shall also be invested in a

manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested **in the best interest** of policyholders and beneficiaries;

manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested **for the general good** of policyholders and beneficiaries **taking into account any fully disclosed policy objective, such as ethical or environmental investment.**

*Justification*

*Risks cannot be controlled. It can be managed and its effects mitigated through management. Best interest is difficult to define. The point is that it should be for the general good of policyholders and beneficiaries but to allow them to have signed up to particular investments.*

**Amendment 93**

**Proposal for a directive**

**Article 131 – paragraph 1 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The first subparagraph shall be without prejudice to requirements which may be laid down by Member States' supervisory authorities of the commitment with regard to retail investors in relation to assets or reference values to which policy benefits may be linked where the investment risk is borne by the policyholders.***

*Justification*

*This is a consumer protection point. At the moment under the Consolidated Life Directive supervisory authorities are able to set rules over what assets can be linked to unit-linked insurance contracts (ie. UCITS-like products). It is important that this link remains so as to avoid cross-sectoral implications where, for example, stricter rules apply to UCITS than non-ucits investment schemes as to what these units can be linked to.*

**Amendment 94**

**Proposal for a directive**

**Article 132 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. With respect to insurance risks situated in the Community, Member States shall

1. With respect to insurance risks situated in the Community, Member States shall

*ensure* 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.***

***not require*** that the assets held cover the 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 95**

### **Proposal for a directive Article 136**

#### *Text proposed by the Commission*

1. Insurance and reinsurance undertakings shall inform the supervisory authority as soon as they observe that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

#### *Amendment*

1. Insurance and reinsurance undertakings shall ***immediately*** inform the supervisory authority as soon as they observe that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three

2. Within two months from the observation of the non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the supervisory authority.

3. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of the non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

The supervisory authority may, if appropriate, extend that period by three months.

***4. In exceptional circumstances, if the supervisory authority is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. That supervisory authority shall inform the supervisory authorities of the host Member States of any measures it has taken. Those authorities shall, at the request of the supervisory authority of the home Member State, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.***

months.

2. Within two months from the observation of the ***significant*** non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the supervisory authority.

3. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of the ***significant*** non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

The supervisory authority may, if appropriate, extend that period by three months.

***3a. In order to avoid pro-cyclical effects and to prevent destabilising financial markets by requiring undertakings to comply with the Solvency Capital Requirement within nine months from the observation of non-compliance, the supervisory authorities may extend the period set out in the second subparagraph three times by an additional three months.***

***4. An extension of the periods set out in paragraph 3 is subject to at least the following requirements:***

***(a) that a progress report is submitted to***



*the supervisory authority every three months; and  
(b) that significant improvement in compliance with the Solvency Capital Requirement has been achieved in the three months preceding the proposed extension.*

*Justification*

*This amendment is intended to provide for implementing measures to ensure that the powers of, and the measures taken by, supervisory authorities are proportionate to the risk exposure, so as to protect the policyholders and beneficiaries insured by the undertakings concerned.*

**Amendment 96**

**Proposal for a directive  
Article 139 – paragraph 2**

*Text proposed by the Commission*

Those measures shall reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

*Amendment*

Those measures shall reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned **and shall be proportionate to the risk posed to the protection of policyholders and beneficiaries.**

*Justification*

*It gives supervisors the power to “take all measures necessary to safeguard the interests of policyholders”. This unlimited power appears to be far too open and wide ranging. The supervisory powers should be principle based, proportionate and escalating commensurate with the level of the capital breach. They should take into account the potential for the company’s capital position to worsen in the future and any mitigating actions that the company has taken or intends to take in the near future.*

**Amendment 97**

**Proposal for a directive  
Article 141 – subparagraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

**The Commission shall adopt implementing measures specifying the**

*conditions for intervention in the forms referred to in Article 136(3) and (4) and clarifying the application of the principles referred to in Article 139.*

*Justification*

*It is essential that the directive should, as far as possible, serve to harmonise the procedures and practices of the various European supervisors so as to prevent a given operator being treated different from one Member State to another. It is accordingly proposed that the Commission, under development measures (Lamfalussy level 2), should lay down the harmonised general principles that national supervisors must take into account.*

**Amendment 98**

**Proposal for a directive  
Article 164 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. For these purposes, recoverables from reinsurance contracts shall be deemed to be retained in the Member State where the activities are carried out to the extent that they are recoverables from reinsurance contracts against one of the following:  
(a) undertakings authorised in accordance with this Directive;  
(b) dedicated reinsurers; or***

***(c) undertakings with a head office in a third country where the solvency regime is deemed to be equivalent in accordance with Article 170.***

**Amendment 99**

**Proposal for a directive  
Article 170 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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-

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

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.

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 100**

#### **Proposal for a directive**

#### **Article 170 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. A decision referred to in paragraph 1 can enter into force only after the third country concerned has recognised the solvency regime laid down in this Directive as equivalent to theirs (mutual recognition).***

#### *Justification*

*The incorporation of this paragraph is appropriate due to the equivalence assessment of article 263 and 170. Especially in the range of the acceptance of monitory systems for reinsurance, there are negotiations with different jurisdictions in order to develop standards since years. If countries think about introducing collateral systems, the EU should not appreciate them without additional requirements.*

### **Amendment 101**

**Proposal for a directive**  
**Article 183 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. In addition, specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the policyholder.***

*Justification*

*This amendment aims at strengthening the provisions in the Commission's proposal as regards policyholder protection and information together with Articles 180 and 181.*

**Amendment 102**

**Proposal for a directive**  
**Article 183 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 183a***  
***Information for policyholders: surplus funds***  
***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 conclusion of the life insurance contract.***

*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 103**

**Proposal for a directive**  
**Article 208 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

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 **identify, measure,** monitor, manage, control and report the risks arising from those contracts or activities.

*Justification*

*Before a measurement of risk is possible, a risk should be identified. The five actions "to identify", "to assess", to manage", "to monitor", and "to report" are recommended in this combination in CEIOPS's first wave of advice.*

**Amendment 104**

**Proposal for a directive**  
**Article 210 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) "group" means a group of undertakings, *which* consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC;

*Amendment*

(c) "group" means a group of undertakings:

**(i)** *that* consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC; **or**  
**(ii)** *that is based on a contractual or other material recognition of long-lasting strong and sustainable financial links among all those undertakings, and that*

*may include mutual or mutual-type associations, provided that:*  
*- centralised coordination effectively exercises a dominant influence over the decisions, including financial decisions, of all undertakings that are part of the group; and*  
*- the establishment and dissolution of such relationships for the purposes of this Title are subject to prior approval by the group supervisor.*  
*The undertaking performing the centralised coordination shall be deemed to be the participating undertaking or, where appropriate, the parent undertaking, and all other undertakings shall be deemed to be related undertakings or, where appropriate, subsidiaries;*

*Justification*

Group supervision rights and duties are in the proposed Commission text limited to groups with a parent/subsidiary constellation. There are however insurance groups and/or mixed-activity insurance (holding) companies based on contractual relations, where a similar situation exists. Group supervision should also benefit these groups.

**Amendment 105**

**Proposal for a directive**  
**Article 210 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) "college of supervisors" means a permanent but flexible structure for cooperation and coordination among the supervisory authorities of the Member States concerned;*

*Justification*

*To ensure introduction of colleges of supervisors as a legal requirement for cross-boarder insurance group supervision, a definition needs to be introduced into the Framework Directive.*

**Amendment 106**

**Proposal for a directive**  
**Article 212 – paragraph 2 – subparagraph 4**

*Text proposed by the Commission*

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.

*Amendment*

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 is useful to receive 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 107**

**Proposal for a directive**  
**Article 220 – paragraph 2**

*Text proposed by the Commission*

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:

**(a) profit reserves and future profits**

*Amendment*

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 be included in the calculation **only** in so far as **it is** eligible for covering the Solvency Capital Requirement of the related undertaking concerned.

*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.*

*(c) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.*

#### *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 108**

##### **Proposal for a directive Article 220 – paragraph 3**

###### *Text proposed by the Commission*

**3. *If the supervisory authorities consider that*** certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in paragraph 2 cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

###### *Amendment*

**3. *Where*** certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in paragraph 2 cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

#### **Amendment 109**



**Proposal for a directive**  
**Article 225 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, the latter shall *be treated* solely for the purposes of the calculation as a related insurance or reinsurance undertaking.

*Amendment*

1. When calculating, ***in accordance with Article 231***, the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, the latter shall, solely for the purposes of the calculation, *be treated* as a related insurance or reinsurance undertaking.

*Justification*

*According to the Commission<sup>1</sup>, the Directive allows diversification effects to be taken into account across a whole group, and not just within the EU, when calculating the SCR on a consolidated basis. On the other hand, the deduction and aggregation method of calculating the SCR requires a third country to be equivalent before diversification benefits can be taken into account. This amendment distinguishes between the two calculation methods, clarifying that arbitrary limits cannot be placed on diversification benefits when using the consolidated method.*

<sup>1</sup> Letter from Jorgen Holmquist, Director-General, DG Markt, to Thomas Steffen, CEIOPS Chairman, dated 23 January 2008

**Amendment 110**

**Proposal for a directive**  
**Article 225 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

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.*

*Amendment*

***In so doing***, the group supervisor shall consult the other supervisory authorities concerned and *CEIOPS*.

*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 111

### Proposal for a directive Article 225 – paragraph 3

*Text proposed by the Commission*

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 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.

*Amendment*

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, **in accordance with the principle of mutual recognition.**

**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.

*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 112

### Proposal for a directive Article 225 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**Where the Commission has not adopted a decision in accordance with paragraph 3, the third-country regime is presumed not to be equivalent to the regime provided for in this Directive and its implementing measures. Such a presumption shall be rebuttable.**

*Justification*

*The amendment suggests that there is a rebuttable presumption on the non-equivalence of the third-country regime.*

**Amendment 113**

**Proposal for a directive**

**Article 225 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

**4. When a decision adopted by the Commission in accordance with paragraph 3 concludes as to the equivalence of the solvency regime in a third country, paragraph 2 shall not apply.** **deleted**

*Justification*

*See justification to amendment proposed by Mr. Sánchez Presedo to Article 225 paragraph 2 subparagraph 2.*

**Amendment 114**

**Proposal for a directive**

**Article 228 – paragraph 2 – subparagraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

(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 115**

**Proposal for a directive**  
**Article 229 – paragraph 4**

*Text proposed by the Commission*

**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.**

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.**

*Amendment*

**4. In the absence of a joint decision of 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 CEIOPS, within a further ten weeks, to deliver non-binding advice, adopted by a qualified majority of its members, to all the supervisory authorities concerned.**

The group supervisor shall **take a decision within three weeks of the transmission of that advice, taking full account thereof. 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.**

**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 involvement of supervisory authorities concerned, not being the group supervisor, should be enhanced. All supervisors involved should be able to judge a situation based on the same relevant informations. Where concerned supervisors cannot come to an agreement, it is useful to receive a qualified advice from a third party that provides an independent view.*

*The CEIOPS advice should be taken in an qualified majority voting process, because home and host supervisor are both CEIOPS members.*

**Amendment 116**

**Proposal for a directive**  
**Title III – Chapter II – Section 1– Subsection 6 – title**

*Text proposed by the Commission*

**SUBSECTION 6 – GROUP SUPPORT**

PE400.648v02-00

*Amendment*

**SECTION 1a – GROUP SUPPORT**

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## Justification

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

### Amendment 117

#### Proposal for a directive Article 234

##### *Text proposed by the Commission*

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:

- (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;
- (b) the risk management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;
- (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;

##### *Amendment*

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:

- (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;
- (b) the risk management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;
- (c) the parent undertaking has declared, in writing and in a legally binding document accepted by the group supervisor ***and the other supervisory authority concerned***, in accordance with Article 237, that it guarantees that ***appropriate basic*** own funds will be transferred ***unconditionally and promptly*** where ***required, in the form of appropriate assets at the request of either the group supervisor or the other supervisory authority concerned*** and up to the limit resulting from the application of Article 237.  
***(ca) the parent undertaking satisfies the competent authority regarding the prudent management of the subsidiary***

*and has declared, with the consent of the supervisory authority, that it guarantees the commitments entered into by the subsidiary;*

*(cb) the primary source of group support is own funds transferred from the parent undertaking to its subsidiary and legally enforceable contracts are in place to enable the transfer of eligible own funds in the event that group support is provided from resources available in a subsidiary; and*

(d) an application for permission to be subject to Articles 236 to 241 has been introduced by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 235.

(d) an application for permission to be subject to Articles 236 to 241 has been **submitted jointly** by the parent undertaking **and the subsidiary concerned** and a favourable decision has been made on such application in accordance with the procedure set out in Article 235.

#### *Justification*

*The deleted words only provide confusion in relation to paragraph d) of this Article as to who requests group support.*

### **Amendment 118**

#### **Proposal for a directive Article 235 – paragraphs 2 and 3**

##### *Text proposed by the Commission*

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within **six** months from the date of receipt of the complete application by the group supervisor.

The group supervisor shall forward the complete application to the other supervisory authorities concerned without delay.

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

##### *Amendment*

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within **three** months from the date of receipt of the complete application by the group supervisor.

The group supervisor shall forward the complete application to the other supervisory authorities concerned without delay.

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.

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 supervisory authorities concerned.

joint decision referred to above shall be **complied with** by the supervisory authorities in the Member States concerned.

3. In the absence of a joint decision between the supervisory authorities concerned within **three** months **of the date of receipt of the complete application by the group supervisor**, the group supervisor shall **request CEIOPS to deliver its advice adopted with a qualified majority of its members, to all** the supervisory authorities concerned **within a further two months**.

**The group supervisor shall take a decision within one week of the transmission of CEIOPS' advice, taking full account of that advice and of the views of the other supervisory authorities concerned.**

**The group supervisor's decision shall be set out in a document containing the full reasons for the decision, including an explanation of any significant deviation from the positions of the other supervisory authorities concerned or the advice of CEIOPS.**

**The group supervisor shall provide its decision to the applicant and the other supervisory authorities concerned, which in turn may provide this information to other undertakings that are part of the group and subject to their supervision. All 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 119**

### **Proposal for a directive**

#### **Article 236 – paragraphs 2 to 4**

##### *Text proposed by the Commission*

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.

3. Where the Solvency Capital Requirement of the subsidiary is calculated

##### *Amendment*

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 **that** 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 **that** the group supervisor 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, **may propose that the group supervisor** require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The supervisory authority **that authorised the subsidiary** shall communicate the grounds for such proposals to both the subsidiary and the group supervisor. ***In the event that the group supervisor agrees, the proposing supervisory authority shall decide jointly with the group supervisor either to set the capital add-on to the Solvency Capital Requirement of that subsidiary in accordance with Article 37(2) to (5) or, in exceptional circumstances, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula.***

3. Where the Solvency Capital Requirement of the subsidiary is calculated



on the basis of the standard formula and the supervisory authority *having* authorised the subsidiary considers that its risk profile deviates significantly from the assumptions underlying the standard formula, 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.

4. The supervisory authority shall communicate the grounds for such proposal to both the subsidiary and the group supervisor.

*Where the supervisory authority and the group supervisor disagree, or in the absence of a decision from the group supervisor within one month from the proposal of the supervisory authority, the matter shall be referred for consultation to the Committee of European Insurance and Occupational Pensions Supervisors, which shall give its advice within two months.*

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. 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.*

on the basis of the standard formula and the supervisory authority *that* authorised the subsidiary considers that its risk profile deviates significantly from the assumptions underlying the standard formula, 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.

The supervisory authority *that authorised the subsidiary* shall communicate the grounds for such proposal to both the subsidiary and the group supervisor. *In the event that the group supervisor agrees, the proposing supervisory authority shall decide jointly with the group supervisor to set the capital add-on to the Solvency Capital Requirement of that subsidiary in accordance with Article 37(2) to (5).*

4. *In the absence of a joint decision by the supervisory authorities concerned within three months, the group supervisor shall request CEIOPS to deliver its advice adopted with a qualified majority of its members, to all the supervisory authorities concerned within a further two months.*

The group supervisor shall *take a decision within one week of the transmission of CEIOPS' advice, taking full account of that advice and of the views of the other supervisory authorities concerned. The group supervisor's decision shall be set out in a document containing the full reasons for the decision, including an explanation of any significant deviation from the positions of the other supervisory authorities concerned or the advice of CEIOPS.*

*The group supervisor shall provide its decision to the applicant and the other supervisory authorities concerned, which in turn may provide this information to*

***other undertakings that are part of the group and subject to their supervision. All the supervisory authorities concerned shall comply with the decision.***

#### *Justification*

*Legally the group supervisor has no powers in the Member State of the subsidiary. Therefore, it is appropriate for legal certainty that the capital add-on for a subsidiary is set by its solo supervisor or, respectively, the subsidiary is required by its solo supervisor to use the standard formula. In both cases the group supervisor's agreement is necessary as pre-condition.*

### **Amendment 120**

#### **Proposal for a directive**

#### **Article 237**

##### *Text proposed by the Commission*

1. By way of derogation from Article 98(4), any difference between the Solvency Capital Requirement and the *minimum capital requirement* of the subsidiary shall be covered by either own funds eligible under Article 98(4) or group support, or any combination thereof.

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***.

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).

##### *Amendment*

1. By way of derogation from Article 98(4), any difference between the Solvency Capital Requirement and the *Minimum Capital Requirement* of the subsidiary shall be covered by either own funds eligible under Article 98(4) or group support, or any combination thereof.

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***.

***Surplus funds under Article 90 shall not be transferable within the group support regime.***

2. The group support shall take the form of a declaration ***from the parent undertaking to the subsidiary, accepted by*** the group supervisor ***and the supervisory authority concerned, and*** expressed in a legally binding document ***which, notwithstanding any provisions of relevant company law, constitutes*** a commitment to transfer own funds eligible under Article 98(5) ***up to a stated limit to the subsidiary concerned.***  
***2a. The group support shall be provided from eligible own funds available in the***

3. Before accepting the declaration referred to in paragraph 2, the group supervisor shall verify the following:

(a) that the group has sufficient eligible own funds to cover its consolidated group Solvency Capital Requirement;

(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;

(c) that the document containing the declaration of group support meets all requirements existing under *the law of the parent undertaking to be recognised as a legal commitment*, and that any recourse before a legal or administrative body shall not have suspensive effect.

*parent undertaking or in another subsidiary when there is clear evidence that no legal impediment to the transfer of own funds from that subsidiary will arise, including in crisis situations.*

3. Before accepting the declaration referred to in paragraph 2, the group supervisor **and the supervisory authority that authorised the subsidiary** shall **work together** to verify the following:

(a) that the group has sufficient eligible own funds to cover its consolidated group Solvency Capital Requirement;

***(aa) that the group maintains an adequate liquidity management system in order to ensure potential needs to transfer funds;***

(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;

(c) that the document containing the declaration of group support **and any necessary accompanying instrument** meets all requirements existing under **a law enforceable in the Member State of the undertaking providing group support**, and that any recourse before a legal or administrative body shall not have suspensive effect, ***including the establishment of group support up to the limit of the most recent declaration, or as provided under Article 244(1) when relevant, and ranking equivalent to policyholder claims including in circumstances of reorganisation, composition, assignment, take-over or any other administrative proceedings.***

***3a. In the absence of a joint acceptance by the supervisory authorities concerned within three months of the date of receipt of the complete application by the group supervisor, the group supervisor shall request CEIOPS to deliver its advice adopted with a qualified majority of its members to all the supervisory authorities concerned within a further two months. The group supervisor shall take a decision within one week of the transmission of the***

*CEIOPS' advice, taking full account of that advice and of the views of the other supervisory authorities concerned.*

*The group supervisor's decision shall be set out in a document containing the full reasons for the decision, including an explanation of any significant deviation from the positions of the other supervisory authorities concerned or the advice of CEIOPS.*

*The group supervisor shall provide its decision to the applicant and the other supervisory authorities concerned, which in turn may provide that information to other undertakings that are part of the group and subject to their supervision. All the supervisory authorities concerned shall comply with the decision.*

#### *Justification*

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

## **Amendment 121**

### **Proposal for a directive Article 238**

#### *Text proposed by the Commission*

1. By way of derogation from *Article 136, 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.*

2. *Where* the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 98(4) and the amount of group support declared in accordance with

#### *Amendment*

1. By way of derogation from *Article 136(2) and (3), in cases of non-compliance with the* Solvency Capital Requirement *the procedures set out in paragraphs 2 to 4a shall apply.*

2. *Within two months of the observation that* the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 98(4) and the amount of group support declared

Article 237, **but the own funds eligible under Article 98(5) are sufficient to cover the minimum capital requirement**, the supervisory authority **may call on the parent undertaking to provide a new declaration bringing the group support to the amount necessary to ensure that the Solvency Capital Requirement is again fully covered.**

3. **Where the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 98(4) and the amount of group support declared in accordance with Article 237, and the own funds eligible under Article 98(5) are not sufficient to cover the minimum capital requirement, the supervisory authority may call on the parent undertaking to transfer own funds eligible under Article 98(5) to the extent necessary to ensure that the minimum capital requirement is again covered, and to provide a new declaration bringing the group support to the amount necessary to ensure that the Solvency Capital Requirement is again fully covered.**

4. **Before accepting any new declaration referred to in paragraphs 2 or 3, the group supervisor shall verify that the conditions laid down in Article 237 are met.** Where the **parent undertaking does not provide the new declaration requested, or where the new declaration provided is not accepted**, the derogations provided for in Articles 236 and 237 and in paragraph 1 shall cease to apply.

The supervisory authority **having** authorised the subsidiary shall **regain full responsibility for setting the Solvency Capital Requirement of the subsidiary and taking** appropriate measures to ensure that **it** is adequately met by own funds eligible under Article 98(4). The parent

in accordance with Article 237, **the subsidiary shall submit a plan for the reestablishment of the coverage of the Solvency Capital Requirement to the supervisory authority for approval within three months of the observation of the non-compliance, either by increasing the level of eligible own funds or by receiving a new declaration of group support or by decreasing its risk exposure (de-risking).** **The supervisory authority shall inform and forward the plan to the group supervisor without delay.**

3. **Before approving the plan, the supervisory authority shall ensure that any amount of group support which may be set out in the plan is declared in accordance with Article 237.**

4. Where the **plan is not approved and the level of the Solvency Capital Requirement of the subsidiary is not re-established within the timetable set out in paragraph 2**, the derogations provided for in Articles 236 and 237 and in paragraph 1 of this Article shall cease to apply **and the parent undertaking shall transfer within one month the own funds resulting from the most recent declaration accepted in the form of elements under Article 98(4).**

The supervisory authority **that** authorised the subsidiary shall **take** appropriate measures to ensure that the **Solvency Capital Requirement** is adequately met by own funds eligible under Article 98(4). The parent undertaking shall not, **however**, be released from the commitment resulting

undertaking shall *however* not be released from the commitment resulting from the most recent declaration accepted.

from the most recent declaration accepted.

***4a. Where the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 98(4) and the amount of group support declared in accordance with Article 237, and the own funds eligible under Article 98(5) are not sufficient to cover the Minimum Capital Requirement, in addition to the powers set out in Article 137, the supervisory authority may call on the parent undertaking to transfer own funds eligible under Article 98(5) to the extent necessary to ensure that the Minimum Capital Requirement is again covered and up to the limit of the group support resulting from the most recent declaration accepted.***

#### *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 122**

### **Proposal for a directive Article 239**

#### *Text proposed by the Commission*

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

#### *Amendment*

When the subsidiary is found to be insolvent ***and is being wound up***, the supervisory authority *that* 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

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.

to the subsidiary, in so far as they are necessary to meet **all** liabilities, up to the limit of the group support resulting from the most recent declaration accepted.

### *Justification*

*No substantial changes: clarification.*

## **Amendment 123**

### **Proposal for a directive Article 240 – paragraphs 1 and 2**

#### *Text proposed by the Commission*

1. In the cases referred to in Articles 238 and 239, the supervisory authority shall address its request to the parent undertaking and immediately inform the group supervisor.

Where the parent undertaking does not **rapidly** transfer eligible own funds to the subsidiary, the group supervisor shall use all powers available, including the power available under Article 142, to ensure that the group provides the requested transfer as soon as is practicable.

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

#### *Amendment*

1. In the cases referred to in Articles 238 and 239, the supervisory authority shall address its request to the parent undertaking and immediately inform the group supervisor.

Where the parent undertaking does not **promptly and, in any event,, within one month of it having been first required**, transfer eligible own funds to the subsidiary, the group supervisor shall use all powers available, including the power available under Article 142, to ensure that the **parent undertaking** provides the requested transfer as soon as is practicable, **but in any event within two months of it having been first required**.

2. Group support **shall be primarily provided from eligible own funds present in the parent undertaking**. It may be provided from eligible own funds present in any subsidiary **within the group support regime**, 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 **that** 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.

with, ***own funds can only be transferred if*** a declaration by the parent undertaking of the necessary level of group support ***is provided and this declaration is accepted*** by the group supervisor ***and the supervisory authority that authorised the subsidiary concerned in accordance with Article 237.***

#### *Justification*

*There should be clear deadlines set out in the Directive for the transfer of group support. This legal certainty is also important for consumer protection and for the right to apply to the court.*

### **Amendment 124**

#### **Proposal for a directive Article 241**

##### *Text proposed by the Commission*

The existence of declarations of group support, and any use thereof, shall be publicly disclosed by both the parent undertaking and the subsidiary concerned.

##### *Amendment*

The existence ***and the main principles*** of declarations of group support, and any use thereof, ***including amounts***, shall be publicly disclosed by both the parent undertaking and the subsidiary concerned.

#### *Justification*

*It is necessary to ensure transparency and accessibility of the Directive provisions to the customers.*

### **Amendment 125**

#### **Proposal for a directive Article 242 – paragraph 2**

##### *Text proposed by the Commission*

2. When the derogations provided for in Articles 236, 237 and 238 cease to apply, the supervisory authority ***having*** authorised the subsidiary ***shall regain full responsibility for setting*** the Solvency Capital Requirement of the subsidiary and

##### *Amendment*

2. When the derogations provided for in Articles 236, 237 and 238 cease to apply, the supervisory authority ***that*** authorised the subsidiary ***takes appropriate measures to ensure that*** the Solvency Capital Requirement of the subsidiary and taking



taking appropriate measures to ensure that it is adequately met by own funds eligible under Article 98(4). The parent undertaking shall however not be released from the commitments resulting from the most recent declarations accepted in accordance with Articles 237, 238 and 240.

appropriate measures to ensure that it is adequately met by own funds eligible under Article 98(4). The parent undertaking shall however not be released from the commitments resulting from the most recent declarations accepted in accordance with Articles 237, 238 and 240.

#### *Justification*

*In line with the clarification under Article 238, regarding the role and responsibilities of the group supervisor and the supervisory authority having authorised the subsidiary.*

### **Amendment 126**

#### **Proposal for a directive Article 243 – paragraph 3**

##### *Text proposed by the Commission*

3. When the derogations provided for in Articles 236, 237 and 238 cease to apply, the supervisory authorities having authorised any subsidiary to which the rules laid down in Articles 236 to 241 apply shall **regain full responsibility for setting** the Solvency Capital Requirement of **these** subsidiaries and taking appropriate measures to ensure that it is adequately met by own funds eligible under Article 98(4). The parent undertaking shall however not be released from the commitments resulting from the most recent declarations accepted in accordance with Articles 237, 238 and 240.

##### *Amendment*

3. When the derogations provided for in Articles 236, 237 and 238 cease to apply, the supervisory authorities having authorised any subsidiary to which the rules laid down in Articles 236 to 241 apply shall **take the appropriate measures to ensure that** the Solvency Capital Requirement of **the** subsidiaries and taking appropriate measures to ensure that it is adequately met by own funds eligible under Article 98(4). The parent undertaking shall however not be released from the commitments resulting from the most recent declarations accepted in accordance with Articles 237, 238 and 240.

#### *Justification*

*In line with the clarification under Article 238, regarding the role and responsibilities of the group supervisor and the supervisory authority having authorised the subsidiary.*

### **Amendment 127**

**Proposal for a directive**  
**Article 244**

*Text proposed by the Commission*

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.

The reduction shall be calculated for each subsidiary with a view to ensuring that each subsidiary is subject to the same ratio between the sum of its available assets and any transfer from the group on the one hand and the sum of its technical provisions and its minimum capital requirement on the other hand.

2. Member States shall ensure that liabilities resulting from insurance contracts entered into by the parent undertaking are not treated more favourably than liabilities resulting from insurance contracts entered into by any subsidiary which is subject to the rules laid down in Articles 236 to 241.

*Amendment*

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 following rules shall apply:***

***(a) all subsidiaries of the parent undertaking shall be held responsible, together with the parent undertaking, up to the amounts resulting from the most recent declarations accepted in respect of each subsidiary which is subject to the rules laid down in Articles 236 to 241;***  
***(b) the amounts referred to in point (a) shall be reduced where necessary with direct insurance ranking ahead of reinsurance.*** The reduction shall be calculated for each subsidiary with a view to ensuring that each subsidiary ***and the parent*** is subject to the same ratio between the sum of its available assets and any transfer from ***or to*** the group on the one hand and the sum of its technical provisions and its minimum capital requirement on the other hand.  
***The parent undertaking shall not, however, be released from the commitments to transfer the full amounts resulting from the most recent declarations accepted, unless there is an ongoing insolvency at group level.***

2. ***Notwithstanding Article 277,*** Member States shall ensure that liabilities resulting from insurance contracts entered into by the parent undertaking are not treated more ***or less*** favourably than liabilities resulting from insurance contracts entered into by any subsidiary which is subject to the rules laid down in Articles 236 to 241. ***The Commission shall adopt implementing***

*measures specifying procedures under which an orderly and fair distribution of group support over time is to be achieved in the event of insolvency at group level and having regard to the priority of insurance claims set out in Article 277 to ensure uniform application within the Community. 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*

*This is necessary to ensure fair treatment of policyholders and to prevent suspensive effects on transfer of funds in the event of winding up (Article 277). Surplus funds are solvency capital in the relevant undertaking and are not fungible so they must be taken into account before any redistribution. Other industry or tax funded statutory guarantee schemes are not treated as capital and should not be called on until after distribution of funds. In the event of insolvency at group level it is necessary to have some coordination over the distribution of assets.*

**Amendment 128**

**Proposal for a directive  
Article 245 – paragraph 1 – point c**

*Text proposed by the Commission*

*Amendment*

(c) specifying the means to be used when disclosing the information referred to in Article 241;

(c) specifying the ***principles and*** means to be used when disclosing the information referred to in Article 241;

*Justification*

*The derogation regarding the final decision on the capital add-on should be bounded and further defined in Level 2 implementing measures.*

**Amendment 129**

**Proposal for a directive  
Article 246**

*Text proposed by the Commission*

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.

*This* report shall address in particular the appropriate level of own funds which a subsidiary is required to hold where it belongs to a group fulfilling the conditions of this subsection, the form which group support is required to take, the allowable amount of group support and the level of own funds at which the derogations provided for in Articles 236, 237 and 238 shall cease to apply.

*Amendment*

The Commission shall submit to ***the European Parliament and*** 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.

*That* report shall address in particular ***the quality of eligible own funds which the group is required to hold to apply the rules laid down in Article 236 to 241,*** the appropriate level of own funds which a subsidiary is required to hold where it belongs to a group fulfilling the conditions of this subsection, the form which group support is required to take, the allowable amount of group support and the level of own funds at which the derogations provided for in Articles 236, 237 and 238 shall cease to apply.

*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 130**

**Proposal for a directive**  
**Article 251 – paragraphs 3 to 5**

*Text proposed by the Commission*

3. In particular cases, the supervisory authorities concerned may derogate from the criteria set out in paragraph 2 if their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings activities in different countries, and designate a different supervisory authority as group supervisor.

*Amendment*

3. In particular cases, the supervisory authorities concerned may, ***at the request of any of the authorities, take a joint decision to*** derogate from the criteria set out in paragraph 2 if their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings activities in different countries, and designate a different supervisory authority as group

***For that purpose, any of the supervisory authorities concerned may request that a discussion be opened on whether the criteria referred to in paragraph 2 are appropriate. Such a discussion shall not take place more than once a year.***

The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months ***from the request for discussion. Before taking their decision, the supervisory authorities concerned shall give the group an opportunity to state its opinion.***

4. In the absence of a joint decision ***within three months***, the task of group supervisor shall be exercised by the supervisory authority ***of the Member State where the group has its most important insurance and reinsurance activities.***

***However, where that result is opposed by a majority of the other supervisory authorities concerned, the designation of the group supervisor shall be referred within one month following the default designation for final decision to the Committee of European Insurance and Occupational Pensions Supervisors, which shall render its decision within one month following the referral.***

5. The Committee of European Insurance and Occupational Pensions Supervisors

supervisor.

The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months.

***3a. During the period referred to in paragraph 3, any of the supervisory authorities concerned may request that CEIOPS be consulted. In the event that CEIOPS is consulted, the period referred to in paragraph 3 shall be extended by two months.***

***3b. In the event that CEIOPS is consulted, the supervisory authorities concerned shall duly take into account CEIOPS' advice before taking their joint decision. The joint decision shall be fully reasoned and shall contain an explanation of any significant deviation from the positions adopted by CEIOPS.***

4. In the absence of a joint decision ***derogating from the criteria set out in paragraph 2***, the task of group supervisor shall be exercised by the supervisory authority ***identified in accordance with that paragraph.***

5. CEIOPS shall inform ***the European Parliament, the Council and the***

shall inform the Commission, at least *once a year*, of any major difficulties with the application of *paragraphs 2, 3 and 4*.

Commission, at least *annually*, of any major difficulties with the application of *the criteria set out in paragraphs 2 and 3*. *In the event that such major difficulties arise, the Commission may adopt implementing measures specifying those criteria.*

*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).*

## Amendment 131

### Proposal for a directive

#### Article 252 – paragraph 1 – points e and f

##### *Text proposed by the Commission*

(e) planning and coordination, through regular meetings or other appropriate means, of supervisory activities in going concern as well as in emergency situations, in cooperation with the supervisory authorities concerned;

(f) other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for *validation* of any internal model at group level as set out in Articles 229 and 231 **and leading the process for** permitting group support as set out in Article 235.

##### *Amendment*

(e) planning and coordination, through regular meetings **held at least annually** or other appropriate means, of supervisory activities in going concern as well as in emergency situations, in cooperation with the supervisory authorities concerned;

(f) other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for:

*(i) validating* any internal model at group level as set out in Articles 229 and 231,

*(ii) permitting* group support as set out in Article 235, **and**

*(iii) determining the Solvency Capital Requirement regarding the possibility to impose a capital add-on as set out in Article 236.*

##### *Justification*

## Amendment 132

**Proposal for a directive**  
**Article 252 – paragraph 2**

*Text proposed by the Commission*

2. In order to facilitate group supervision, the group supervisor *and the other supervisory authorities concerned shall have coordination arrangements in place.*

*Amendment*

2. In order to facilitate group supervision, *a college of supervisors, chaired by the group supervisor, shall be established to facilitate the exercise of the tasks referred to in Article 253, 254 and 255.*

*The college of supervisors shall assure that cooperation, exchange of information and consultation processes among the supervisory authorities of the college, are effectively applied in accordance with Title III of this Directive. Those coordination arrangements shall specify, without prejudice to any measure adopted pursuant to this Directive, the procedures for the decision-making process among the supervisory authorities concerned as referred to in Article 236, and for cooperation with other supervisory authorities.*

*Supervisors shall use the college to promote the convergence of their respective decisions and to cooperate closely to carry out their supervisory activities across the group under harmonised criteria.*

*The membership of the college shall include the supervisory authorities of all the Member States in which the head offices of subsidiary undertakings are situated.*

*Without prejudice to any measure adopted pursuant to this Directive, the establishment and functioning of colleges shall be based on an agreement concluded by all the members of the college, reflecting the procedures necessary to achieve its objectives, including the processes related to the approval of the group internal model and the functioning of the group support regime.*

*Provided that cooperation, convergence and exchange of information is appropriately guaranteed, the procedures*

*of the college shall provide flexibility to allow arrangements among supervisory authorities, in the cases where this results in a more efficient supervision of the group, and it does not impair the supervisory activities of the members of the college in respect of their individual responsibilities.*

*Those coordination arrangements may entrust additional tasks to the group supervisor and may specify, without prejudice to any measure adopted pursuant to this Directive, the procedures for the decision-making process among the supervisory authorities concerned as referred to in Articles 211(3), 212(2), 213(2), 214, 215, 217, 218(2), 219(2), 225(2), 236, 248, 249, 251 (3) and (4), 254, 263 and 264 and for cooperation with other supervisory authorities.*

*The college of supervisors shall be consulted before any arrangement among its members is concluded, in particular when such coordination arrangements entrust additional tasks to the group supervisor or other supervisory authorities concerned, or when it refers to the application in practice of Articles 211(3), 212(2) and 213(2), Articles 214, 215 and 217, Articles 218(2), 219(2) and 225(2), Articles 248 and 249, Article 251(3) and (4), and Articles 254, 263 and 264.*

*The group supervisor shall, annually, forward a report to CEIOPS on the functioning of the college of supervisors, new practices and difficulties encountered.*

#### *Justification*

*Regarding the original proposal of Article 252(2), second subparagraph, there is no rationale to allow delegation of tasks only towards the group supervisor. Delegations from group supervisor to subsidiary supervisors should be envisaged, since they may contribute to make more efficient and enhance mutual trust. Having in mind the practical experience in banking sector, delegation of tasks should be allowed in both directions.*

### **Amendment 133**

#### **Proposal for a directive Article 253 – paragraph 1**

##### *Text proposed by the Commission*

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

##### *Amendment*

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.

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*.

*Information referred to in the second subparagraph shall be regarded as essential if it could materially influence the assessment of the financial soundness of an insurance or reinsurance undertaking*

insurance or reinsurance undertaking encounters financial difficulties.

*The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall meet regularly. The frequency of their meetings shall be agreed between the supervisory authorities, on the basis of the nature, complexity and scale of the risks inherent in the business of all undertakings that are part of the group.*

*With the objective of ensuring that the 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 information *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 *as soon as 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.*

*1a. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall each call immediately for a meeting of all supervisors involved in group supervision in at least the following cases:*  
*(a) when they become aware of a breach of the Solvency Capital Requirement or the Minimum Capital Requirement of an*

*individual insurance or reinsurance undertaking; or*  
*(b) when they become aware of a breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with which method according to Title III, Chapter II, Section 1, Subsection 4, is used;*  
*(c) when other exceptional circumstances occur or have occurred.*

*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 essential or relevant 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.*

**Amendment 134**

**Proposal for a directive**

**Article 254 – paragraph 1 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. The supervisory authorities concerned shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other with regard to the following items:

1. The supervisory authorities concerned shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other ***in the college of supervisors*** with regard to the following items:

*Justification*

*To enhance the involvement of all supervisory authorities in the supervision of cross-border insurance groups, colleges of supervisors need to be set up. These provide for a permanent, but flexible, structure for cooperation and coordination. They meet regularly, with the objectives to facilitate the exchange of information, enable supervisors to develop a common understanding of the risk profile of the groups, achieve coordination and to coordinate decisions taken by individual authorities.*

**Amendment 135**

**Proposal for a directive**  
**Article 262 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 262a**

**CEIOPS reports**

***CEIOPS shall report annually to the European Parliament on the experiences of the supervisory activities in the framework of Title III, in particular:***  
***(a) the use of group support, including frequency and amounts of declarations and frequency and amounts of requests for transfer of funds;***  
***(b) the cooperation between supervisors, the working of the colleges of supervisors, the process of the nomination of the lead supervisor, the number of lead supervisors and geographical spread;***  
***(c) the involvement and commitment of supervisors where they are not the lead supervisor; and***  
***(d) the asset distribution in groups that use group support.***

*Justification*

*As group support is a new concept, it is important that first hand experience is shared with the legislator.*

**Amendment 136**

**Proposal for a directive**  
**Article 263 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

The verification shall be carried out by the supervisory authority which would be the group supervisor if the criteria set out in Article 251(2) were to apply, at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Community or on its own initiative. That supervisory authority shall

The verification shall be carried out by the supervisory authority which would be the group supervisor if the criteria set out in Article 251(2) were to apply, at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Community or on its own initiative. ***In so doing***, that supervisory

consult the other supervisory authorities concerned, and *the Committee of European Insurance and Occupational Pensions Supervisors, before taking a decision.*

authority shall consult the other supervisory authorities concerned, and CEIOPS.

#### *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 137**

#### **Proposal for a directive**

#### **Article 263 – paragraph 2 – subparagraph 1**

##### *Text proposed by the Commission*

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.

##### *Amendment*

2. The Commission may adopt ***decisions*** 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, ***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 138**

#### **Proposal for a directive**

#### **Article 263 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2a. 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 139**

**Proposal for a directive  
Article 263 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. The decisions referred to in paragraph 2 shall enter into force only after the third countries concerned have recognised the prudential regime of the Community as equivalent to theirs, in accordance with the principle of 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 140**

**Proposal for a directive  
Article 263 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 263a***

***Parent undertakings outside the  
Community: equivalence***

***1. 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.***

***2. 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.***

***3. 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 141**

**Proposal for a directive**  
**Article 284 – paragraph 2**

*Text proposed by the Commission*

2. The claims of all creditors referred to in paragraph 1 shall be treated in the same way and given the same ranking as claims of an equivalent nature which may be lodged by creditors who have their habitual residence, domicile or head office in the home Member State.

*Amendment*

2. The claims of all creditors referred to in paragraph 1 shall be treated in the same way and given the same ranking as claims of an equivalent nature which may be lodged by creditors who have their habitual residence, domicile or head office in the home Member State. ***Lead supervisors must therefore operate without discrimination at the Community level. In particular, with regards to the settling of claims and winding-up situations where group support arrangements have been in place, assets should be distributed on an equitable basis to all relevant policy holders regardless of nationality or domicile.***

*Justification*

*It is important to ensure that policyholders in all Member States have fair and equal rights in the case of an insurance company becoming insolvent.*

**Amendment 142**

**Proposal for a directive**  
**Article 303**

*Text proposed by the Commission*

***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***

*Amendment*

***From 1 January 2012, the amounts expressed in euro in this Directive shall be adapted annually in order to take account of changes in the general Harmonised Indices of Consumer Prices of all Member States as published by Eurostat. Those amounts shall be adapted automatically, by increasing the base amount in euro by the percentage change in that index from 1 January 2012 until 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 143**

**Proposal for a directive  
Article 304 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

*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 144**

**Proposal for a directive  
Article 311 – paragraph 1 a (new)**



*Text proposed by the Commission*

*Amendment*

***1a. By derogation from paragraph 1, Articles 27 and 28 of Directive 2002/83/EC shall remain in force as regards institutions for occupational retirement provision in accordance with Article 17 of Directive 2003/41/EC.***

*Justification*

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

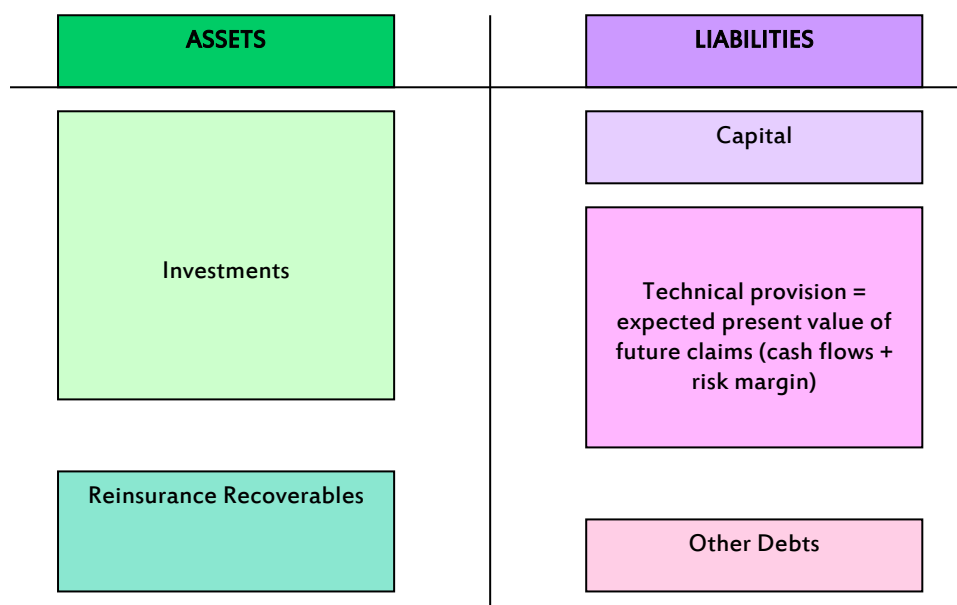
## EXPLANATORY STATEMENT

### Background of the proposal

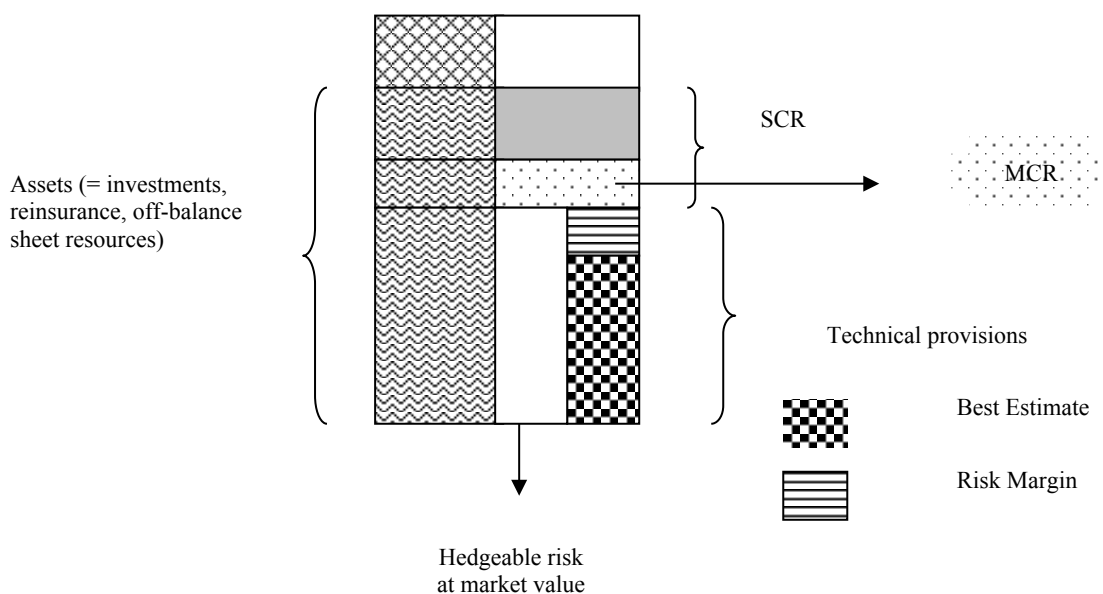
With this new solvency framework, as outlined in the proposal for a Directive ("draft Directive") on the taking up and pursuit of the business of Insurance and Reinsurance (COM(2008)0119 final), also called Solvency II, the Commission intends to introduce a risk sensitive approach with incentives for 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 Commissions text. In particular, a definition of Surplus Funds which is used in only a few EU Members 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.

2.7.2008

## **OPINION OF THE COMMITTEE ON LEGAL AFFAIRS**

for the Committee on Economic and Monetary Affairs

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))

Draftswoman: Sharon Bowles

### **SHORT JUSTIFICATION**

Solvency II is a directive that updates the 14 existing directives on insurance and reinsurance. It is in a recast format so that only the new parts are open for amendment.

The main purpose of the directive is to make the capital, or solvency requirements, depend upon risk, analysed in the context of the whole business of the undertaking. This is qualitative as well as quantitative. In particular it should be noted that insurance companies are exposed to risk not only for liabilities but also in the assets that they hold to cover those liabilities. Indeed failures of insurance companies have more often been as a result of asset problems than liability problems.

The risk analysis is done on the basis of models. Standard models can be used but large undertakings will also be able, indeed expected, to develop their own internal models which will be approved by the supervisor. Groups can also request that they be supervised as a whole so as to benefit from the greater diversification that it brings into the risk calculations, resulting in a lower capital requirement than would be the case for the sum of the solo entities.

Capital is divided into a minimum capital requirement (MCR) which is the level that each undertaking must always have in order to continue in full authorisation. The Solvency Capital Requirement (SCR), is a higher level of capital that should normally be held and, if breached, acts as an early warning for supervisory intervention. The additional SCR assets, over and above the MCR, may be held at Group (parent or holding company) level. If a subsidiary falls below the MCR (and normally before that is reached) supervisors will require transfer of capital to the subsidiary.

Fundamental to operation of the group supervisory processes is cooperation between national supervisors in the host states with subsidiaries and the home state of the parent company. The supervisor from the home country of the parent company has an enhanced role as the 'group supervisor'. The Committee of European Insurance and Occupational Pensions Supervisors

(CEIOPS) also has a role in dispute settlement between supervisors and achieving regulatory convergence.

Within this framework there are several areas that it is wished to draw to the particular attention of the European Parliament:

### **Group Supervision**

It is necessary to make it clearer that all supervisors are involved in group supervision, that all should have access to documentation as a routine matter and be dynamically involved in decision making.

### **Transfer of Funds in Group Support**

Ensuring that funds are movable between undertakings is paramount. If spare funds are with the parent or holding company then it is much more straightforward to have legal structures in place enabling the transfer, and this may be the best option at least in the first instance. However it is not unknown for groups to move funds between subsidiaries and so a legally enforceable mechanism for doing that is also envisaged. This would seem to require a contractual basis between each respective pair of subsidiaries.

### **National Supervisory Resources and Responsibility**

The new supervisory regime requires an in depth understanding of both asset and liability risk. Decisions are both quantitative and qualitative. It is essential that supervisors have the resources to do this thoroughly, across all undertakings, not just those that are perceived as crucial to market stability.

It also needs to be clarified that when national supervisors act as group supervisors they have a mandate beyond that which is purely national and they must safeguard the interests of all policyholders. Actions properly taken as a group supervisor should not result in legal proceedings that those actions have compromised national responsibilities.

### **Legal Entity for CEIOPS**

At present CEIOPS does not have a legal entity but is an advisory committee to the Commission. Given the specialist nature of some of the advice, it is in essence a decision, however it is phrased. If CEIOPS had a legal entity it would be more accountable for that advice. This could be done via a Regulation entering into force at the latest with the implementation of this directive unless it has been done by other channels, for example as part of the Lamfalussy review. The ECJ Case C-217/04 of 2 May 2006 which indicates that Article 95 can be a basis for setting up a body could, by extension, also apply to Article 47 on which this directive is also based.

### **Achieving a consistent EU approach to supervisory liability**

In general in the EU there is a 'regulator friendly' view of liability and any claim for compensation can generally only be made on the basis of gross negligence or bad faith,



although the test varies in different countries. The ECJ has said this approach does not run counter to EU law. In particular in the Peter Paul case the ECJ ruled that a Member State can (as Germany did) legislate that supervisors fulfil functions only in the public interest and thereby preclude individuals from claiming compensation for defective supervision.

So the question is a political one as to whether one wishes to recognise some right to reparation against supervisory authorities. It was certainly the view of the Parliament to do so in the vote on the Equitable Life enquiry and it certainly seems reasonable, in the context of group supervisory functions going cross border, for there to be more harmonisation (indeed this probably provides the legal base).

### **Guarantee schemes**

With an increasing cross border nature to insurance business, and with cross border supervision, it is appropriate for there to be cross border guarantee schemes that are at least equivalent and take account of the supervision structures. Further work to that end is necessary but beyond the possibility of reasonable inclusion in this directive.

### **The recasting technique**

Under the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular pursuant to point 9 thereof, the Consultative Working Party, consisting of the respective legal services of the European Parliament, the Council and the Commission, met on 13 March 2008 for the purpose of examining the proposal submitted by the Commission.

The said examination resulted in the Consultative Working Party's establishing by common accord that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

## **AMENDMENTS**

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

### **Amendment 1**

**Proposal for a directive**  
**Citation 1**

*Text proposed by the Commission*

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) **and** 55 thereof,

*Amendment*

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 **and 95** thereof,

*Justification*

*This change will ensure the Commission is able to propose either level 2 implementing directive or level 2 implementing regulation on the basis of this framework directive.*

**Amendment 2**

**Draft legislative resolution**  
**Recital A (new)**

*Draft legislative resolution*

*Amendment*

***A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts without any change in their substance,***

**Amendment 3**

**Draft legislative resolution**  
**Paragraph 1**

*Draft legislative resolution*

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;***

*Amendment*

1. Approves the Commission proposal as ***adapted to*** the recommendations of the ***Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission and as***

*amended hereunder;*

#### **Amendment 4**

##### **Proposal for a directive Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) The new solvency regime will result in even better protection for all concerned; this will require the Member States to provide the authorities responsible for financial supervision with adequate resources.***

#### **Amendment 5**

##### **Proposal for a directive Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

***(14a) Basing supervision on qualitative as well as quantitative risk management principles is likely to require an increase in supervisory resources.***

##### *Justification*

*The supervisory requirements established under Pillars 2 and 3, such as the approval of internal models, their monitoring and regular review, and the consequent closer cooperation and engagement with other supervisors and companies, is likely to mean national supervisors will need more resources to fulfil their enhanced responsibilities properly.*

#### **Amendment 6**

##### **Proposal for a directive Recital 23**

*Text proposed by the Commission*

*Amendment*

(23) It is necessary to promote supervisory

(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.

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. ***That Committee should be given a legal basis and personality under a new regulation to enter into force at the same time as this Directive.***

#### *Justification*

*CEIOPS is being given decision making powers, for example to resolve disputes in group support. In the event that there is a legal challenge to any such decision it is desirable, and more accountable, if CEIOPS is a party to any proceeding rather than being represented solely in the personality of the Commission. The ECJ has ruled in Case C-217/04 of 2 May 2006 that Article 95 can be a basis for setting up a body. By extension a similar conclusion can be made for Article 47.*

#### **Amendment 7**

##### **Proposal for a directive Recital 35**

###### *Text proposed by the Commission*

(35) The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). Both capital requirements should be harmonized throughout the Community in order to achieve a uniform level of protection for policyholders.

###### *Amendment*

(35) The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). ***The Minimum Capital Requirement should be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited. It should correspond to an amount of eligible basic own funds below which policyholders and beneficiaries would be exposed to an unacceptable level of risk if insurance and reinsurance undertakings were***

*allowed to continue their operations. With regard to the Minimum Capital Requirement and the Solvency Capital Requirement, the confidence level should correspond to the range of 80% to 90% over a one-year period.* Both capital requirements should be harmonized throughout the Community in order to achieve a uniform level of protection for policyholders.

## Amendment 8

### Proposal for a directive

#### Recital 70

##### *Text proposed by the Commission*

(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.

##### *Amendment*

(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. ***For the equal protection of all policyholders, Member States should provide for free movement of assets and liabilities to enable solvency capital and eligible own funds to be reconfigured within a group for the purposes of group support and without risk of suspensive actions. For those Member States where such movement is not yet guaranteed, group support should in the interim period additionally include those instruments or other mechanisms necessary to ensure that funds are***

***transferred in good time. Member States should also ensure that claims arising from group support commitments are treated as equivalent to insurance claims.***

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.

#### *Justification*

*The group supervision and support regimes should operate on an overall economic basis allowing intra group transfer. Group support to restore of MCR can be other than a transfer of funds, for example a reduction of liabilities, what is needed is the ability to reconfigure solvency capital to meet circumstances. In some Member States there may presently be some legal obstruction or uncertainty to transfers, for which additional safeguards could be implemented in the interim. This should not remain the long term method of operation. In the event of winding up, or other administrative procedures, the ranking of group support as equivalent to policyholder claims needs to be established.*

### **Amendment 9**

#### **Proposal for a directive Recital 75**

##### *Text proposed by the Commission*

***(75) The supervisory authorities should have access to all the information relevant to the exercise of*** group supervision. Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established.

##### *Amendment*

***(75) Supervisors from all Member States in which an undertaking in the group is established should be involved in*** group supervision. ***They should all have access to documentation as a matter of routine and should be dynamically involved in decision-making.*** Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established.

#### *Justification*

*Supervisors would essentially be a College.*

## Amendment 10

### Proposal for a directive Recital 95 a (new)

*Text proposed by the Commission*

*Amendment*

***(95a) Given the increasingly cross-border nature of insurance business, it is necessary to work on the functioning of insurance guarantee throughout Europe, taking account of the supervision structures. This work in progress will be done outside the scope of this Directive, since new solvency requirements will by themselves offer a high level of harmonised protection for policyholders.***

*Justification*

*It is a matter of clarification. It is useful at that stage to have an open work on the insurance guarantee schemes throughout Europe. These schemes are a complement to the solvency II directive, which will already ensure a high and harmonized protection for policyholders.*

## Amendment 11

### Proposal for a directive Article 4

*Text proposed by the Commission*

*Amendment*

(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.

(1) ***For the first three years after the date referred to in Article 310(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*

*It is sensible to exclude small firms from the scope of the directive for the time being. Concessions on the basis of the proportionality principle still have to be laid down and implemented. The threshold should be retained for the first three years, therefore. Afterwards proportionality rules will have been laid down and firms will have had long enough to adapt to the new rules. In the long term, smaller insurance companies also want Solvency II quality*

*standards.*

## **Amendment 12**

### **Proposal for a directive Article 27**

#### *Text proposed by the Commission*

Member States shall ensure that the supervisory authorities are provided with the necessary means to achieve the main objective of supervision, namely the protection of policyholders and beneficiaries.

#### *Amendment*

Member States shall ensure that the supervisory authorities are provided with the necessary means, **and have the relevant expertise and capacity**, to achieve the main objective of supervision, namely the protection of policyholders and beneficiaries.

#### *Justification*

*The supervisory requirements established under Pillars 2 and 3, such as the approval of internal models, their monitoring and regular review, and the consequent closer cooperation and engagement with other supervisors and companies, is likely to mean national supervisors will need more resources to fulfil their enhanced responsibilities properly.*

## **Amendment 13**

### **Proposal for a directive Article 28 – paragraph 3**

#### *Text proposed by the Commission*

3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, complexity and scale of the risks inherent in the business of an insurance or reinsurance undertaking.

#### *Amendment*

3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, complexity and scale of the risks inherent in the business of an insurance or reinsurance undertaking **even if the undertaking concerned is not vital for the overall financial stability of the market.**

#### *Justification*

*All business should be regulated - regardless of the size, since the impact of a failure is not always linear to the size, but depends on the type of insurance a company underwrites and the geography of their activities.*



## Amendment 14

### Proposal for a directive Article 47 – paragraph 2

*Text proposed by the Commission*

2. The actuarial function shall be carried out by persons with sufficient knowledge of actuarial and financial mathematics and able where appropriate, to demonstrate their relevant experience and expertise with applicable professional and other standards.

*Amendment*

2. The actuarial function shall be carried out by persons with sufficient knowledge of actuarial and financial mathematics, ***having capacity proportionate to the complexity and risk structure of the undertaking concerned***, and able where appropriate, to demonstrate their relevant experience and expertise with applicable professional and other standards.

*Justification*

*To ensure proper resource and knowledge.*

## Amendment 15

### Proposal for a directive Article 52 – paragraph 1 – point (a)

*Text proposed by the Commission*

(a) if, by disclosing such information, ***the competitors of the undertaking gain significant*** undue ***advantage***;

*Amendment*

(a) if, by disclosing such information, the undertaking ***would suffer*** undue ***commercial harm***;

*Justification*

*The test should be 'harm' to the undertaking. This may be through unfair competition or otherwise.*

## Amendment 16

### Proposal for a directive Article 70

*Text proposed by the Commission*

Member States shall ensure that the supervisory authorities participate in the

*Amendment*

Member States shall ensure that the supervisory authorities participate in the

activities of the Committee of European Insurance and Occupational Pensions Supervisors pursuant to the second paragraph of Article 2 of Commission Decision 2004/6/EC.

activities of the Committee of European Insurance and Occupational Pensions Supervisors pursuant to the second paragraph of Article 2 of Commission Decision 2004/6/EC, **and that national mandates conferred on supervisors do not inhibit the performance by them of their duties as members of that Committee or under this Directive.**

*Justification*

*The advice of CEIOPS must be fair and honest and must not be politically compromised. Therefore national supervisors must be in a position to communicate and fully engage with each other.*

**Amendment 17**

**Proposal for a directive  
Article 76 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

The calculation of the best estimate shall be based upon current and credible information and realistic assumptions and be performed using adequate actuarial methods and statistical techniques.

*Amendment*

The calculation of the best estimate shall be based upon current and credible information and realistic assumptions and be performed using adequate, **applicable and relevant** actuarial methods and statistical techniques.

*Justification*

*Adequate is insufficient given that "applicability and relevance" appears in Article 83.*

**Amendment 18**

**Proposal for a directive  
Article 109 – paragraph 1 – point (c)**

*Text proposed by the Commission*

(c) the correlation parameters;

*Amendment*

(c) the correlation parameters **and procedures for the updating of those parameters;**

*Justification*

*As has been shown by the recent financial crisis correlation parameters may need to be adjusted quickly.*

**Amendment 19**

**Proposal for a directive**

**Article 119 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

2. The methods used to calculate the probability distribution forecast shall be based on adequate actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

*Amendment*

2. The methods used to calculate the probability distribution forecast shall be based on adequate, ***applicable and relevant*** actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

*Justification*

*Adequate is insufficient given that "applicability and relevance" appears in Article 83.*

**Amendment 20**

**Proposal for a directive**

**Article 130 – paragraph 4 – subparagraph 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***Supervisors may take account of the effects on asset management of voluntary codes of conduct and transparency adhered to by the relevant institutions dealing in unregulated or alternative investment instruments.***

*Justification*

*It is a matter of clarification. Supervisors will not take account whether or not institutions use codes but will take account of the codes that are used, if any, and their effect on the asset management by the insurance undertakings.*

## Amendment 21

### Proposal for a directive

#### Article 142 – paragraph 1 – introductory part

##### *Text proposed by the Commission*

1. The supervisory authority of the home Member State shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:

##### *Amendment*

1. The supervisory authority of the home Member State, ***whilst continuing any necessary supervision***, shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:

##### *Justification*

*Acknowledging the need for strong supervisory intervention when the MCR is breached (hence the recast from "may" to "shall"), it is important to clarify that the full withdrawal of authorisation relates to newly established undertakings, and that in regards to other undertakings supervisory authorities should be able to take all measures necessary to safeguard the interests of policyholders, and obligations under reinsurance contracts, in proceedings such as winding-up etc.*

## Amendment 22

### Proposal for a directive

#### Article 142 – paragraph 1 – point (c)

##### *Text proposed by the Commission*

(c) the undertaking does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is manifestly inadequate or, the undertaking concerned fails to comply with the approved scheme within three months from the observation of the noncompliance with the Minimum Capital Requirement.

##### *Amendment*

(c) the undertaking does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is manifestly inadequate or, the undertaking concerned fails to comply with the approved scheme within three months from the observation of the noncompliance with the Minimum Capital Requirement; ***the withdrawal of authorisation in these circumstances shall not result in any cessation of supervision with respect to safeguarding the interests of policyholders and overseeing any winding-up, takeover or similar proceedings.***

### *Justification*

*Acknowledging the need for strong supervisory intervention when the MCR is breached (hence the recast from "may" to "shall"), it is important to clarify that the full withdrawal of authorisation relates to newly established undertakings, and that in regards to other undertakings supervisory authorities should be able to take all measures necessary to safeguard the interests of policyholders, and obligations under reinsurance contracts, in proceedings such as winding-up etc.*

### **Amendment 23**

#### **Proposal for a directive**

#### **Article 234 – paragraph 1 – point c a (new)**

*Text proposed by the Commission*

*Amendment*

***(ca) the primary source of group support is own funds transferred from the parent undertaking to its subsidiary; in the event that group support may be provided from resources available in a subsidiary, legally enforceable contracts or other mechanisms shall be in place to enable the transfer of eligible own funds;***

### **Amendment 24**

#### **Proposal for a directive**

#### **Article 237 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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 ***college of supervisors, via the*** group supervisor, ***including where necessary evidence of legally enforceable instruments*** constituting a commitment to transfer own funds eligible under Article 98(5).

### *Justification*

*The communications for group support involve the entire group, so should be communicated to the college. Reduction in liabilities is another way group support could be exercised.*

### **Amendment 25**

**Proposal for a directive**  
**Article 237 – paragraph 3 – point c**

*Text proposed by the Commission*

(c) that the document containing the declaration of group support meets all requirements existing under ***the law of the parent undertaking to be recognised as a legal commitment***, and that any recourse before a legal or administrative body shall not have suspensive effect.

*Amendment*

(c) that the document containing the declaration of group support ***and any necessary accompanying instrument*** meets all requirements existing under ***a law enforceable in the Member State of the undertaking providing group support***, and that any recourse before a legal or administrative body shall not have suspensive effect, ***and including the establishment of group support up to the limit of the most recent declaration, or as provided under Article 244(1) when relevant, and ranking equivalent to policyholder claims including in circumstances of reorganisation, composition, assignment, take-over or any other administrative proceedings.***

*Justification*

*Enforceability of group support covering additional interim provisions in the event of legal uncertainties (see recital 70) and establishment of the ranking of group support.*

**Amendment 26**

**Proposal for a directive**  
**Article 244**

*Text proposed by the Commission*

Subsidiaries of an insurance or reinsurance undertaking: ***reduction of group supports***  
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.

*Amendment*

Subsidiaries of an insurance or reinsurance undertaking: ***equal treatment***  
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 following rules shall apply:***  
  
***(a) all insurance and reinsurance undertakings which are subsidiaries of***

The reduction shall be calculated for each subsidiary with a view to ensuring that each subsidiary is subject to the same ratio between the sum of its available assets and any transfer from the group on the one hand and the sum of its technical provisions and its minimum capital requirement on the other hand.

2. Member States shall ensure that liabilities resulting from insurance contracts entered into by the parent undertaking are not treated more favourably than liabilities resulting from insurance contracts entered into by any subsidiary which is subject to the rules laid down in Articles 236 to 241.

#### **Amendment 27**

##### **Proposal for a directive Article 251 – paragraph 6 a (new)**

*Text proposed by the Commission*

***the parent undertaking shall be held jointly responsible, together with the parent undertaking, up to the amounts resulting from the most recent declarations accepted in respect of each subsidiary which is subject to the rules laid down in Articles 236 to 241;***

***(b) the amounts referred to in point (a) shall be reduced where necessary. The reduction shall be calculated for each subsidiary with a view to ensuring that each subsidiary is subject to the same ratio between the sum of its available assets and any transfer from the group on the one hand and the sum of its technical provisions and its minimum capital requirement on the other hand.***

***2. Notwithstanding Article 277, Member States shall ensure that liabilities resulting from insurance contracts entered into by the parent undertaking are not treated more favourably than liabilities resulting from insurance contracts entered into by any subsidiary which is subject to the rules laid down in Articles 236 to 241.***

*Amendment*

***6a. Member States shall ensure that when a supervisory authority acts as a group supervisor it is recognised as doing so in a non-discriminatory manner; consequently, legitimate actions taken as a group supervisor, including but not limited to transfers of capital, shall not be regarded, on the basis of that supervisor's national mandate, as contrary to the interests of the Member State or of policyholders in that Member State.***

### *Justification*

*As Group supervisor the national supervisor of the home member state has a duty to act in the interest of the group. National supervisors should not be worried that decisions made on this basis could result in their being sued by policyholders from the home member state who believed this action to be to their detriment.*

### **Amendment 28**

#### **Proposal for a directive**

#### **Article 262 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) In the event of non-compliance by a holding company or a parent company with the requirements of group support, the group supervisor may determine that supervision on a group basis is to cease.***

### *Justification*

*A sanction to lose all capital advantages of being in a group in the event of defaulting on group support obligations.*

### **Amendment 29**

#### **Proposal for a directive**

#### **Article 304 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) Notwithstanding paragraph 1 and having regard to the decision-making procedure provided for by Article 251(4), and the tasks referred to in recital 23, the Committee of European Insurance and Occupational Pensions Supervisors shall be given legal personality in a regulation to enter into force at the same time as this Directive.***

### *Justification*

*CEIOPS is being given decision making powers, for example to resolve disputes in group support. In the event that there is a legal challenge to any such decision it is desirable, and more accountable, if CEIOPS is a party to any proceeding rather than being represented*



*solely in the personality of the Commission. The ECJ has ruled in Case C-217/04 of 2 May 2006 that Article 95 can be a basis for setting up a body. By extension a similar conclusion can be made for Article 47.*

## PROCEDURE

<b>Title</b>	Insurance and reinsurance - Solvency II
<b>References</b>	COM(2008)0119 – C6-0231/2007 – COM(2007)0361 – 2007/0143(COD)
<b>Committee responsible</b>	ECON
<b>Opinion by</b> Date announced in plenary	JURI 24.9.2007
<b>Drafts(wo)man</b> Date appointed	Sharon Bowles 19.11.2007
<b>Discussed in committee</b>	19.12.2007      8.4.2008
<b>Date adopted</b>	25.6.2008
<b>Result of final vote</b>	+:            21 -:            0 0:            0
<b>Members present for the final vote</b>	Carlo Casini, Titus Corlăţean, Marek Aleksander Czarnecki, Bert Doorn, Monica Frassoni, Giuseppe Gargani, Neena Gill, Klaus-Heiner Lehne, Katalin Lévai, Hans-Peter Mayer, Manuel Medina Ortega, Hartmut Nassauer, Aloyzas Sakalas, Francesco Enrico Speroni, Diana Wallis, Jaroslav Zvěřina
<b>Substitute(s) present for the final vote</b>	Sharon Bowles, Georgios Papastamkos, Michel Rocard, Gabriele Stauner, József Szájer

**ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION**



CONSULTATIVE WORKING PARTY  
OF THE LEGAL SERVICES

Brussels, 10 April 2008

**OPINION**

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT  
THE COUNCIL  
THE COMMISSION**

**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 (Solvency II) COM(2005)119 final of 26.2.2008 – 2007/0143(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party, consisting of the respective legal services of the European Parliament, the Council and the Commission, met on 13 March 2008 for the purpose of examining the aforementioned proposal, submitted by the Commission.

At that meeting<sup>1</sup>, an examination was carried out in respect of the proposal for a Council directive recasting the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance, Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance, Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance, the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of

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<sup>1</sup> The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

freedom to provide services and amending Directive 73/239/EEC, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive), Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group, Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and wind-up of insurance undertakings, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance and Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC.

The said examination resulted in the Consultative Working Party's establishing by common accord that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

C. PENNERA  
Jurisconsult

J.-C. PIRIS  
Legal Adviser

M. PETITE  
Director-General

## PROCEDURE

<b>Title</b>	Insurance and reinsurance - Solvency II (recast)			
<b>References</b>	COM(2008)0119 – C6-0231/2007 – COM(2007)0361 – 2007/0143(COD)			
<b>Date submitted to Parliament</b>	26.2.2008			
<b>Committee responsible</b> Date announced in plenary	ECON 24.9.2007			
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	JURI 24.9.2007			
<b>Rapporteur(s)</b> Date appointed	Peter Skinner 4.7.2006			
<b>Discussed in committee</b>	11.4.2007	2.10.2007	18.12.2007	26.2.2008
	1.4.2008	15.7.2008	22.9.2008	
<b>Date adopted</b>	7.10.2008			
<b>Result of final vote</b>	+: 22			
	–: 7			
	0: 4			
<b>Members present for the final vote</b>	Mariela Velichkova Baeva, Paolo Bartolozzi, Pervenche Berès, Sebastian Valentin Bodu, Sharon Bowles, Udo Bullmann, Manuel António dos Santos, Christian Ehler, Elisa Ferreira, José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Gunnar Hökmark, Karsten Friedrich Hoppenstedt, Sophia in 't Veld, Othmar Karas, Wolf Klinz, Christoph Konrad, Andrea Losco, Astrid Lulling, Gay Mitchell, John Purvis, Alexander Radwan, Bernhard Rapkay, Dariusz Rosati, Eoin Ryan, Antolín Sánchez Presedo, Salvador Domingo Sanz Palacio, Peter Skinner, Margarita Starkevičiūtė, Ivo Strejček, Ieke van den Burg, Cornelis Visser			
<b>Substitute(s) present for the final vote</b>	Piia-Noora Kauppi, Werner Langen, Thomas Mann, Bilyana Ilieva Raeva, Karl von Wogau			