



Committee on Economic and Monetary Affairs
The Chair

Mr Jonathan Hill
Commissioner for Financial Stability,
Financial Services and Capital Markets
Union
European Commission
Rue de la Loi 200
B – 1049 Bruxelles

320933 19.12.2014

Dear Commissioner,

On 10 October 2014, the Commission adopted the Delegated Regulation (C(2014) 7230) supplementing the Solvency II Directive (Directive 2009/138/EC). The Parliament's Solvency II Negotiating Team has analysed this text. This resulted in a list of issues which would need to be corrected, where questions have arisen whether the Commission is empowered at all, and issues for further and future work.

It is important for Solvency II to "go live" as of 1 January 2016, and to give as early as possible certainty to all stakeholders how the new system is going to work. To that end, it is considered to be constructive, if you would commit yourself to address the issues listed in the Annex and to indicate how you intend to do so by 31 January 2015.

Furthermore, and based on the report to be drafted by EIOPA in accordance with Article 310a of the Solvency II Directive, the Commission is called upon to take immediate action to ensure that EIOPA has the necessary resources to fulfil the powers and duties stemming from the Delegated Regulation.

Yours sincerely,

Roberto Gualtieri

ANNEX

I. Corrections

1. The legal basis of the Regulation includes a reference to Article 126 Solvency II, which does not entail an empowerment and could therefore be deleted.
2. Typos in Title I: "captopal" instead of "capital" and "tranparency" instead of "transparency".
3. In Article 316(2) it seems "2018" should be replaced by "2020".

II. Empowerments

1. Article 71(1)(g) of the Regulation refers to undertakings' medium-term capital management plan, although there is no obligation for such a plan in the Directive. Furthermore, it refers to an amount exceeding the SCR "by an appropriate margin". Who determines the appropriateness and on which basis?
2. Article 75(1) Solvency II lays down that no adjustment to take account of the own credit standing of the insurance or reinsurance undertaking should be taken into account in the valuation of liabilities. However, according to Article 14 of the Regulation "there shall be no subsequent adjustment ... after initial recognition". On which basis does the Commission take the view that this is in line with the empowerment of Article 75 of the Directive?
3. Article 82(3) of the Regulation sets limits within tier 1. This is understood as a sub-tier. However, both Council and Parliament deleted the empowerment to the Commission to adopt sub-tiers even before the trilogues started in 2009. This is a clear infringement of political will of the co-legislators and the Commission is called upon to remove this paragraph as soon as possible.
4. Article 111(4) Solvency II provides that EIOPA shall develop draft regulatory standards to specify quantitative limits and asset eligibility criteria where those risks are not adequately covered by a sub-module. This power has been transferred to the Commission in accordance with Article 301b. When does the Commission envisage adopting such a delegated act?
5. Article 143(2) Solvency II provides that EIOPA shall develop draft regulatory standards to specify the recovery plan, and the finance scheme, taking due care to avoid pro-cyclical effect. This power has been transferred to the Commission in accordance with Article 301b. When does the Commission envisage adopting such a delegated act?

III. Further and Future Work

1. Article 111(3) Solvency II, requires the Commission to present a report by 31 December 2020 on the appropriateness of methods, assumptions and parameters, and that it shall in particular take in to account the performance of any asset class and financial instrument, the behaviour of investors in those assets and instruments as well as development in international standard setting. Recital 60 of the Omnibus II Directive clarifies that the review

of the standard parameters for certain asset classes, such as fixed-income securities and long-term infrastructure, may need to be prioritised. In Recital 150 of the Regulation the Commission already commits itself to a review before 2018. However, given the overall economic situation, an earlier review of the calibration of infrastructure investments is warranted to assess the impact on financial stability.

2. EIOPA should be mandated by the Commission to start with an assessment of high-quality long-term infrastructure investments in order to create a safe, long-term, liquid asset class. Questions like the definition and availability of infrastructure investments, different risks associated with investments in infrastructure and the ability of insurers to measure, understand and manage those risks, as well as the collection of appropriate and reliable data have to be addressed in a comprehensive and timely manner in order to enable an adaptation of the *delegated acts earlier than end of 2018*. In addition, EIOPA should be mandated to monitor the calibrations for securitisations. The state-of-play should be regularly reported to the Parliament's negotiation team.

3. The Commission is called upon to consequently implement and apply the principle of proportionality in the delegated acts, regulatory technical standards and implementing technical standards as referred to in Article 29 of the Directive. Proportionality is a general principle, not limited to a few exemptions. The proportionality that is embedded in the Directive should not be thwarted by the delegated acts, the implementing technical standards or EIOPA guidelines. A more specific comment relates to the sub-tier limit of 20%, that, if continued (see comment above), could in particular penalise mutual insurers who do not have access to the equity markets, and therefore depend more on subordinated debt.

4. The Commission should assess whether the draft implementing technical standards as prepared by EIOPA remain within the co-legislators' decisions at the Directive and DA level, before adopting these. This assessment should be made available to the Parliament's negotiation team before the adoption of the relevant ITS. The Commission should also monitor if EIOPA's guidelines remain within the co-legislators' decisions at the Directive and DA level, and are proportionate and do not multiply the requirements of the Directive or the Delegated Acts. An additional layer may circumvent the co-legislators' intentions and create an unnecessarily high burden to undertakings, in particular to SMEs.

5. The Parliament is equipped with scrutiny and approval rights on the (full/temporary/provisional) third country equivalence. It is considered important that the Commission presents the draft delegated acts on equivalence in a separate manner, by the end of January 2015, by third country and by area (art. 172/227/260). Furthermore, Article 227 is the priority of the work to be undertaken in the area of equivalence, as that Article enables EU groups to do business outside the EU in a capital efficient manner.

6. The Commission is requested to closely monitor the effects of the 'Long Term Guarantees Package' and its calibration to make sure its implementation is safe and does not create distortion of competition.

7. The Commission should ensure that the data series on which the calibrations have been based should become publicly available, in order to ensure that calculations can be replicated, and to ensure future consistency.