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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Coreper 2)
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision (Solvency II Review) – General approach

I. INTRODUCTION

1. On 22 September 2021, the Commission transmitted to the Council a Directive Proposal¹ amending Solvency II Directive 2009/138/EC. The Proposal aims to review the prudential framework applicable to the insurance sector in a comprehensive fashion, covering a broad range of topics, in particular: the proportionality of measures in consideration of the variety of undertakings being covered; the quality of supervision; reporting; so-called ‘long-term guarantee measures’; macroprudential tools; adapting the framework to the European Green Deal; supervision of groups and of cross-border insurance business; and, other issues including transitional measures.

¹ Doc. 11763/21 + ADD 1 to ADD 6

2. The Proposal was part of a package comprising also a Directive Proposal establishing a framework for recovery and resolution of insurance and reinsurance undertakings², currently under examination in the Council, and a Communication on the review of the EU prudential framework for insurers and reinsurers in the context of the EU's post pandemic recovery³.
3. The Commission presented this package at the ECOFIN Council in a policy debate on 5 October 2021 and, together with the related impact assessments, to the Council's Working Party on Financial Services and the Banking Union (Insurance) on 14-15 October 2021.
4. On 23 February 2022, the European Economic and Social Committee adopted its opinion on the package⁴.

II. STATE OF PLAY

5. The Solvency II amending proposal was discussed by the Working Party on Financial Services and the Banking Union at four further meetings under the Slovenian Presidency, as noted in its Progress report⁵; and, seven meetings under the current Presidency, which has brought forward and completed the consideration of outstanding issues and related compromise solutions. As a result, the Presidency considers that its proposed final compromise, as set out in doc. 9676/22, is supported by the required majority.

² Doc. 11764/21 + ADD 1 to ADD 5

³ Doc. 11992/21

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⁵ Doc. 14760/22

6. However, the Presidency has also noted the importance for delegations of ensuring that a balanced and consistent updated prudential framework is established in a timely fashion for the insurance sector and that such complete framework must also include forthcoming amendments to Delegated Regulation (EU) 2015/35.
7. In that regard it is recalled that, given the close links between the Solvency II Directive 2009/138/EC and its Delegated Regulation (EU) 2015/35 and as explained in the aforementioned Commission Communication (doc. 11992/21), amendments to both acts will be needed to reach the objective of a consistent and balanced delivery of the review of the Solvency II framework.
8. The Commission committed to undertake preparatory work on the envisaged changes to the Delegated Regulation in parallel to the legislative process for amending Solvency II, with five meetings of the expert group on banking, payments and insurance (EGBPI).
9. The Presidency concurs that, in view of the close interaction between different topics and the parallel procedures, sufficient progress in the work on the envisaged amendments to both acts has been achieved so as to ensure the coherence and the balance of the review of the Solvency II prudential framework.
10. The European Parliament's position at first reading is pending.
11. When the co-legislators engage in trilogue negotiations on the Solvency II amending proposal, they will need to have a comprehensive understanding of the detailed framework of rules under consideration and ensure that the outcome of the legislative process will not result in increased capital charges compared with the current situation at both Member State and EU levels.

III. CONCLUSION

12. In view of the above, it is suggested that the Committee of Permanent Representatives:

- agree to transmit the final Presidency compromise, as set out in doc. 9676/22, to the Council, as a non-discussion item, with a view to reaching a general approach thereon;
- invite the Council to reckon that given the close links between the Solvency II Directive 2009/138/EC and its Delegated Regulation (EU) 2015/35, amendments to both acts will be needed to reach the objectives of a balanced and consistent review;
- recommend to the Council to invite the Commission in this regard:
 - o to present the current state of play of envisaged amendments to the delegated Regulation in order to ensure the balance and the consistency of the whole review of the Solvency II framework;
 - o to continue its preparatory work on the envisaged amendments to the delegated Regulation while pursuing the same objective of a balanced and consistent review of the Solvency II framework;
- recommend to the Council to possibly reassess the situation before opening negotiations with the European Parliament, taking into account whether sufficient progress on the aforementioned preparatory work, in line with the objective of a balanced and consistent review of the Solvency II framework, has been achieved,.
