



Council of the
European Union

Brussels, 12 December 2017
(OR. en)

15069/17

Interinstitutional File:
2017/0300 (NLE)

EF 318
ECOFIN 1051
SURE 55
SERVICES 38
CH 48

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DECISION on the position to be adopted on behalf of the European Union, in the EU-Switzerland Joint Committee concerning a technical revision of the Agreement on direct insurance other than life insurance

COUNCIL DECISION (EU) 2017/...

of ...

**on the position to be adopted on behalf of the European Union,
in the EU-Switzerland Joint Committee
concerning a technical revision
of the Agreement on direct insurance other than life insurance**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 207, in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance¹ ('the Agreement') was concluded by the Union by Council Decision 91/370/EEC² and entered into force on 1 January 1993.
- (2) Pursuant to Articles 39 and 40.3 of the Agreement, the EU-Switzerland Joint Committee may amend the Annexes and Protocols to the Agreement.
- (3) The EU-Switzerland Joint Committee adopted on 18 July 2001 Decision No 1/2001³ amending the Annexes and Protocols to the Agreement and finding that the domestic legislation of the Contracting Parties is compatible with the Agreement.
- (4) The EU-Switzerland Joint Committee, during its next meeting, is to adopt a decision on a technical revision of the Agreement.

¹ OJ L 205, 27.7.1991, p. 3.

² Council Decision 91/370/EEC of 20 June 1991 on the conclusion of the Agreement between the European Economic Community and the Swiss Confederation concerning direct insurance other than life assurance (OJ L 205, 27.7.1991, p. 2).

³ Decision No 1/2001 of the EC-Switzerland Joint Committee of 18 July 2001 amending the Annexes and Protocols to the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance and finding that the domestic legislation of the Contracting Parties is compatible with that Agreement (OJ L 291, 8.11.2001, p. 52).

- (5) It is appropriate to establish the position to be adopted on behalf of the Union in the EU-Switzerland Joint Committee concerning amendments to the Annexes and Protocols to the Agreement and the compatibility of domestic legislation with the Agreement, as the decision will be binding on the Union.
- (6) The solvency regimes in the Union and Switzerland have been amended since 2001. It is therefore necessary to update the solvency regime referred to in the Agreement to bring it in line with the regimes currently in place in the Union and Switzerland.
- (7) The Euro-Swiss Franc conversion rate should be amended to reflect the current conversion rate,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted, on behalf of the European Union, in the EU-Switzerland Joint Committee on the proposed technical revision of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life insurance shall be based on the draft Decision of the EU-Switzerland Joint Committee attached to this Decision.

Article 2

This Decision shall enter into force on the date of its adoption.

Done at Brussels,

For the Council

The President

DRAFT

**DECISION No ...
OF THE EU-SWITZERLAND JOINT COMMITTEE¹**

of ...

**amending the Annexes and Protocols to the Agreement between
the European Economic Community
and the Swiss Confederation
on direct insurance other than life assurance and finding that
the domestic legislation of the Contracting Parties
is compatible with that Agreement**

THE EU-SWITZERLAND JOINT COMMITTEE,

Having regard to Article 39 and 40.3 of the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance² ('the Agreement'),

Having regard to Decision No 1/2001 of the EC-Switzerland Joint Committee of 18 July 2001 amending the Annexes and Protocols to the Agreement between the European Economic Community and the Swiss Confederation on direct insurance other than life assurance and finding that the domestic legislation of the Contracting Parties is compatible with that Agreement³,

¹ Formerly the EC-Switzerland Joint Committee.

² OJ EC L 205, 27.6.1991, p. 3; AS 1992 1894.

³ OJ EC L 291, 8.11.2001, p. 52; AS 2002 3056.

Whereas:

- (1) New Member States have acceded to the Union and their accession requires some technical amendments to Annex III to the Agreement;
- (2) Certain legal acts adopted by the Union and by Switzerland between 18 July 2001 and [date of signature of this Decision] require an amendment of the Annexes and Protocols to the Agreement;
- (3) After examination, certain legal acts adopted by Switzerland do not require the Agreement to be amended,

HAS ADOPTED THIS DECISION:

Article 1

Following the legal acts adopted by the Union and by Switzerland between 18 July 2001 and [date of signature of this Decision], and in order to reflect the accession of new Member States to the Union, the Agreement is amended as follows:

- (1) The list of acceptable legal forms in Part B of Annex III to the Agreement is replaced by the list in Part A of Annex III to Directive 2009/138/EC of the European Parliament and of the Council¹.
- (2) Protocol No 1 to the Agreement is amended as follows:
 - (a) Article 1 is replaced by the following:

“Article 1

Definition of the solvency margin

The solvency margin for undertakings whose head office is domiciled in the territory of the Union is the Solvency Capital Requirement, as referred to in Articles 100 and 101 of Directive 2009/138/EC of the European Parliament and of the Council*.

¹ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ EU L 335, 17.12.2009, p. 1), as amended by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ EU L 153, 22.5.2014, p. 1) and as last amended by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ EU L 354, 23.12.2016, p. 37).

The solvency margin for undertakings whose head office is domiciled in the territory of the Swiss Confederation is the Target Capital (Zielkapital), which is defined together with related concepts such as the valuation of assets and liabilities and the Risk Bearing Capital (Risikotragendes Kapital) of the Swiss Solvency Test (SST) in the Versicherungsaufsichtsgesetz** ('Insurance Supervisory Act') and the Aufsichtsverordnung*** ('Insurance Supervisory Ordinance').

* Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ EU L 335, 17.12.2009, p. 1), as amended by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ EU L 153, 22.5.2014, p. 1) and as last amended by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ EU L 354, 23.12.2016, p. 37).

** Versicherungsaufsichtsgesetz (AS 2005 5269), as last amended on 19 June 2015 (AS 2015 5339).

*** Aufsichtsverordnung (AS 2005 5305), as last amended on 25 November 2015 (AS 2015 5413).”;

(b) Article 2 is deleted;

- (c) Article 3 is replaced by the following:

“Article 3

Definition of the guarantee fund

The guarantee fund for undertakings whose head office is domiciled in the territory of the Union is the Minimum Capital Requirement as referred to in Articles 128 and 129 of Directive 2009/138/EC*.

The guarantee fund for undertakings whose head office is domiciled in the territory of the Swiss Confederation is the minimal capital (lowest intervention level) in the Swiss Solvency Test.

* as amended by Directive 2014/51/EU and as last amended by Directive (EU) 2016/2341.”;

- (d) Article 4 is deleted.

- (3) Article 2.3 of Protocol No 3 to the Agreement is replaced by the following:

“2.3. With regard to the equivalent in Swiss francs of amounts expressed in Euro, the exchange value of one Euro shall, for the purposes of this Agreement, be 1,14 Swiss francs.”.

Article 2

The following legal acts of the Union are compatible with the Agreement:

- Directive 2009/138/EC¹;
- Commission Delegated Regulation (EU) 2015/35, in the version published in the *Official Journal of the European Union* of 17 January 2015²;
- Commission Implementing Regulation (EU) 2015/460, in the version published in the *Official Journal of the European Union* of 20 March 2015³;

¹ Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ EU L 335, 17.12.2009, p. 1), as amended by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (OJ EU L 153, 22.5.2014, p. 1) and as last amended by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ EU L 354, 23.12.2016, p. 37).

² Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ EU L 12, 17.1.2015, p. 1).

³ Commission Implementing Regulation (EU) 2015/460 of 19 March 2015 laying down implementing technical standards with regard to the procedure concerning the approval of an internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 76, 20.3.2015, p. 13).

- Commission Implementing Regulation (EU) 2015/461, in the version published in the *Official Journal of the European Union* of 20 March 2015¹;
- Commission Implementing Regulation (EU) 2015/462, in the version published in the *Official Journal of the European Union* of 20 March 2015²;
- Commission Implementing Regulation (EU) 2015/498, in the version published in the *Official Journal of the European Union* of 25 March 2015³;
- Commission Implementing Regulation (EU) 2015/499, in the version published in the *Official Journal of the European Union* of 25 March 2015⁴;

¹ Commission Implementing Regulation (EU) 2015/461 of 19 March 2015 laying down implementing technical standards with regard to the process to reach a joint decision on the application to use a group internal model in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 76, 20.3.2015, p. 19).

² Commission Implementing Regulation (EU) 2015/462 of 19 March 2015 laying down implementing technical standards with regard to the procedures for supervisory approval to establish special purpose vehicles, for the cooperation and exchange of information between supervisory authorities regarding special purpose vehicles as well as to set out formats and templates for information to be reported by special purpose vehicles in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 76, 20.3.2015, p. 23).

³ Commission Implementing Regulation (EU) 2015/498 of 24 March 2015 laying down implementing technical standards with regard to the supervisory approval procedure to use undertaking-specific parameters in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 79, 25.3.2015, p. 8).

⁴ Commission Implementing Regulation (EU) 2015/499 of 24 March 2015 laying down implementing technical standards with regard to the procedures to be used for granting supervisory approval for the use of ancillary own-fund items in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 79, 25.3.2015, p. 12).

- Commission Implementing Regulation (EU) 2015/500, in the version published in the *Official Journal of the European Union* of 25 March 2015¹;
- Commission Delegated Decision (EU) 2015/1602, in the version published in the *Official Journal of the European Union* of 24 September 2015²;
- Commission Implementing Regulation (EU) 2015/2011, in the version published in the *Official Journal of the European Union* of 12 November 2015³;
- Commission Implementing Regulation (EU) 2015/2012, in the version published in the *Official Journal of the European Union* of 12 November 2015⁴;

¹ Commission Implementing Regulation (EU) 2015/500 of 24 March 2015 laying down implementing technical standards with regard to the procedures to be followed for the supervisory approval of the application of a matching adjustment in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 79, 25.3.2015, p. 18).

² Commission Delegated Decision (EU) 2015/1602 of 5 June 2015 on the equivalence of the solvency and prudential regime for insurance and reinsurance undertakings in force in Switzerland based on Articles 172(2), 227(4) and 260(3) of Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 248, 24.9.2015, p. 95).

³ Commission Implementing Regulation (EU) 2015/2011 of 11 November 2015 laying down implementing technical standards with regard to the lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 295, 12.11.2015, p. 3).

⁴ Commission Implementing Regulation (EU) 2015/2012 of 11 November 2015 laying down implementing technical standards with regard to the procedures for decisions to set, calculate and remove capital add-ons in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 295, 12.11.2015, p. 5).

- Commission Implementing Regulation (EU) 2015/2013, in the version published in the *Official Journal of the European Union* of 12 November 2015¹;
- Commission Implementing Regulation (EU) 2015/2014, in the version published in the *Official Journal of the European Union* of 12 November 2015²;
- Commission Implementing Regulation (EU) 2015/2015, in the version published in the *Official Journal of the European Union* of 12 November 2015³;
- Commission Implementing Regulation (EU) 2015/2016, in the version published in the *Official Journal of the European Union* of 12 November 2015⁴;

¹ Commission Implementing Regulation (EU) 2015/2013 of 11 November 2015 laying down implementing technical standards with regard to on standard deviations in relation to health risk equalisation systems in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 295, 12.11.2015, p. 9).

² Commission Implementing Regulation (EU) 2015/2014 of 11 November 2015 laying down implementing technical standards with regard to the procedures and templates for the submission of information to the group supervisor and for the exchange of information between supervisory authorities in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 295, 12.11.2015, p. 11).

³ Commission Implementing Regulation (EU) 2015/2015 of 11 November 2015 laying down implementing technical standards on the procedures for assessing external credit assessments in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 295, 12.11.2015, p. 16).

⁴ Commission Implementing Regulation (EU) 2015/2016 of 11 November 2015 laying down the implementing technical standards with regard to the equity index for the symmetric adjustment of the standard equity capital charge in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 295, 12.11.2015, p. 18).

- Commission Implementing Regulation (EU) 2015/2017, in the version published in the *Official Journal of the European Union* of 12 November 2015¹;
- Commission Delegated Decision (EU) 2015/2290, in the version published in the *Official Journal of the European Union* of 9 December 2015²;
- Commission Implementing Regulation (EU) 2015/2450, in the version published in the *Official Journal of the European Union* of 31 December 2015³;
- Commission Implementing Regulation (EU) 2015/2451, in the version published in the *Official Journal of the European Union* of 31 December 2015⁴;

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- ¹ Commission Implementing Regulation (EU) 2015/2017 of 11 November 2015 laying down implementing technical standards with regard to the adjusted factors to calculate the capital requirement for currency risk for currencies pegged to the euro in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 295, 12.11.2015, p. 21).
- ² Commission Delegated Decision (EU) 2015/2290 of 5 June 2015 on the provisional equivalence of the solvency regimes in force in Australia, Bermuda, Brazil, Canada, Mexico and the United States and applicable to insurance and reinsurance undertakings with head offices in those countries (OJ EU L 323, 9.12.2015, p. 22).
- ³ Commission Implementing Regulation (EU) 2015/2450 of 2 December 2015 laying down implementing technical standards with regard to the templates for submission of information to the supervisory authorities according to Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 347, 31.12.2015, p. 1).
- ⁴ Commission Implementing Regulation (EU) 2015/2451 of 2 December 2015 laying down implementing technical standards with regard to the templates and structure of the disclosure of specific information by supervisory authorities in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 347, 31.12.2015, p. 1224).

- Commission Implementing Regulation (EU) 2015/2452, in the version published in the *Official Journal of the European Union* of 31 December 2015¹;
- Commission Implementing Regulation (EU) 2016/165, in the version published in the *Official Journal of the European Union* of 9 February 2016²;
- Commission Delegated Decision (EU) 2016/309, in the version published in the *Official Journal of the European Union* of 4 March 2016³;
- Commission Delegated Decision (EU) 2016/310, in the version published in the *Official Journal of the European Union* of 4 March 2016⁴;

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- ¹ Commission Implementing Regulation (EU) 2015/2452 of 2 December 2015 laying down implementing technical standards with regard to the procedures, formats and templates of the solvency and financial condition report in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 347, 31.12.2015, p. 1285).
- ² Commission Implementing Regulation (EU) 2016/165 of 5 February 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 1 January until 30 March 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council (Solvency II) (OJ EU L 32, 9.2.2016, p. 31).
- ³ Commission Delegated Decision (EU) 2016/309 of 26 November 2015 on the equivalence of the supervisory regime for insurance and reinsurance undertakings in force in Bermuda to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council and amending Commission Delegated Decision (EU) 2015/2290 (OJ EU L 58, 4.3.2016, p. 50).
- ⁴ Commission Delegated Decision (EU) 2016/310 of 26 November 2015 on the equivalence of the solvency regime for insurance and reinsurance undertakings in force in Japan to the regime laid down in Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 58, 4.3.2016, p. 55).

- Commission Delegated Regulation (EU) 2016/467, in the version published in the *Official Journal of the European Union* of 1 April 2016¹;
- Commission Implementing Regulation (EU) 2016/869, in the version published in the *Official Journal of the European Union* of 3 June 2016²;
- Commission Implementing Regulation (EU) 2016/1376, in the version published in the *Official Journal of the European Union* of 18 August 2016³;
- Commission Implementing Regulation (EU) 2016/1630, in the version published in the *Official Journal of the European Union* of 10 September 2016⁴;

¹ Commission Delegated Regulation (EU) 2016/467 of 30 September 2015 amending Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings (OJ EU L 85, 1.4.2016, p. 6).

² Commission Implementing Regulation (EU) 2016/869 of 27 May 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ EU L 147, 3.6.2016, p. 1).

³ Commission Implementing Regulation (EU) 2016/1376 of 8 August 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June until 29 September 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ EU L 224, 18.8.2016, p. 1).

⁴ Commission Implementing Regulation (EU) 2016/1630 of 9 September 2016 laying down implementing technical standards with regard to the procedures for the application of the transitional measure for the equity risk sub-module in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 243, 10.9.2016, p. 1).

- Commission Implementing Regulation (EU) 2016/1800, in the version published in the *Official Journal of the European Union* of 12 October 2016¹;
- Commission Implementing Regulation (EU) 2016/1868, in the version published in the *Official Journal of the European Union* of 21 October 2016²;
- Commission Implementing Regulation (EU) 2016/1976, in the version published in the *Official Journal of the European Union* of 16 November 2016³;
- Commission Implementing Regulation (EU) 2017/309, in the version published in the *Official Journal of the European Union* of 28 February 2017⁴;

¹ Commission Implementing Regulation (EU) 2016/1800 of 11 October 2016 laying down implementing technical standards with regard to the allocation of credit assessments of external credit assessment institutions to an objective scale of credit quality steps in accordance with Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 275, 12.10.2016, p. 19).

² Commission Implementing Regulation (EU) 2016/1868 of 20 October 2016 amending and correcting Implementing Regulation (EU) 2015/2450 laying down implementing technical standards with regard to the templates for the submission of information to the supervisory authorities according to Directive 2009/138/EC of the European Parliament and of the Council (OJ EU L 286, 21.10.2016, p. 35).

³ Commission Implementing Regulation (EU) 2016/1976 of 10 November 2016 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September until 30 December 2016 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ EU L 309, 16.11.2016, p. 1).

⁴ Commission Implementing Regulation (EU) 2017/309 of 23 February 2017 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 December 2016 until 30 March 2017 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of insurance and reinsurance (OJ EU L 53, 28.2.2017, p. 1).

- Commission Implementing Regulation (EU) 2017/812, in the version published in the *Official Journal of the European Union* of 18 May 2017¹;
- Commission Implementing Regulation (EU) 2017/1421, in the version published in the *Official Journal of the European Union* of 14 September 2017²;
- Commission Delegated Regulation (EU) 2017/1542, in the version published in the *Official Journal of the European Union* of 14 September 2017³.

¹ Commission Implementing Regulation (EU) 2017/812 of 15 May 2017 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 31 March until 29 June 2017 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ EU L 126, 18.5.2017, p. 1).

² Commission Implementing Regulation (EU) 2017/1421 of 2 August 2017 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 June until 29 September 2017 in accordance with Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ EU L 204, 5.8.2017, p. 7).

³ Commission Delegated Regulation (EU) 2017/1542 of 8 June 2017 amending Delegated Regulation (EU) 2015/35 concerning the calculation of regulatory capital requirements for certain categories of assets held by insurance and reinsurance undertakings (infrastructure corporates) (OJ EU L 236, 14.9.2017, p. 14).

The following legal acts of the Swiss Confederation are compatible with the Agreement:

- Insurance Supervisory Act¹;
- Insurance Supervisory Ordinance².

Article 3

This Decision shall enter into force on the date of its adoption.

Done at ...,

For the Joint Committee
The President

¹ Versicherungsaufsichtsgesetz (AS 2005 5269) as last amended on 19 June 2015 (AS 2015 5339).

² Aufsichtsverordnung (AS 2005 5305) as last amended on 25 November 2015 (AS 2015 5413).