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From: General Secretariat of the Council
To: Delegations

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

Proposal for a Directive of the European Parliament and of the Council establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012

- Progress Report

I. INTRODUCTION

The Commission adopted on 22 September 2021 a package of two Ordinary Legislative Proposals together with a Communication on the review of the EU prudential framework for insurers and reinsurers in the context of the EU's post pandemic recovery:

- a 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; and

- a proposal for a Directive of the European Parliament and of the Council establishing a framework for recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2009/138/EC, (EU) 2017/1132 and Regulations (EU) No 1094/2010 and (EU) No 648/2012.

The Commission presented this package at the ECOFIN Council in a policy debate on 5 October 2021.

The Commission also presented the package including the related impact assessments to the Council's Working Party on Financial Services and the Banking Union (Insurance) on 14-15 October 2021.

II. PROPOSAL AMENDING SOLVENCY II DIRECTIVE 2009/138/EC

The Presidency held five one-day meetings of the Working Party on Financial Services and the Banking Union (Insurance), of which one was for the Commission's presentation of the contents of the new Directive and four were for an examination of the proposed amendments to the Solvency II Directive.

Five of the nine chapters identified by the Presidency were discussed: proportionality, reporting and disclosure, quality of supervision, cross-border supervision and other miscellaneous issues, covering an important part of the Commission's proposal.

On the basis of written comments presented by Member States and oral comments provided during the meetings of the Working Party, the Presidency drafted a number of compromise text proposals on three chapters, i.e. proportionality; reporting and disclosure; and quality of supervision. The latest version of these compromise text proposals resulting from the discussions in the Working Party are set out in document ST 14828/21 and its addenda.

III. PROPOSAL ON INSURANCE RECOVERY AND RESOLUTION

The Insurance Recovery & Resolution Directive is a new proposal inspired by a similar banking directive and the regulation on the financial market infrastructure that reflects international standards, EIOPA's advice, and current practices in some Member States. Insurance undertakings should, under this proposed Directive, plan for the case of deteriorating financial condition in line with their size, risk profile, and degree of cross-border activities. The plans would outline the steps insurers, supervisors, and resolution authorities would take under different scenarios to ensure that all competent authorities act swiftly and in a coordinated manner. In the case of resolution, the main goal of the proposed Directive is to provide resolution authorities with tools and powers to manage the orderly exit of an insurer from the market with the best possible outcome for policyholders, focusing on the continuity of cover and transfer strategies.

The Presidency held four one-day meetings of the Working Party on Financial Services and the Banking Union. In the first meeting, the Commission presented the contents of the proposed Directive. The Presidency took the approach of completing the first review of the proposed Directive by sections of related articles. Starting with resolution tools and powers, the Presidency moved on to resolution planning, valuation of assets, market coverage of planning, cross-border resolution, and third-country relations. The Presidency completed the first review of the Member States' positions but judged it too early in the negotiations process to start drafting compromise texts. Most Member States welcomed the proposal. However, a few topics emerged where further work to reach a compromise would be needed. Most notably, these topics include the definition of minimum market coverage, the approach to resolution financing, the interplay with national bankruptcy proceedings, and the role of EIOPA.

IV. OUTLOOK

As far as the proposal amending the Solvency II Directive 2009/138/EC is concerned, substantial progress has been made on proportionality, reporting and disclosure and quality of supervision, although diverging views remain on specific issues. The discussion on cross-border supervision and other miscellaneous issues also made it possible to identify the main issues of concern for Member States.

It is now for subsequent Presidencies to make further progress, particularly on those issues that have not yet been discussed in the Working Party.

The proposed Insurance Recovery & Resolution Directive contains concepts, which are complex and relatively new for the insurance field. This entail many implications for Member States that need to be adequately understood. At this stage, completing the first review of the proposed Directive was necessary in order to continue the negotiation process successfully. While there is generally broad support for creating a minimum harmonised recovery and resolution regime, topics emerged where further work to reach a compromise would be needed. These topics include the resolution goals and triggers (including the relationship with the Solvency II supervisory ladder of intervention and the relationship between the supervisory and resolution authorities), market coverage, and the valuation of assets and liabilities with possible legal ramifications in the event of resolution. The interaction with groups and the complex procedures to reach a joint decision, potential interaction with national bankruptcy proceedings, and a substantial role for EIOPA in a minimum harmonisation context were among the topics discussed. Furthermore, subsequent Presidencies will have to conduct a more in-depth discussion of resolution financing, particularly the articulation with national insurance guarantee schemes. Member States provided substantial feedback on the proposed text in the meetings of the Working Party and in the written comments to the questions raised by the Presidency.

The Slovenian Presidency thanks all delegations for their contributions to the file and the Commission for its collaborative attitude and fruitful comments.
