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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	18 December 2019
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2019) 8951 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 17.12.2019 correcting Delegated Regulation (EU) 2015/35 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)

Delegations will find attached document C(2019) 8951 final.

Encl.: C(2019) 8951 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 17.12.2019

correcting Delegated Regulation (EU) 2015/35 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)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Look-through approach

Commission Delegated Regulation (EU) 2015/35¹ was amended by Commission Delegated Regulation (EU) 2019/981². One of the amendments concerned paragraph 4 of Article 84 of Delegated Regulation (EU) 2015/35 and was intended to extend the scope of the look-through approach to undertakings related to an insurance or reinsurance undertaking, the main purpose of which is to hold or manage the assets on behalf of that insurance or reinsurance undertaking.

Collective investment undertakings and other investments packaged as funds are already subject to the look-through approach pursuant to Article 84(1), regardless of whether or not they are related to an insurance or reinsurance undertaking. There was no intention to change the treatment of collective investment undertakings and other investments packaged as funds with Commission Delegated Regulation (EU) 2019/981.

However, an unintended reference to Article 84(1) in the current text of Paragraph 4 of that Article excludes collective investment undertakings and other investments packaged as funds that are also related to an insurance or reinsurance undertaking from the look-through approach. As this exclusion was not intended, Delegated Regulation (EU) 2015/35 should be corrected accordingly.

Risk weights for flood risk

Another amendment introduced by Delegated Regulation (EU) 2019/981 concerned the table contained in the section entitled “Risk weights for flood risk” of Annex X of Delegated Regulation (EU) 2015/35. This table fixes the standard parameters to be used for the calculation of the Solvency Capital Requirement for flood risk calculated pursuant to the provisions of Article 123 of the same Regulation. For the purpose of this calculation, insurance and reinsurance undertakings’ exposure to flood risk is split into exposures per region, usually corresponding to a country, and further into risk zones, which usually correspond to a set of postal code areas of that region.

In order to allow insurance and reinsurance undertakings with exposure to flood risk in a relevant region to calculate their Solvency Capital Requirement for flood risk, Annex X, section “Risk weights for flood risk” of that Regulation should set out one risk weight for each risk zone of that region. The risk weights are set out in a table with columns corresponding to regions and rows corresponding to risk zones.

Regarding the region of the United Kingdom of Great Britain and Northern Ireland, this region is split in 124 risk zones. Before the amendments introduced by Delegated Regulation (EU) 2019/981, the table section “Risk weights for flood risk” of Annex X of Delegated Regulation (EU) 2015/35 contained correctly 124 rows which correspond to the 124 risk zones of that region. However, after the amendments, the table has been wrongly replaced

¹ 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 L 12, 17.1.2015, p. 1).

² Commission Delegated Regulation (EU) 2019/981 of 8 March 2019 amending Delegated Regulation (EU) 2015/35 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 L 161, 18.6.2019, p. 1).

with one with only 123 rows against the 124 risk zones present in that region. Therefore, Delegated Regulation (EU) 2015/35 should be corrected accordingly.

2. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 corrects paragraph 4 of Article 84 and Annex X of Commission Delegated Regulation (EU) 2015/35.

Annex I contains the corrected table of 124 rows with the risk weights for flood risk.

Article 2 lays down that the changes should apply retroactively from 8 July 2019.

COMMISSION DELEGATED REGULATION (EU) .../...

of 17.12.2019

correcting Delegated Regulation (EU) 2015/35 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)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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)¹, and in particular points (a) and (c) of Article 111(1) thereof,

Whereas:

- (1) The amendments of Commission Delegated Regulation (EU) 2019/981² to paragraph 4 of Article 84 of Commission Delegated Regulation (EU) 2015/35³ extended the look-through approach to undertakings related to an insurance or reinsurance undertaking, which fulfil certain conditions. An erroneous reference to paragraph 1 of Article 84 of that Regulation in paragraph 4 of that Article exempts certain collective investment undertakings or investments packaged as funds that are also undertakings related to an insurance or reinsurance undertaking from the look-through approach. However, collective investment undertakings or investments packaged as funds should by default be subject to the look-through approach.
- (2) In Annex X to Delegated Regulation (EU) 2015/35, the section “Risk weights for flood risk” sets out the standard parameters for the calculation of the basic Solvency Capital Requirement for flood risk. In order to allow the calculation of the Solvency Capital Requirement for flood risk for the region United Kingdom of Great Britain and Northern Ireland, the table should have one row for each of that region’s 124 risk zones.
- (3) Insurance and reinsurance undertakings should at all times be able to calculate their capital requirement for flood risk. For that purpose and for the purpose of avoiding that capital requirements with respect to investments in collective investment undertakings underestimate the actual risk that insurance and reinsurance undertakings are exposed to, this Regulation should apply from the date of entry into force of Delegated Regulation (EU) 2019/981.

¹ OJ L 335, 17.12.2009, p. 1.

² Commission Delegated Regulation (EU) 2019/981 of 8 March 2019 amending Delegated Regulation (EU) 2015/35 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 L 161, 18.6.2019, p. 1).

³ 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 L 12, 17.1.2015, p. 1).

(4) Delegated Regulation (EU) 2015/35 should therefore be corrected accordingly,
HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) 2015/35 is corrected as follows:

- (1) In Article 84(4), the introductory wording is replaced by the following:
'Paragraph 2 shall not apply to investments in related undertakings, other than investments in respect of which all of the following conditions are met:'.
- (2) In Annex X, the table in the section “Risk weights for flood risk” is replaced by the table in Annex I to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 8 July 2019.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 17.12.2019

For the Commission
The President
Ursula von der LEYEN