Taking-up and pursuit of the business of insurance and reinsurance - Solvency II. Recast

2007/0143(COD) - 26/02/2008 - Legislative proposal

PURPOSE: amended proposal on Solvency II to take into account the coming into force of the mergers and acquisitions directive and proposed new rules on Rome I.

PROPOSED ACT: Directive of the European Parliament and of the Council.

CONTENT: the Commission adopted the Solvency II Directive Proposal in September 2007 (please see the summary of 10/07/2007.). This proposal consists of a recast of 13 existing Directives in the insurance and reinsurance sector and new solvency provisions. In the meantime, Directive 2007/44/EC amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector has been published in the Official Journal and has entered into force on 21 September 2007, i.e. after the date on which the recast proposal was submitted to the legislative authority.

Directive 2007/44/EC introduced changes in some Articles of Directives 92/49/EEC, 2002/83/EC and 2005/68/EC. As a consequence, clear discrepancies exist between the texts of Directives 92/49/EEC, 2002 /83/EC and 2005/68/EC and the corresponding parts of the recast part of the Solvency II Directive Proposal.

Furthermore, in December 2007, a political agreement was reached on the so-called Rome I Regulation which deals with the law applicable on contractual obligations. This affects the provisions on applicable law and conditions of direct insurance contracts in the recast part of the Solvency II Directive Proposal. In view of the above the Commission decided to adopt an amended proposal to the Solvency II Directive Proposal adopted in July 2007.

The Solvency II proposal applies to all life and non-life insurance undertakings and reinsurance undertakings. But the current exclusion of small mutual undertakings has been extended to all small insurance undertakings regardless of their legal form. Other changes in the amended proposal concern: qualitative requirements and supervision; supervisory reporting and public disclosure; promotion of supervisory convergence; quantitative requirements; and group supervision.

The changes introduced by Directive 2007/44/EC were introduced in the recast of the Solvency II Directive Proposal, taking into account the new regulatory procedure of scrutiny for the respective comitology provision.

In order to take account of the proposed Rome I, the provisions on applicable law and conditions of direct insurance contracts in Chapter I of TITLE II were deleted. A cross-reference was added in Article 176 to the draft Rome I Regulation setting out that any Member State not subject to that Regulation shall apply the provisions of that Regulation in order to determine the law applicable to insurance contracts falling within the scope of Article 7 of the Regulation.

Lastly, on the occasion of preparing an amended proposal some technical improvements to the recast suggested by the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission were taken up in order to take account of better regulation principles.