Seventh Presidency compromise text for the Omnibus II Directive

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The seventh Presidency compromise text for Omnibus II makes few changes to the previous text, leaving significant differences for the trilogue discussions

INTRODUCTION

On 21 September 2011, a seventh revision of the Presidency compromise text for Omnibus II was released by the Presidency of the Council of the European Union. This text further develops the amendments to the existing Solvency II Directive proposed in the original Omnibus II released in January of this year.

This latest version of the draft text makes few changes since the previous Presidency compromise text, published in July 2011, and does not appear to incorporate any of the proposed changes set out in the European Parliament's draft report on Omnibus II, also released in July 2011.

To assist you in digesting the revised text, Milliman has prepared this short summary of the content of this document, covering the changes, and including a brief analysis of what we expect these proposals to mean both for companies and Solvency II in general.

IMPLEMENTATION PLANS

The latest Presidency compromise text includes some additional details on the areas for which companies will be required to provide information as part of their implementation plans to be submitted to regulators in the period prior to full adoption of Solvency II.

Interestingly, the text specifies that such implementation plans should be subject to the principle of proportionality, and that supervisors should also be flexible in their assessment of companies' achieved progress. Under the current proposal, companies would be required to provide information on their state of preparedness with respect to (inter alia):

- the valuation of assets and liabilities;
- the calculation of capital requirements;
- the adaptation of a system of governance, including the Own Risk and Solvency Assessment; and
- the adaptation of processes and procedures for supervisory reporting and public disclosure.

The implementation plan should also include details of whether the company intends to take advantage of a number of the provisions under the new regime including whether companies have closed to new business in advance of implementation and intend to run off their portfolio over the subsequent 5 years, invest in tradeable securities or repackaged loans, or to make use of any of the proposed transitional arrangements, including those surrounding non-compliance with the SCR and those relating to third country equivalence.

Guidelines on the requirements of the implementation plan should be issued by EIOPA by 1 March 2013, while the relevant regulations should be in place within member states to ensure compliance with the requirements for an implementation plan by 1 April 2013.

IMPLEMENTING MEASURES

The latest draft text retains the sole use of implementing technical standards as a tool for ensuring the uniform application of the regulations. This is in contrast to the European Parliament's proposal to reintroduce regulatory technical standards, aimed at ensuring consistent harmonisation of the regime, while retaining implementing technical standards where it is felt that the topic would merit further involvement of supervisory expertise. The timetable for submission of these technical standards by EIOPA continues to stretch into 2016 (compared to 2012 under the draft report).

We note that there are clear differences between the three separate proposals for the Omnibus II text (formed of the original Commission text, the compromise text from the Council of the European Union, and the draft report from the European Parliament). These will be consolidated into a single text through "trilogue" discussions (the new buzz word for Solvency II).

TRANSITIONAL ARRANGEMENTS

The latest version of the text includes a number of new recitals, including one aimed at ensuring that Solvency II "*avoids undesirable impacts in its treatment of insurance business with long term guarantees*". This new recital further states that subsequent delegated acts should ensure the future development of products with long-term guarantees is not impaired.

We note that this new recital seeks to address a number of issues that have been raised by stakeholders in relation to products with long-term guarantees and their treatment under the proposed regime. As such it is likely that such a commitment within the Solvency II Level 1 text will be welcomed by the industry.

While it is helpful that such a recital has been included in the revised text, enshrining the objectives surrounding such products within the Solvency II framework, it is unclear at this stage how these will be taken forward.

One interpretation is that this may provide the clearest indication yet that proposals such as the counter-cyclical premium and the accompanying matching premium will be included in next version of the level 2 delegated acts which we expect to be published in October 2011. The level 2 text is initially expected only to be available to a limited number of stakeholders, with a public version potentially not available until early next year.

TIMETABLE

The date of the plenary meeting of the European Parliament, at which the finalised Omnibus II proposal will be discussed, has been brought forward from February 2012 to 14 December 2011.

The fundamental differences within the three versions of the text look set to increase the uncertainty surrounding the timetable for implementation of Solvency II at a time when many companies are attempting to gain comfort with their Solvency II work plans. This should increase the pressure on the various stakeholders to reach an agreement on the key issues before the finalised text needs to be presented to the European Parliament later this year.

SUMMARY AND ANALYSIS

The seventh Presidency compromise text for Omnibus II proposes some further alterations to the original Omnibus II text, which set out a range of changes to the Solvency II Level 1 Directive.

While the revised text includes some small additions, including a new recital covering products with-long term guarantees and some further details on companies' implementation plans, it is noticeable that the proposals set out in the European Parliament's draft report on Omnibus II appear not to have been incorporated. Under current plans, these proposals for Omnibus II will continue to be developed through trilogue discussions over the next couple of months before a final, consolidated version is available later in the year.

The FSA commented on its website, following the release of European Parliament's draft report, that it will update its position in relation to Omnibus II following the publication of this latest draft text and we would hope this will provide further clarity for companies on these issues.

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