

AMICE Position Paper in response to the Trilogue agreements on Omnibus II

Europe's mutual and cooperative insurers

- welcome the Trilogue agreement that paves the way for the further legislative process;
- fear that any further delay in the already very tight and challenging time line towards 01/01/2016 will make good preparation impossible;
- see the need for improvement of the EIOPA Preparatory Guidelines with regard to proportionality in reporting and governance;
- warn against gold-plating and uneven implementation in Member States.

Introductory and general comments

AMICE and its members welcome the fact that the long negotiations on the Omnibus II Directive proposal have now led to a political agreement between the institutions at the European level. We have been actively involved in the preparations and discussions of the issues at stake and regard the compromise reached as a workable package on the way towards implementation of the European Solvency II project.

Notwithstanding this carefully positive assessment of the procedural success achieved, we are still convinced that a strictly market-consistent valuation concept fails to appropriately mirror **the stable, long-term orientation of the insurance business** as such and the mutual and cooperative business model in particular. Regulation must not unduly restrict the insurance industry's possibilities to innovate and to fulfil its fundamental role of risk-taking which is so vital for society and economy.

The trilogue results and the follow-up by Council and Parliament are not the end of the legislative and rule-making process. Therefore, we would like to underline **four essential expectations** that our sector has for the further process:

- By nature, a compromise is a balance between (sometimes extreme) expectations and may create the desire to later “correct” positions that had to be given up at the time. We warn against any intentions to make use of the forthcoming Level-2 and 3 discussions to depart from results earlier agreed on and to “tighten the screws” again where **a compromise has been worked out** in cooperation between policymakers and representatives of industry and consumers.
- The further process must focus on creating **proportionate and appropriate rules**. Insurers with reduced scale and complexity in their operations must be able to thrive in a regime that respects their lower risk profile; mutuals and cooperatives must be enabled to use and develop their business model, including their specific approach to governance and member involvement.
- We observe already now – in the discussions on the implementation of EIOPA’s Preparatory Guidelines (see below) – an inclination towards “gold-plating” by national regulators. **Any overfulfilment** by individual Member States or their national regulators distorts the level playing field, is **therefore detrimental to the concept of the Single Market** and, moreover, threatens to weaken the international competitiveness of affected players.
- Some important issues still require consideration in the forthcoming negotiations, among them e.g. the calibration of the credit rate adjustment and of the risk premium factor for assistance insurance.

The further timeline

We understand that the strong political commitment to stick to the 2016 implementation date has been one of the drivers of the trilogue agreement. Still, we maintain that 01/01/2016 remains a very challenging deadline. The further development path is indeed **extremely time-critical** and every slight delay (and be it only in the time required for translation) can derail the process and/or make appropriate preparation impossible for insurance undertakings.

In this context, we have noted already with regret and concern that the transposition date has been moved by two months from 31/01/2015 to 31/03/2015 at the request of Member States. A situation like this, where implementation is cemented at the European level, but transposition is allowed to drag along at Member State level is **a real threat to good and timely preparation** by industry.

We call therefore on the European Parliament and the Council not to delay the process and to make use, both swiftly and efficiently, of their commenting periods. And we call on national lawmakers and regulators to provide their insurance undertakings with **legal certainty** as early as possible. Insurance undertakings across Europe are now adapting their implementation plans to accommodate the new final perspective, demonstrating their willingness to play their part in the successful implementation of the Solvency II project.

As mentioned, the timeline is challenging and the remaining time is short. We therefore recommend that EIOPA, the Commission, and national regulators should be extremely restrictive in requesting further industry studies and analyses and in issuing extensive information requests. In the light of the current discussions on reporting, we see the need to address this advice also to the ECB (see also below).

EIOPA's Preparatory Guidelines

General remark

We would like to remind the regulatory and supervisory community of their commitment that the preparatory phase of 2014/2015 should be a **phase of preparation and phasing-in** for all stakeholders: lawmakers, regulators, and industry. This means that, instead of misusing the phase as an accelerated introduction of Solvency II requirements, it should be characterised by a process of discussion at the national level of realistic achievables and upcoming problems. We call on national regulators to work seriously, with industry, to identify necessary areas of non-compliance or staggered compliance and to come up with strong and reasoned explanations why.

At the same time, many of our members fear that too far-sweeping exemptions may lead to truly uneven implementation. We find it necessary to again warn against any pre-emptive overfulfilment of the guidelines. The purpose of the “phase of preparation and phasing-in” would in our view be completely compromised if regulators find that this is the time for the introduction of over-ambitious or excessive regulation. After all, the Preparatory Guidelines were presented as a chance for a “**consistent and convergent way**” of arriving at S II Day.

In particular, we fear that national regulators may decide to ignore and exceed the proposed **application thresholds** (in terms of market share to be covered) and may extend requirements that were recognised as having to be applied in a proportionate way to more or less the whole industry. The 50 and 80 per cent application thresholds in themselves reflect a reasonable compromise reached. We urge EIOPA to (at least informally) declare these thresholds as a maximum that should not be exceeded (not even with an explanation of this over-compliance).

Reporting requirements

Firstly, we acknowledge and welcome the inclusion of elements of proportionality in the Preparatory Guidelines. There are absolutely compelling reasons why this is justified: the costs for developing or buying reporting systems and for subsequently feeding and administrating them are not proportionate to the business volume and hence hurt smaller undertakings more. The European insurance landscape and European citizens **benefit greatly from the diversity in the market**: the diversity between large and smaller players; between local, national and international players; between general and specialised insurers; and, last but not least, between legal forms – mutuals, cooperatives, publicly owned insurers and plc's.

Still, we hear from many of our smaller or medium-sized members which are characteristic for our sector, that proportionality does not hold the expected and promised benefits for them. For them in particular, but likewise for all insurers, the proposals to subject **all public disclosure to external audit requirements** is a further burden and fails in our view to pass a serious cost-benefit test.

In the wider context of reporting requirements, our members also express serious concerns about the ECB plans to request reporting from insurers. Meaningful discussions are taking place on this issue, but industry has to be assured that **ECB requirements do not exceed Solvency II requirements** by

- demanding more (additional) and different data;
- demanding them in different classification and/or format;
- demanding them faster, i.e. within shorter deadlines; and/or
- not following and mirroring the EIOPA proportionality approach – or, alternatively, that the proportionality exemption in the Preparatory Guidelines will not survive.

Governance

We note that the Preparatory Guidelines on **Governance and the ORSA are less clear on how proportionality is being applied**. We therefore expect at least a discussion among national regulators and with EIOPA on whether some governance requirements could equally be subjected to proportionality considerations. And, as in the past, we reiterate that – in addition to scale – nature and complexity are the two other dimensions of proportionality, which are often overlooked in the discussions.

Furthermore, we have to deplore that the Preparatory Guidelines still give no appropriate answer to concerns raised from the outset by mutuals in some jurisdictions that the governance provisions at all levels of Solvency II **do not respect the specifics** (seen as essential characteristics, but also as a strength of the model) **of the mutual/cooperative company structure**.

In the context of **ORSA**, members are concerned that national regulators, but also EIOPA, may embark on a “collection of best practice” exercise (as could be observed in the discussions about reporting) with the purpose of establishing and implementing “industry benchmarks”. This, we fear, would end up in ORSA expectations and processes that **clearly overburden smaller, less complex and/or simpler-by-nature undertakings**, thus also in this area infringing on the proportionality principle.