Commission Implementing Regulation (EU) 2015/2012 of 11 November 2015 laying down implementing technical standards with regard to the procedures for decisions to set, calculate and remove capital add-ons in accordance with Directive 2009/138/EC of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION IMPLEMENTING REGULATION (EU) 2015/2012

of 11 November 2015

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(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 the third subparagraph of Article 37(8) thereof,

Whereas:

(1) Directive 2009/138/EC provides for a possibility for the supervisory authorities to set a capital add-on for an insurance or reinsurance undertaking. It is necessary to provide for procedures for decisions to set, calculate and remove capital add-ons.

(2) In order to enable the insurance or reinsurance undertaking to provide information and justifications which may mitigate or challenge the need for a capital add-on before taking a decision on setting the capital add-on, the supervisory authority should give the insurance or reinsurance undertaking the possibility to provide reasons against setting a capital add-on.

(3) The cooperation of the insurance or reinsurance undertaking with the supervisory authority is essential in view of ensuring the effectiveness of the capital add-on as a supervisory measure. In order to enable the supervisory authority to base the capital add-on on accurate and up to date information, the insurance or reinsurance undertaking should calculate the capital add-on at the request of the supervisory authority.

(4) In order to enable the insurance or reinsurance undertaking to remedy the deficiencies that led to the imposition of the capital add-on it is necessary to specify the content of the decision to set a capital add-on.

(5) The supervisory authority and the insurance or reinsurance undertaking should not rely only on the annual review of the capital add-on, but should proactively monitor the circumstances which led to the setting of the capital add-on in order to take appropriate measures. To this end, the insurance or reinsurance undertaking should therefore provide the supervisory authority with progress reports on remedying the

deficiencies that led to the imposition of the capital add-on. It is also necessary to provide for a procedure to review decisions on capital add-on if there is a material change in the circumstances that led to the setting of the capital add-on.

(6) This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the Commission.

(7) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council[(2)],

HAS ADOPTED THIS REGULATION:

Article 1

Notification before setting a capital add-on

1 The supervisory authority shall notify the insurance or reinsurance undertaking concerned of its intention to set a capital add-on and the reasons for setting the capital add-on.

2 The supervisory authority shall set a deadline by which the insurance or reinsurance undertaking is to respond to the notification referred to in paragraph 1. The supervisory authority shall consider any information provided by the insurance or reinsurance undertaking before taking its decision.

Article 2

Calculation of capital add-on

If required by the supervisory authority, the insurance or reinsurance undertaking shall perform the calculation of the capital add-on in accordance with the specifications set by the supervisory authority.

Article 3

Provision of information

1 The supervisory authority may request the insurance or reinsurance undertaking to provide information necessary for taking a decision on setting a capital add-on by a deadline set by the supervisory authority.

2 When determining the deadline referred to in paragraph 1, the supervisory authority shall pay particular attention to the likelihood and severity of any adverse impact on policyholders and beneficiaries.

3 The insurance or reinsurance undertaking shall immediately notify the supervisory authority if it cannot meet the deadline referred to in paragraph 1.

Article 4

Decision to set a capital add-on

1 The supervisory authority shall notify in writing its decision to set a capital add-on to the insurance or reinsurance undertaking.

2 The decision of the supervisory authority shall be sufficiently detailed to enable the insurance or reinsurance undertaking to understand what measures it needs to take or what deficiencies it needs to remedy in order to have the capital add-on removed.

3 The decision referred to in paragraph 2 shall include:

a the reasons for setting the capital add-on;

b the methodology for calculating the capital add-on and the amount of the capital add-on;

c the date from which the capital add-on is applicable;

d where relevant, the deadline by which the insurance or reinsurance undertaking is to remedy the deficiencies that led to setting the capital add-on;

e where relevant, the content and frequency of any progress report to be provided in accordance with Article 5.

Article 5

Progress report

In the cases set out in Article 37(1)(b) and (c) of Directive 2009/138/EC and if requested by the supervisory authority, the insurance or reinsurance undertaking shall inform the supervisory authority about the progress it has made in remedying the deficiencies that led to the setting of the capital add-on and what relevant actions it has taken.

Article 6

Review of the capital add-on

1 The supervisory authority shall review the imposed capital add-on if there is a material change in the circumstances that led to the setting of the capital add-on.

2 Following the review of the imposed capital add-on the supervisory authority shall maintain, change or remove the capital add-on.

Article 7

Maintaining, changing or removing the capital add-on

When considering whether to maintain, change or remove the capital add-on the supervisory authority shall take into account any of the following:

(a) information submitted by the insurance or reinsurance undertaking during the process of setting and calculating the capital add-on;

(b) information obtained by the supervisory authority through the supervisory review process and through any subsequent supervisory activity;