

Demystifying Solvency II equivalence decisions

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European Commission's equivalence decisions must also be reviewed by the European parliament and the Council

At the beginning of June, the European Commission adopted and published the first package of Solvency II equivalence decisions. The commission deemed the solvency and prudential regime in force in Switzerland fully equivalent with Solvency II requirements in all three equivalence areas: reinsurance, group solvency calculation and group supervision.

It considers the solvency regimes in force in six other countries (Australia, Bermuda, Brazil, Canada, Mexico and the US) provisionally equivalent, an exercise largely to assist European groups with foreign operations.

Having read the initial reactions to the decisions in the specialist press, it seems misunderstandings abound. Clarifications are, therefore, in order.

The legislative procedure does not end with the commission. Equivalence decisions are delegated acts (commission delegated decisions). They must, therefore, be reviewed by the European parliament and the Council, which have three months (and possibly a further three months) to scrutinise the texts.

There follows a somewhat clumsy process of “non-objection” before the decisions are published in the EU Official Journal and enter into force. Should either one of the two EU co-legislators raise an objection, the text is rendered void (with no possibility of amendments). A new decision would have to be adopted before the affected third country (or countries) gets a second chance.

Provisional equivalence for group solvency calculation is very important for European Economic Area-headquartered groups. On the other hand, it has almost no benefits for third-country (re)insurers and their groups. In fact, provisional equivalence was a “last-minute” addition to Solvency II, inserted during the Omnibus II negotiations to accommodate EU groups.

Where a third-country solvency regime is deemed provisionally equivalent, EU groups may use the third-country capital requirements and own-fund rules for subsidiaries established in that third country when calculating group-wide solvency under the deduction and aggregation method.

Solvency II equivalence is not a tool to secure cross-border market access rights for third-country (re)insurers. While “equivalence” would facilitate the conduct of business in the EU, only limited market access benefits are attached to equivalence, mainly for reinsurance activities.

The commission has announced in parliament and in the press release accompanying the decisions there will be additional equivalence decisions. We can expect the second package of equivalence decisions in the autumn. We understand the commission may deem some of the initial “provisional” jurisdictions as either full or temporary equivalent.

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