

Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC (Text with EEA relevance) (repealed)

TITLE III

CONDITIONS GOVERNING THE BUSINESS OF REINSURANCE

CHAPTER 3

Rules relating to the solvency margin and to the guarantee fund

Section 2

Required solvency margin

Article 37

Required solvency margin for non-life reinsurance activities

1 The required solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years.

However, in the case of reinsurance undertakings which essentially underwrite only one or more of the risks of credit, storm, hail or frost, the last seven financial years shall be taken as the reference period for the average burden of claims.

2 Subject to Article 40, the amount of the required solvency margin shall be equal to the higher of the two results as set out in paragraphs 3 and 4 of this Article.

3 The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions.

Premiums or contributions in respect of the classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC shall be increased by 50 %.

Premiums or contributions in respect of classes other than classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC may be increased by up to 50 %, for specific reinsurance activities or contract types, in order to take account of the specificities of these activities or contracts, in accordance with the procedure referred to in Article 55(2) of this Directive. The premiums or contributions, inclusive of charges ancillary to premiums or contributions, due in respect of reinsurance business in the last financial year shall be aggregated.

From that sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

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The amount so obtained shall be divided into two portions, the first portion extending up to EUR 50 000 000, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the reinsurance undertaking after deduction of amounts recoverable under retrocession and the gross amount of claims; that ratio may in no case be less than 50 %. Upon application, with supporting evidence, by the reinsurance undertaking to the competent authority of the home Member State and with the agreement of that authority, amounts recoverable from special purpose vehicles as referred to in Article 46 may also be deducted as retrocession.

With the approval of the competent authorities, statistical methods may be used to allocate the premiums or contributions.

4 The claims basis shall be calculated, as follows, using in respect of the classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC, claims, provisions and recoveries increased by 50 %.

Claims, provisions and recoveries in respect of classes other than classes 11, 12 and 13 listed in point A of the Annex to Directive 73/239/EEC, may be increased by up to 50 %, for specific reinsurance activities or contract types, in order to take account of the specificities of those activities or contracts, in accordance with the procedure referred to in Article 55(2) of this Directive.

The amounts of claims paid, without any deduction of claims borne by retrocessionaires, in the periods specified in paragraph 1 shall be aggregated.

To that sum there shall be added the amount of provisions for claims outstanding established at the end of the last financial year.

From that sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 1.

From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts. If the reference period established in paragraph 1 equals seven years, the amount of provisions for claims outstanding established at the commencement of the sixth financial year preceding the last financial year for which there are accounts shall be deducted.

One third, or one seventh, of the amount so obtained, according to the reference period established in paragraph 1, shall be divided into two portions, the first extending up to EUR 35 000 000 and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the undertaking after deduction of amounts recoverable under retrocession and the gross amount of claims; that ratio may in no case be less than 50 %. Upon application, with supporting evidence, by the reinsurance undertaking to the competent authority of the home Member State and with the agreement of that authority, amounts recoverable from special purpose vehicles as referred to in Article 46 may also be deducted as retrocession.

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With the approval of the competent authorities, statistical methods may be used to allocate claims, provisions and recoveries.

5 If the required solvency margin as calculated in paragraphs 2, 3 and 4 is lower than the required solvency margin of the year before, the required solvency margin shall be at least equal to the required solvency margin of the year before multiplied by the ratio between the amount of the technical provisions for claims outstanding at the end of the last financial year and the amount of the technical provisions for claims outstanding at the beginning of the last financial year. In these calculations technical provisions shall be calculated net of retrocession but the ratio may in no case be higher than 1.

6 The fractions applicable to the portions referred to in the fifth subparagraph of paragraph 3 and the seventh subparagraph of paragraph 4 shall each be reduced to a third in the case of reinsurance of health insurance practised on a similar technical basis to that of life assurance, if:

- a the premiums paid are calculated on the basis of sickness tables according to the mathematical method applied in insurance;
- b a provision is set up for increasing age;
- c an additional premium is collected in order to set up a safety margin of an appropriate amount;
- d the insurance undertaking may cancel the contract before the end of the third year of insurance at the latest;
- e the contract provides for the possibility of increasing premiums or reducing payments even for current contracts.

Article 38

Required solvency margin for life reinsurance activities

1 The required solvency margin for life reinsurance activities shall be determined in accordance with Article 37.

2 Notwithstanding paragraph 1 of this Article, the home Member State may provide that for reinsurance classes of assurance business covered by Article 2(1)(a) of Directive 2002/83/EC linked to investment funds or participating contracts and for the operations referred to in Article 2(1)(b), 2(2)(b), (c), (d) and (e) of Directive 2002/83/EC, the required solvency margin is to be determined in accordance with Article 28 of Directive 2002/83/EC.

Article 39

Required solvency margin for a reinsurance undertaking simultaneously conducting non-life and life reinsurance

1 The home Member State shall require every reinsurance undertaking conducting both non-life and life reinsurance business to have an available solvency margin to cover the total sum of required solvency margins in respect of both non-life and life reinsurance activities which shall be determined in accordance with Articles 37 and 38 respectively.

2 If the available solvency margin does not reach the level required in paragraph 1 of this Article, the competent authorities shall apply the measures provided for in Articles 42 and 43.