

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) (recast) (Text with EEA relevance)

TITLE I

**GENERAL RULES ON THE TAKING-UP AND PURSUIT OF
DIRECT INSURANCE AND REINSURANCE ACTIVITIES**

CHAPTER III

Supervisory authorities and general rules

Article 38

Supervision of outsourced functions and activities

1 Without prejudice to Article 49, Member States shall ensure that insurance and reinsurance undertakings which outsource a function or an insurance or reinsurance activity take the necessary steps to ensure that the following conditions are satisfied:

- a the service provider must cooperate with the supervisory authorities of the insurance and reinsurance undertaking in connection with the outsourced function or activity;
- b the insurance and reinsurance undertakings, their auditors and the supervisory authorities must have effective access to data related to the outsourced functions or activities;
- c the supervisory authorities must have effective access to the business premises of the service provider and must be able to exercise those rights of access.

2 The Member State where the service provider is located shall permit the supervisory authorities of the insurance or reinsurance undertaking to carry out themselves, or through the intermediary of persons they appoint for that purpose, on-site inspections at the premises of the service provider. The supervisory authority of the insurance or reinsurance undertaking shall inform the appropriate authority of the Member State of the service provider prior to conducting the on-site inspection. In the case of a non-supervised entity the appropriate authority shall be the supervisory authority.

The supervisory authorities of the Member State of the insurance or reinsurance undertaking may delegate such on-site inspections to the supervisory authorities of the Member State where the service provider is located.

[^{F1}Where a supervisory authority has informed the appropriate authority of the Member State of the service provider that it intends to carry out an on-site inspection in accordance with this paragraph, or where it carries out an on-site inspection in accordance with the first subparagraph where that supervisory authority is unable in practice to exercise its right to carry out that on-site inspection, the supervisory authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

Status: EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

In accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site examination where they are carried out jointly by two or more supervisory authorities.]

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Textual Amendments

- F1** Inserted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)