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 I

Subject matter, scope and definitions

Section 1

Subject matter and scope

Article 1

Subject matter

This Directive lays down rules concerning the following:

(1) the taking-up and pursuit, within the Community, of the self-employed activities of direct insurance and reinsurance;

(2) the supervision of insurance and reinsurance groups;

(3) the reorganisation and winding-up of direct insurance undertakings.

Article 2

Scope

1 This Directive shall apply to direct life and non-life insurance undertakings which are established in the territory of a Member State or which wish to become established there.

It shall also apply to reinsurance undertakings which conduct only reinsurance activities and which are established in the territory of a Member State or which wish to become established there with the exception of Title IV.

2 In regard to non-life insurance, this Directive shall apply to activities of the classes set out in Part A of Annex I. For the purposes of the first subparagraph of paragraph 1, non-life insurance shall include the activity which consists of assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence. It shall comprise an undertaking, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.

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The aid may comprise the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.

The assistance activity shall not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

3 In regard to life insurance, this Directive shall apply:

a to the following life insurance activities where they are on a contractual basis:

(i) life insurance which comprises assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance;

(ii) annuities;

(iii) supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness;

(iv) types of permanent health insurance not subject to cancellation currently existing in Ireland and the United Kingdom;

b to the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the authorities responsible for the supervision of private insurance:

(i) operations whereby associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased (tontines);

(ii) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;

(iii) management of group pension funds, comprising the management of investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;

(iv) the operations referred to in point (iii) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

(v) the operations carried out by life insurance undertakings such as those referred to in Chapter 1, Title 4 of Book IV of the French ‘Code des assurances’;

c to operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, in so far as they are effected or managed by life insurance undertakings at their own risk in accordance with the laws of a Member State.

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Section 2

Exclusions from scope

Subsection 1

General

Article 3

Statutory systems

Without prejudice to Article 2(3)(c), this Directive shall not apply to insurance forming part of a statutory system of social security.

Article 4

Exclusion from scope due to size

1 Without prejudice to Article 3 and Articles 5 to 10, this Directive shall not apply to an insurance undertaking which fulfils all the following conditions:

a the undertaking's annual gross written premium income does not exceed EUR 5 million;

b the total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, does not exceed EUR 25 million;

c where the undertaking belongs to a group, the total of the technical provisions of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed EUR 25 million;

d the business of the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of Article 16(1);

e the business of the undertaking does not include reinsurance operations exceeding EUR 0,5 million of its gross written premium income or EUR 2,5 million of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, or more than 10 % of its gross written premium income or more than 10 % of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.

2 If any of the amounts set out in paragraph 1 is exceeded for three consecutive years this Directive shall apply as from the fourth year.

3 By way of derogation from paragraph 1, this Directive shall apply to all undertakings seeking authorisation to pursue insurance and reinsurance activities of which the annual gross written premium income or technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles are expected to exceed any of the amounts set out in paragraph 1 within the following five years.

4 This Directive shall cease to apply to those insurance undertakings for which the supervisory authority has verified that all of the following conditions are met:

a none of the thresholds set out in paragraph 1 has been exceeded for the three previous consecutive years; and

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b none of the thresholds set out in paragraph 1 is expected to be exceeded during the following five years.

For as long as the insurance undertaking concerned pursues activities in accordance with Articles 145 to 149, paragraph 1 of this Article shall not apply.

5 Paragraphs 1 and 4 shall not prevent any undertaking from applying for authorisation or continuing to be authorised under this Directive.

Subsection 2

Non-life

Article 5

Operations

In regard to non-life insurance, this Directive shall not apply to the following operations:

(1) capital redemption operations, as defined by the law in each Member State;

(2) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

(3) operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves; or

(4) export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.

Article 6

Assistance

1 This Directive shall not apply to an assistance activity which fulfils all the following conditions:

a the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in the territory of the Member State of the undertaking providing cover;

b the liability for the assistance is limited to the following operations:

(i) an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment;

(ii) the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means; and

(iii) where provided for by the home Member State of the undertaking providing cover, the conveyance of the vehicle, possibly accompanied by the driver and

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passengers, to their home, point of departure or original destination within the same State; and

c the assistance is not carried out by an undertaking subject to this Directive.

2 In the cases referred to in points (i) and (ii) of paragraph 1(b), the condition that the accident or breakdown must have happened in the territory of the Member State of the undertaking providing cover shall not apply where the beneficiary is a member of the body providing cover and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the country concerned on the basis of a reciprocal agreement, or, in the case of Ireland and the United Kingdom, where the assistance operations are provided by a single body operating in both States.

3 This Directive shall not apply in the case of operations referred to in point (iii) of paragraph 1(b), where the accident or the breakdown has occurred in the territory of Ireland or, in the case of the United Kingdom, in the territory of Northern Ireland and the vehicle, possibly accompanied by the driver and passengers, is conveyed to their home, point of departure or original destination within either territory.

4 This Directive shall not apply to assistance operations carried out by the Automobile Club of the Grand Duchy of Luxembourg where the accident or the breakdown of a road vehicle has occurred outside the territory of the Grand Duchy of Luxembourg and the assistance consists in conveying the vehicle which has been involved in that accident or breakdown, possibly accompanied by the driver and passengers, to their home.

Article 7

Mutual undertakings

This Directive shall not apply to mutual undertakings which pursue non-life insurance activities and which have concluded with other mutual undertakings an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case the accepting undertaking shall be subject to the rules of this Directive.

Article 8

Institutions

This Directive shall not apply to the following institutions which pursue non-life insurance activities unless their statutes or the applicable law are amended as regards capacity:

(1) in Denmark, Falck Danmark;

(2) in Germany, the following semi-public institutions:

(a) Postbeamtenkrankenkasse,

(b) Krankenversorgung der Bundesbahnbeamten;

(3) in Ireland, the Voluntary Health Insurance Board;

(4) in Spain, the Consorcio de Compensación de Seguros.

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Subsection 3

Life

Article 9

Operations and activities

In regard to life insurance, this Directive shall not apply to the following operations and activities:

(1) operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;

(2) operations carried out by organisations, other than undertakings referred to in Article 2, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions;

(3) the pension activities of pension insurance undertakings prescribed in the Employees Pension Act (TyEL) and other related Finnish legislation provided that:

(a) pension insurance companies which already under Finnish law are obliged to have separate accounting and management systems for their pension activities, as from 1 January 1995, set up separate legal entities for pursuing those activities; and

(b) the Finnish authorities allow, in a non-discriminatory manner, all nationals and companies of Member States to perform according to Finnish legislation the activities specified in Article 2 related to *that* exemption whether by means of ownership or participation in an existing insurance company or group or by means of creation or participation of new insurance companies or groups, including pension insurance companies.

Article 10

Organisations, undertakings and institutions

In regard to life insurance, this Directive shall not apply to the following organisations, undertakings and institutions:

(1) organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;

(2) the ‘Versorgungsverband deutscher Wirtschaftsorganisationen’ in Germany, unless its statutes are amended as regards the scope of its capacity;

(3) the ‘Consorcio de Compensación de Seguros’ in Spain, unless its statutes are amended as regards the scope of its activities or capacity.

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Subsection 4

Reinsurance

Article 11

Reinsurance

In regard to reinsurance, this Directive shall not apply to the activity of reinsurance conducted or fully guaranteed by the government of a Member State when that government is acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

Article 12

Reinsurance undertakings closing their activity

1 Reinsurance undertakings which by 10 December 2007 ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to this Directive.

2 Member States shall draw up a list of the reinsurance undertakings concerned and communicate that list to all the other Member States.

Section 3

Definitions

Article 13

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) ‘insurance undertaking’ means a direct life or non-life insurance undertaking which has received authorisation in accordance with Article 14;

(2) ‘captive insurance undertaking’ means an insurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 212(1)(c) or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

(3) ‘third-country insurance undertaking’ means an undertaking which would require authorisation as an insurance undertaking in accordance with Article 14 if its head office were situated in the Community;

(4) ‘reinsurance undertaking’ means an undertaking which has received authorisation in accordance with Article 14 to pursue reinsurance activities;

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(5) 'captive reinsurance undertaking' means a reinsurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 212(1)(c) or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

(6) 'third-country reinsurance undertaking' means an undertaking which would require authorisation as a reinsurance undertaking in accordance with Article 14 if its head office were situated in the Community;

(7) **[**[F1]'reinsurance' means one of the following:

(a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking;

(b) in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's; or

(c) the provision of cover by a reinsurance undertaking to an institution that falls within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council[(1)];**]**

(8) 'home Member State' means any of the following:

(a) for non-life insurance, the Member State in which the head office of the insurance undertaking covering the risk is situated;

(b) for life insurance, the Member State in which the head office of the insurance undertaking covering the commitment is situated; or

(c) for reinsurance, the Member State in which the head office of the reinsurance undertaking is situated;

(9) 'host Member State' means the Member State, other than the home Member State, in which an insurance or a reinsurance undertaking has a branch or provides services; for life and non-life insurance, the Member State of the provisions of services means, respectively, the Member State of the commitment or the Member State in which the risk is situated, where that commitment or risk is covered by an insurance undertaking or a branch situated in another Member State;

(10) 'supervisory authority' means the national authority or the national authorities empowered by law or regulation to supervise insurance or reinsurance undertakings;

(11) 'branch' means an agency or a branch of an insurance or reinsurance undertaking which is located in the territory of a Member State other than the home Member State;

(12) 'establishment' of an undertaking means its head office or any of its branches;

(13) 'Member State in which the risk is situated' means any of the following:

(a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;

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(b) the Member State of registration, where the insurance relates to vehicles of any type;

(c) the Member State where the policy holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;

(d) in all cases not explicitly covered by points (a), (b) or (c), the Member State in which either of the following is situated:

(i) the habitual residence of the policy holder; or

(ii) if the policy holder is a legal person, that policy holder's establishment to which the contract relates;

(14) 'Member State of the commitment' means the Member State in which either of the following is situated:

(a) the habitual residence of the policy holder;

(b) if the policy holder is a legal person, that policy holder's establishment, to which the contract relates;

(15) 'parent undertaking' means a parent undertaking within the meaning of Article 1 of Directive 83/349/EEC;

(16) 'subsidiary undertaking' means any subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC, including subsidiaries thereof;

(17) 'close links' means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;

(18) 'control' means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

(19) 'intra-group transaction' means any transaction by which an insurance or reinsurance undertaking relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

(20) 'participation' means the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;

(21) 'qualifying holding' means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

(22) 'regulated market' means either of the following:

(a) in the case of a market situated in a Member State, a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC; or

(b) in the case of a market situated in a third country, a financial market which fulfils the following conditions:

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(i) it is recognised by the home Member State of the insurance undertaking and fulfils requirements comparable to those laid down in Directive 2004/39/EC; and

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets of the home Member State;

(23) 'national bureau' means a national insurers' bureau as defined in Article 1(3) of Directive 72/166/EEC;

(24) 'national guarantee fund' means the body referred to in Article 1(4) of Directive 84/5/EEC;

(25) 'financial undertaking' means any of the following entities:

(a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 4(1), (5) and (21) of Directive 2006/48/EC respectively;

(b) an insurance undertaking, or a reinsurance undertaking or an insurance holding company within the meaning of Article 212(1)(f);

(c) an investment firm or a financial institution within the meaning of Article 4(1)(1) of Directive 2004/39/EC; or

(d) a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC

(26) 'special purpose vehicle' means any undertaking, whether incorporated or not, other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking;

(27) 'large risks' means:

(a) risks classified under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex I;

(b) risks classified under classes 14 and 15 in Part A of Annex I, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;

(c) risks classified under classes 3, 8, 9, 10, 13 and 16 in Part A of Annex I in so far as the policy holder exceeds the limits of at least two of the following criteria:

(i) a balance-sheet total of EUR 6,2 million;

(ii) a net turnover, within the meaning of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies[(2)], of EUR 12,8 million;

(iii) an average number of 250 employees during the financial year.

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If the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC are drawn up, the criteria set out in point (c) of the first subparagraph shall be applied on the basis of the consolidated accounts.

Member States may add to the category referred to in point (c) of the first subparagraph the risks insured by professional associations, joint ventures or temporary groupings;

(28) 'outsourcing' means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself;

(29) 'function', within a system of governance, means an internal capacity to undertake practical tasks; a system of governance includes the risk-management function, the compliance function, the internal audit function and the actuarial function;

(30) 'underwriting risk' means the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions;

(31) 'market risk' means the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

(32) 'credit risk' means the risk of loss or of adverse change in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

(32a) '**[**[F2]qualifying central counterparty' means a central counterparty that has been either authorised in accordance with Article 14 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[(3)] or recognised in accordance with Article 25 of that Regulation;**]**

(33) 'operational risk' means the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;

(34) 'liquidity risk' means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;

(35) 'concentration risk' means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance and reinsurance undertakings;

(36) 'risk-mitigation techniques' means all techniques which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party;

(37) 'diversification effects' means the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;

(38) 'probability distribution forecast' means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;

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(39) 'risk measure' means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast**[**F3**;]**

(40) '**[**F2external credit assessment institution' or 'ECAI' means a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council(4) or a central bank issuing credit ratings which are exempt from the application of that Regulation.**]**

Textual Amendments

F1 Substituted by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) (Text with EEA relevance).

F2 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).

F3 Substituted 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).

CHAPTER II

Taking-up of business

Article 14

Principle of authorisation

1 The taking-up of the business of direct insurance or reinsurance covered by this Directive shall be subject to prior authorisation.

2 The authorisation referred to in paragraph 1 shall be sought from the supervisory authorities of the home Member State by the following:

a any undertaking which is establishing its head office within the territory of that Member State; or

b any insurance undertaking which, having received an authorisation pursuant to paragraph 1, wishes to extend its business to an entire insurance class or to insurance classes other than those already authorised.

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Article 15

Scope of authorisation

1 An authorisation pursuant to Article 14 shall be valid for the entire Community. It shall permit insurance and reinsurance undertakings to pursue business there, that authorisation covering also the right of establishment and the freedom to provide services.

2 Subject to Article 14, authorisation shall be granted for a particular class of direct insurance as listed in Part A of Annex I or in Annex II. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class.

The risks included in a class shall not be included in any other class except in the cases referred to in Article 16.

Authorisation may be granted for two or more of the classes, where the national law of a Member State permits such classes to be pursued simultaneously.

3 In regard to non-life insurance, Member States may grant authorisation for the groups of classes listed in Part B of Annex I.

The supervisory authorities may limit authorisation requested for one of the classes to the operations set out in the scheme of operations referred to in Article 23.

4 Undertakings subject to this Directive may engage in the assistance activity referred to in Article 6 only if they have received authorisation for class 18 in Part A of Annex I, without prejudice to Article 16(1). In that event this Directive shall apply to the operations in question.

5 In regard to reinsurance, authorisation shall be granted for non-life reinsurance activity, life reinsurance activity or all kinds of reinsurance activity.

The application for authorisation shall be considered in the light of the scheme of operations to be submitted pursuant to Article 18(1)(c) and the fulfilment of the conditions laid down for authorisation by the Member State from which the authorisation is sought.

Article 16

Ancillary risks

1 An insurance undertaking which has obtained an authorisation for a principal risk belonging to one class or a group of classes as set out in Annex I may also insure risks included in another class without the need to obtain authorisation in respect of such risks provided that the risks fulfil all the following conditions:

a they are connected with the principal risk;

b they concern the object which is covered against the principal risk; and

c they are covered by the contract insuring the principal risk.

2 By way of derogation from paragraph 1, the risks included in classes 14, 15 and 17 in Part A of Annex I shall not be regarded as risks ancillary to other classes.

However, legal expenses insurance as set out in class 17 may be regarded as a risk ancillary to class 18, where the conditions laid down in paragraph 1 and either of the following conditions are fulfilled:

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a the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence; or

b the insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

Article 17

Legal form of the insurance or reinsurance undertaking

1 The home Member State shall require every undertaking for which authorisation is sought under Article 14 to adopt one of the legal forms set out in Annex III.

2 Member States may set up undertakings of a form governed by public law, provided that such bodies have insurance or reinsurance operations as their object, under conditions equivalent to those under which undertakings governed by private law operate.

[[F3]3 The Commission may adopt delegated acts in accordance with Article 301a relating to the lists of forms set out in Annex III, excluding points 28 and 29 of each of Parts A, B and C.**]**

Textual Amendments

F3 Substituted 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).

Article 18

Conditions for authorisation

1 The home Member State shall require every undertaking for which authorisation is sought:

a in regard to insurance undertakings, to limit their objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business;

b in regard to reinsurance undertakings, to limit their objects to the business of reinsurance and related operations; that requirement may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2(8) of Directive 2002/87/EC;

c to submit a scheme of operations in accordance with Article 23;

d to hold the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement provided for in Article 129(1)(d);

e to show evidence that it will be in a position to hold eligible own funds to cover the Solvency Capital Requirement, as provided for in Article 100, going forward;

f to show evidence that it will be in a position to hold eligible basic own funds to cover the Minimum Capital Requirement, as provided for in Article 128, going forward;

g to show evidence that it will be in a position to comply with the system of governance referred to in Chapter IV, Section 2;

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h in regard to non-life insurance, to communicate the name and address of all claims representatives appointed pursuant to Article 4 of Directive 2000/26/EC in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of Part A of Annex I to this Directive, other than carrier's liability.

2 An insurance undertaking seeking authorisation to extend its business to other classes or to extend an authorisation covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article 23.

It shall, in addition, be required to show proof that it possesses the eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement provided for in the first paragraph of Article 100 and Article 128.

3 Without prejudice to paragraph 2, an insurance undertaking pursuing life activities, and seeking authorisation to extend its business to the risks listed in classes 1 or 2 in Part A of Annex I as referred to in Article 73, shall demonstrate that it:

a possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in Article 129(1)(d);

b undertakes to cover the minimum financial obligations referred to in Article 74(3), going forward.

4 Without prejudice to paragraph 2, an insurance undertaking pursuing non-life activities for the risks listed in classes 1 or 2 in Part A of Annex I, and seeking authorisation to extend its business to life insurance risks as referred to in Article 73, shall demonstrate that it:

a possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in Article 129(1)(d);

b undertakes to cover the minimum financial obligations referred to in Article 74(3) going forward.

Article 19

Close links

Where close links exist between the insurance undertaking or reinsurance undertaking and other natural or legal persons, the supervisory authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The supervisory authorities shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the insurance or reinsurance undertaking has close links, or difficulties involved in the enforcement of those measures, prevent the effective exercise of their supervisory functions.

The supervisory authorities shall require insurance and reinsurance undertakings to provide them with the information they require to monitor compliance with the conditions referred to in the first paragraph on a continuous basis.

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Article 20

Head office of insurance undertakings and reinsurance undertakings

Member States shall require that the head offices of insurance and reinsurance undertakings be situated in the same Member State as their registered offices.

Article 21

Policy conditions and scales of premiums

1 Member States shall not require the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases, used in particular for calculating scales of premiums and technical provisions, or of forms and other printed documents which an undertaking intends to use in its dealings with policy holders or ceding or retro-ceding undertakings.

However, for life insurance and for the sole purpose of verifying compliance with national provisions concerning actuarial principles, the home Member State may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions. That requirement shall not constitute a prior condition for the authorisation of a life insurance undertaking.

2 Member States shall not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

3 Member States may subject undertakings seeking or having obtained authorisation for class 18 in Part A of Annex I to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to such undertakings to meet their commitments arising out of that class.

4 Member States may maintain in force or introduce laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and communication of any other documents necessary for the normal exercise of supervision.

Article 22

Economic requirements of the market

Member States shall not require that any application for authorisation be considered in the light of the economic requirements of the market.

Article 23

Scheme of operations

1 The scheme of operations referred to in Article 18(1)(c) shall include particulars or evidence of the following:

a the nature of the risks or commitments which the insurance or reinsurance undertaking concerned proposes to cover;

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b the kind of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;

c the guiding principles as to reinsurance and to retrocession;

d the basic own-fund items constituting the absolute floor of the Minimum Capital Requirement;

e estimates of the costs of setting up the administrative services and the organisation for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in Part A of Annex I, the resources at the disposal of the insurance undertaking for the provision of the assistance promised.

2 In addition to the requirements set out in paragraph 1, for the first three financial years the scheme shall include the following:

a a forecast balance sheet;

b estimates of the future Solvency Capital Requirement, as provided for in Chapter VI, Section 4, Subsection 1, on the basis of the forecast balance sheet referred to in point (a), as well as the calculation method used to derive those estimates;

c estimates of the future Minimum Capital Requirement, as provided for in Articles 128 and 129, on the basis of the forecast balance sheet referred to in point (a), as well as the calculation method used to derive those estimates;

d estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;

e in regard to non-life insurance and reinsurance, also the following:

(i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;

(ii) estimates of premiums or contributions and claims;

f in regard to life insurance, also a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

Article 24

Shareholders and members with qualifying holdings

1 The supervisory authorities of the home Member State shall not grant to an undertaking an authorisation to take up the business of insurance or reinsurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

Those authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an insurance or reinsurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.

2 For the purposes of paragraph 1, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issues whose securities are admitted to trading on a regulated market[(5)], as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

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Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point (6) of Section A of Annex I to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of the acquisition.

Article 25

Refusal of authorisation

Any decision to refuse an authorisation shall state full reasons and shall be notified to the undertaking concerned.

Each Member State shall make provision for a right to apply to the courts where an authorisation is refused.

Such provision shall also be made with regard to cases where the supervisory authorities have not dealt with an application for an authorisation within six months of the date of its receipt.

[F2*Article 25a*

Notification and publication of authorisations or withdrawals of authorisation

Every authorisation or withdrawal of authorisation shall be notified to the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA') established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[6]. The name of each insurance or reinsurance undertaking to which authorisation has been granted shall be entered on a list. EIOPA shall publish and keep up to date that list on its website.**]**

Textual Amendments

F2 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).

Article 26

Prior consultation of the authorities of other Member States

1 The supervisory authorities of any other Member State concerned shall be consulted prior to the granting of an authorisation to:

a a subsidiary of an insurance or reinsurance undertaking authorised in that Member State;

b a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in that Member State; or

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c an undertaking controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in that Member State.

2 The authorities of a Member State involved which are responsible for the supervision of credit institutions or investment firms shall be consulted prior to the granting of an authorisation to an insurance or reinsurance undertaking which is:

a a subsidiary of a credit institution or investment firm authorised in the Community;

b a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or

c an undertaking controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

3 The relevant authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions involved in the management of another entity of the same group.

They shall inform each other of any information regarding the suitability of shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions which is of relevance to the other competent authorities concerned for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

CHAPTER III

Supervisory authorities and general rules

Article 27

Main objective of supervision

Member States shall ensure that the supervisory authorities are provided with the necessary means, and have the relevant expertise, capacity, and mandate to achieve the main objective of supervision, namely the protection of policy holders and beneficiaries.

Article 28

Financial stability and pro-cyclicality

Without prejudice to the main objective of supervision as set out in Article 27, Member States shall ensure that, in the exercise of their general duties, supervisory authorities shall duly consider the potential impact of their decisions on the stability of the financial systems concerned in the European Union, in particular in emergency situations, taking into account the information available at the relevant time.

In times of exceptional movements in the financial markets, supervisory authorities shall take into account the potential pro-cyclical effects of their actions.

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Article 29

General principles of supervision

1 Supervision shall be based on a prospective and risk-based approach. It shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.

2 Supervision of insurance and reinsurance undertakings shall comprise an appropriate combination of off-site activities and on-site inspections.

3 Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.

[[F3]4 The delegated acts and the regulatory and implementing technical standards adopted by the Commission shall take into account the principle of proportionality, thus ensuring the proportionate application of this Directive, in particular in relation to small insurance undertakings.

The draft regulatory technical standards submitted by EIOPA in accordance with Article 10 to 14 of Regulation (EU) No 1094/2010, the draft implementing technical standards submitted in accordance with Article 15 thereof and the guidelines and recommendations issued in accordance with Article 16 thereof, shall take into account the principle of proportionality, thus ensuring the proportionate application of this Directive, in particular in relation to small insurance undertakings.**]**

Textual Amendments

F3 Substituted 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).

Article 30

Supervisory authorities and scope of supervision

1 The financial supervision of insurance and reinsurance undertakings, including that of the business they pursue either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State.

2 Financial supervision pursuant to paragraph 1 shall include verification, with respect to the entire business of the insurance and reinsurance undertaking, of its state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds, in accordance with the rules laid down or practices followed in the home Member State under provisions adopted at Community level.

Where the insurance undertaking concerned is authorised to cover the risks classified in class 18 in Part A of Annex I, supervision shall extend to monitoring of the technical

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resources which the insurance undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform, where the law of the home Member State provides for the monitoring of such resources.

3 If the supervisory authorities of the Member State in which the risk is situated or the Member State of the commitment or, in case of a reinsurance undertaking, the supervisory authorities of the host Member State, have reason to consider that the activities of an insurance or reinsurance undertaking might affect its financial soundness, they shall inform the supervisory authorities of the home Member State of that undertaking.

The supervisory authorities of the home Member State shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.

Article 31

Transparency and accountability

1 The supervisory authorities shall conduct their tasks in a transparent and accountable manner with due respect for the protection of confidential information.

2 Member States shall ensure that the following information is disclosed:

a the texts of laws, regulations, administrative rules and general guidance in the field of insurance regulation;

b the general criteria and methods, including the tools developed in accordance with Article 34(4), used in the supervisory review process as set out in Article 36;

c aggregate statistical data on key aspects of the application of the prudential framework;

d the manner of exercise of the options provided for in this Directive;

e the objectives of the supervision and its main functions and activities.

The disclosure provided for in the first subparagraph shall be sufficient to enable a comparison of the supervisory approaches adopted by the supervisory authorities of the different Member States.

The disclosure shall be made in a common format and be updated regularly. The information referred to in points (a) to (e) of the first subparagraph shall be accessible at a single electronic location in each Member State.

3 Member States shall provide for transparent procedures regarding the appointment and dismissal of the members of the governing and managing bodies of their supervisory authorities.

[[F3]4 Without prejudice to Article 35, Article 51, Article 254(2) and Article 256, the Commission shall adopt delegated acts in accordance with Article 301a relating to paragraph 2 of this Article, specifying the key aspects on which aggregate statistical data are to be disclosed, and the contents list and publication date of the disclosures.

5 In order to ensure uniform conditions relating to the application of paragraph 2 of this Article, and without prejudice to Article 35, Article 51, Article 254(2) and Article 256, EIOPA shall develop draft implementing technical standards to specify the templates and structure of the disclosure provided for in this Article.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 September 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

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Textual Amendments

F3 Substituted 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).

Article 32

Prohibition of refusal of reinsurance contracts or retrocession contracts

1 The home Member State of an insurance undertaking shall not refuse a reinsurance contract concluded with a reinsurance undertaking or an insurance undertaking authorised in accordance with Article 14 on grounds directly related to the financial soundness of that reinsurance undertaking or that insurance undertaking.

2 The home Member State of the reinsurance undertaking shall not refuse a retrocession contract concluded by a reinsurance undertaking with a reinsurance undertaking or an insurance undertaking authorised in accordance with Article 14 on grounds directly related to the financial soundness of that reinsurance undertaking or that insurance undertaking.

Article 33

Supervision of branches established in another Member State

Member States shall provide that, where an insurance or reinsurance undertaking authorised in another Member State carries on business through a branch, the supervisory authorities of the home Member State may, after having informed the supervisory authorities of the host Member State concerned, carry out themselves, or through the intermediary of persons appointed for that purpose, on-site verifications of the information necessary to ensure the financial supervision of the undertaking.

The authorities of the host Member State concerned may participate in those verifications.

[[F2]Where a supervisory authority has informed the supervisory authorities of a host Member State that it intends to carry out on-site verifications in accordance with the first paragraph and where that supervisory authority is prohibited from exercising its right to carry out those on-site verifications or where the supervisory authorities of the host Member State are unable in practice to exercise their right to participate in accordance with the second paragraph, the supervisory authorities 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.

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

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Textual Amendments

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Article 34

General supervisory powers

1 Member States shall ensure that the supervisory authorities have the power to take preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions with which they have to comply in each Member State.

2 The supervisory authorities shall have the power to take any necessary measures, including where appropriate, those of an administrative or financial nature, with regard to insurance or reinsurance undertakings, and the members of their administrative, management or supervisory body.

3 Member States shall ensure that supervisory authorities have the power to require all information necessary to conduct supervision in accordance with Article 35.

4 Member States shall ensure that supervisory authorities have the power to develop, in addition to the calculation of the Solvency Capital Requirement and where appropriate, necessary quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. The supervisory authorities shall have the power to require that corresponding tests are performed by the undertakings.

5 The supervisory authorities shall have the power to carry out on-site investigations at the premises of the insurance and reinsurance undertakings.

6 Supervisory powers shall be applied in a timely and proportionate manner.

7 The powers with regard to insurance and reinsurance undertakings referred to in paragraphs 1 to 5 shall also be available with regard to outsourced activities of insurance and reinsurance undertakings.

8 The powers referred to in paragraphs 1 to 5 and 7 shall be exercised, if need be by enforcement and, where appropriate, through judicial channels.

Article 35

Information to be provided for supervisory purposes

[[F3]1 Member States shall require insurance and reinsurance undertakings to submit to the supervisory authorities the information which is necessary for the purposes of supervision, taking into account the objectives of supervision laid down in Articles 27 and 28. Such

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information shall include at least the information necessary for the following when performing the process referred to in Article 36:**]**

a to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, needs and management;

b to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.

2 Member States shall ensure that the supervisory authorities have the following powers:

a to determine the nature, the scope and the format of the information referred to in paragraph 1 which they require insurance and reinsurance undertakings to submit at the following points in time:

(i) at predefined periods;

(ii) upon occurrence of predefined events;

(iii) during enquiries regarding the situation of an insurance or reinsurance undertaking;

b to obtain any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties; and

c to require information from external experts, such as auditors and actuaries.

3 The information referred to in paragraphs 1 and 2 shall comprise the following:

a qualitative or quantitative elements, or any appropriate combination thereof;

b historic, current or prospective elements, or any appropriate combination thereof; and

c data from internal or external sources, or any appropriate combination thereof.

4 The information referred to in paragraphs 1 and 2 shall comply with the following principles:

a it must reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in that business;

b it must be accessible, complete in all material respects, comparable and consistent over time; and

c it must be relevant, reliable and comprehensible.

5 Member States shall require insurance and reinsurance undertakings to have appropriate systems and structures in place to fulfil the requirements laid down in paragraphs 1 to 4 as well as a written policy, approved by the administrative, management or supervisory body of the insurance or reinsurance undertaking, ensuring the ongoing appropriateness of the information submitted.

[F3 6 Without prejudice to Article 129(4), where the predefined periods referred to in paragraph 2(a)(i) are shorter than one year, the supervisory authorities concerned may limit regular supervisory reporting, where:

a the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

b the information is reported at least annually.

Supervisory authorities shall not limit regular supervisory reporting with a frequency shorter than one year in the case of insurance or reinsurance undertakings that are part of a group within the meaning of Article 212(1)(c), unless the undertaking can demonstrate to the satisfaction of the supervisory authority that regular supervisory reporting with a

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frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.

The limitation to regular supervisory reporting shall be granted only to undertakings that do not represent more than 20 % of a Member State's life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

Supervisory authorities shall give priority to the smallest undertakings when determining the eligibility of the undertakings for those limitations.

7 The supervisory authorities concerned may limit regular supervisory reporting or exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where:

a the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

b the submission of that information is not necessary for the effective supervision of the undertaking;

c the exemption does not undermine the stability of the financial systems concerned in the Union; and

d the undertaking is able to provide the information on an ad-hoc basis.

Supervisory authorities shall not exempt from reporting on an item-by-item basis insurance or reinsurance undertakings that are part of a group within the meaning of Article 212(1)(c), unless the undertaking can demonstrate to the satisfaction of the supervisory authority that reporting on an item-by-tem basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

The exemption from reporting on an item-by-item basis shall be granted only to undertakings that do not represent more than 20 % of a Member State's life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

Supervisory authorities shall give priority to the smallest undertakings when determining the eligibility of the undertakings for those exemptions.

8 For the purposes of paragraphs 6 and 7, as part of the supervisory review process, supervisory authorities shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least:

a the volume of premiums, technical provisions and assets of the undertaking;

b the volatility of the claims and benefits covered by the undertaking;

c the market risks that the investments of the undertaking give rise to;

d the level of risk concentrations;

e the total number of classes of life and non-life insurance for which authorisation is granted;

f possible effects of the management of the assets of the undertaking on financial stability;

g the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in paragraph 5;

h the appropriateness of the system of governance of the undertaking;

i the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement;

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j whether the undertaking is a captive insurance or reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

9 The Commission shall adopt delegated acts in accordance with Article 301a specifying the information referred to in paragraphs 1 to 4 of this Article and the deadlines for the submission of that information, with a view to ensuring to the appropriate extent convergence of supervisory reporting.

10 In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on regular supervisory reporting with regard to the templates for the submission of information to the supervisory authorities referred to in paragraphs 1 and 2.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

11 In order to enhance a coherent and consistent application of paragraphs 6 and 7, EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to further specify the methods to be used when determining the market shares referred to in the third subparagraph of paragraphs 6 and 7.**]**

Textual Amendments

F3 Substituted 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).

Article 36

Supervisory review process

1 Member States shall ensure that the supervisory authorities review and evaluate the strategies, processes and reporting procedures which are established by the insurance and reinsurance undertakings to comply with the laws, regulations and administrative provisions adopted pursuant to this Directive.

That review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.

2 The supervisory authorities shall in particular review and evaluate compliance with the following:

a the system of governance, including the own-risk and solvency assessment, as set out in Chapter IV, Section 2;

b the technical provisions as set out in Chapter VI, Section 2;

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c the capital requirements as set out in Chapter VI, Sections 4 and 5;

d the investment rules as set out in Chapter VI, Section 6;

e the quality and quantity of own funds as set out in Chapter VI, Section 3;

f where the insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in Chapter VI, Section 4, Subsection 3.

3 The supervisory authorities shall have in place appropriate monitoring tools that enable them to identify deteriorating financial conditions in an insurance or reinsurance undertaking and to monitor how that deterioration is remedied.

4 The supervisory authorities shall assess the adequacy of the methods and practices of the insurance and reinsurance undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned.

The supervisory authorities shall assess the ability of the undertakings to withstand those possible events or future changes in economic conditions.

5 The supervisory authorities shall have the necessary powers to require insurance and reinsurance undertakings to remedy weaknesses or deficiencies identified in the supervisory review process.

6 The reviews, evaluations and assessments referred to in paragraphs 1, 2 and 4 shall be conducted regularly.

The supervisory authorities shall establish the minimum frequency and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

Article 37

Capital add-on

1 Following the supervisory review process supervisory authorities may in exceptional circumstances set a capital add-on for an insurance or reinsurance undertaking by a decision stating the reasons. That possibility shall exist only in the following cases:

a the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with Chapter VI, Section 4, Subsection 2 and:

(i) the requirement to use an internal model under Article 119 is inappropriate or has been ineffective; or

(ii) while a partial or full internal model is being developed in accordance with Article 119;

[[F3]b the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with Chapter VI, Section 4, Subsection 3, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;**]**

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c the supervisory authority concludes that the system of governance of an insurance or reinsurance undertaking deviates significantly from the standards laid down in Chapter IV, Section 2, that those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe**[**F3;**]**

[F2d the insurance or reinsurance undertaking applies the matching adjustment referred to in Article 77b, the volatility adjustment referred to in Article 77d or the transitional measures referred to in Articles 308c and 308d and the supervisory authority concludes that the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures.**]**

[F32 In the circumstances set out in points (a) and (b) of paragraph 1, the capital add-on shall be calculated in such a way as to ensure that the undertaking complies with Article 101(3).

In the circumstances set out in paragraph 1(c) the capital add-on shall be proportionate to the material risks arising from the deficiencies which gave rise to the decision of the supervisory authority to set the add-on.

In the circumstances set out in paragraph 1(d), the capital add-on shall be proportionate to the material risks arising from the deviation referred to in that paragraph.**]**

3 In the cases set out in points (b) and (c) of paragraph 1 the supervisory authority shall ensure that the insurance or reinsurance undertaking makes every effort to remedy the deficiencies that led to the imposition of the capital add-on.

4 The capital add-on referred to in paragraph 1 shall be reviewed at least once a year by the supervisory authority and be removed when the undertaking has remedied the deficiencies which led to its imposition.

5 The Solvency Capital Requirement including the capital add-on imposed shall replace the inadequate Solvency Capital Requirement.

Notwithstanding the first subparagraph the Solvency Capital Requirement shall not include the capital add-on imposed in accordance with paragraph 1(c) for the purposes of the calculation of the risk margin referred to in Article 77(5).

[F36 The Commission shall adopt delegated acts in accordance with Article 301a laying down further specifications for the circumstances under which a capital add-on may be imposed.

7 The Commission shall adopt delegated acts in accordance with Article 301a laying down further specifications for the methodologies for the calculation of capital add-ons.

8 In order to ensure uniform conditions of application in relation to this Article, EIOPA shall develop draft implementing technical standards on the procedures for decisions to set, calculate and remove capital add-ons.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 September 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

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Textual Amendments

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F3 Substituted 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).

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.

[[F2]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.

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

F2 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).

Article 39

Transfer of portfolio

1 Under the conditions laid down by national law, Member States shall authorise insurance and reinsurance undertakings with head offices within their territory to transfer all or part of their portfolios of contracts, concluded either under the right of establishment or the freedom to provide services, to an accepting undertaking established within the Community.

Such transfer shall be authorised only if the supervisory authorities of the home Member State of the accepting undertaking certify that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in the first paragraph of Article 100.

2 In the case of insurance undertakings paragraphs 3 to 6 shall apply.

3 Where a branch proposes to transfer all or part of its portfolio of contracts, the Member State where that branch is situated shall be consulted.

4 In the circumstances referred to in paragraphs 1 and 3, the supervisory authorities of the home Member State of the transferring insurance undertaking shall authorise the transfer after obtaining the agreement of the authorities of the Member States where the contracts were concluded, either under the right of establishment or the freedom to provide services.

5 The authorities of the Member States consulted shall give their opinion or consent to the authorities of the home Member State of the transferring insurance undertaking within three months of receiving a request for consultation.

The absence of any response within that period from the authorities consulted shall be considered as tacit consent.

6 A transfer of portfolio authorised in accordance with paragraphs 1 to 5 shall be published either prior to or following authorisation, as laid down by the national law of the home Member State, of the Member State in which the risk is situated, or of the Member State of the commitment.

Such transfers shall automatically be valid against policy holders, the insured persons and any other person having rights or obligations arising out of the contracts transferred.

The first and second subparagraphs of this paragraph shall not affect the right of the Member States to give policy holders the option of cancelling contracts within a fixed period after a transfer.

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CHAPTER IV

Conditions governing business

Section 1

Responsibility of the administrative, management or supervisory body

Article 40

Responsibility of the administrative, management or supervisory body

Member States shall ensure that the administrative, management or supervisory body of the insurance or reinsurance undertaking has the ultimate responsibility for the compliance, by the undertaking concerned, with the laws, regulations and administrative provisions adopted pursuant to this Directive.

Section 2

System of governance

Article 41

General governance requirements

1 Member States shall require all insurance and reinsurance undertakings to have in place an effective system of governance which provides for sound and prudent management of the business.

That system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. It shall include compliance with the requirements laid down in Articles 42 to 49.

The system of governance shall be subject to regular internal review.

2 The system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

3 Insurance and reinsurance undertakings shall have written policies in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing. They shall ensure that those policies are implemented.

Those written policies shall be reviewed at least annually. They shall be subject to prior approval by the administrative, management or supervisory body and be adapted in view of any significant change in the system or area concerned.

4 Insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and procedures.

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5 The supervisory authorities shall have appropriate means, methods and powers for verifying the system of governance of the insurance and reinsurance undertakings and for evaluating emerging risks identified by those undertakings which may affect their financial soundness.

The Member States shall ensure that the supervisory authorities have the powers necessary to require that the system of governance be improved and strengthened to ensure compliance with the requirements set out in Articles 42 to 49.

Article 42

Fit and proper requirements for persons who effectively run the undertaking or have other key functions

1 Insurance and reinsurance undertakings shall ensure that all persons who effectively run the undertaking or have other key functions at all times fulfil the following requirements:

a their professional qualifications, knowledge and experience are adequate to enable sound and prudent management (fit); and

b they are of good repute and integrity (proper).

2 Insurance and reinsurance undertakings shall notify the supervisory authority of any changes to the identity of the persons who effectively run the undertaking or are responsible for other key functions, along with all information needed to assess whether any new persons appointed to manage the undertaking are fit and proper.

3 Insurance and reinsurance undertakings shall notify their supervisory authority if any of the persons referred to in paragraphs 1 and 2 have been replaced because they no longer fulfil the requirements referred to in paragraph 1.

Article 43

Proof of good repute

1 Where a Member State requires of its own nationals proof of good repute, proof of no previous bankruptcy, or both, that Member State shall accept as sufficient evidence in respect of nationals of other Member States the production of an extract from the judicial record or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the home Member State or the Member State from which the foreign national comes showing that those requirements have been met.

2 Where the home Member State or the Member State from which the foreign national concerned comes does not issue the document referred to in paragraph 1, it may be replaced by a declaration on oath – or in Member States where there is no provision for declaration on oath by a solemn declaration – made by the foreign national concerned before a competent judicial or administrative authority or, where appropriate, a notary in the home Member State or the Member State from which that foreign national comes.

Such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

The declaration referred to in the first subparagraph in respect of no previous bankruptcy may also be made before a competent professional or trade body in the Member State concerned.

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3 The documents and certificates referred to in paragraphs 1 and 2 shall not be presented more than three months after their date of issue.

4 Member States shall designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 and shall forthwith inform the other Member States and the Commission thereof.

Each Member State shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in paragraphs 1 and 2 are to be submitted in support of an application to pursue in the territory of that Member State the activities referred to in Article 2.

Article 44

Risk management

1 Insurance and reinsurance undertakings shall have in place an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.

That risk-management system shall be effective and well integrated into the organisational structure and in the decision-making processes of the insurance or reinsurance undertaking with proper consideration of the persons who effectively run the undertaking or have other key functions.

2 The risk-management system shall cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in Article 101(4) as well as the risks which are not or not fully included in the calculation thereof.

The risk-management system shall cover at least the following areas:

a underwriting and reserving;
b asset–liability management;
c investment, in particular derivatives and similar commitments;
d liquidity and concentration risk management;
e operational risk management;
f reinsurance and other risk-mitigation techniques.

The written policy on risk management referred to in Article 41(3) shall comprise policies relating to points (a) to (f) of the second subparagraph of this paragraph.

[[F2]Where insurance or reinsurance undertakings apply the matching adjustment referred to in Article 77b or the volatility adjustment referred to in Article 77d, they shall set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.**]**

[[F2]2a As regards asset-liability management, insurance and reinsurance undertakings shall regularly assess:

a the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in Article 77a;
b where the matching adjustment referred to in Article 77b is applied:
    (i) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including

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the calculation of the fundamental spread referred to in Article 77c(1)(b), and the possible effect of a forced sale of assets on their eligible own funds;

(ii) the sensitivity of their technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets;

(iii) the impact of a reduction of the matching adjustment to zero;

c where the volatility adjustment referred to in Article 77d is applied:

(i) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on their eligible own funds;

(ii) the impact of a reduction of the volatility adjustment to zero.

Insurance and reinsurance undertakings shall submit the assessments referred to in points (a), (b) and (c) of the first subparagraph annually to the supervisory authority as part of the information reported under Article 35. Where the reduction of the matching adjustment or the volatility adjustment to zero would result in non-compliance with the Solvency Capital Requirement, the undertaking shall also submit an analysis of the measures it could apply in such a situation to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to restore compliance with the Solvency Capital Requirement.

Where the volatility adjustment referred to in Article 77d is applied, the written policy on risk management referred to in Article 41(3) shall comprise a policy on the criteria for the application of the volatility adjustment.**]**

3 As regards investment risk, insurance and reinsurance undertakings shall demonstrate that they comply with Chapter VI, Section 6.

4 Insurance and reinsurance undertakings shall provide for a risk-management function which shall be structured in such a way as to facilitate the implementation of the risk-management system.

[F2 4a In order to avoid overreliance on external credit assessment institutions when they use external credit rating assessment in the calculation of technical provisions and the Solvency Capital Requirement, insurance and reinsurance undertakings shall assess the appropriateness of those external credit assessments as part of their risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.

In order to ensure uniform conditions of application of this paragraph, EIOPA shall develop draft implementing technical standards on the procedures for assessing external credit assessments.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

5 For insurance and reinsurance undertakings using a partial or full internal model approved in accordance with Articles 112 and 113 the risk-management function shall cover the following additional tasks:

a to design and implement the internal model;

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b to test and validate the internal model;

c to document the internal model and any subsequent changes made to it;

d to analyse the performance of the internal model and to produce summary reports thereof;

e to inform the administrative, management or supervisory body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses.

Textual Amendments

F2 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).

Article 45

Own risk and solvency assessment

1 As part of its risk-management system every insurance undertaking and reinsurance undertaking shall conduct its own risk and solvency assessment.

That assessment shall include at least the following:

a the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

b the compliance, on a continuous basis, with the capital requirements, as laid down in Chapter VI, Sections 4 and 5 and with the requirements regarding technical provisions, as laid down in Chapter VI, Section 2;

c the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the Solvency Capital Requirement as laid down in Article 101(3), calculated with the standard formula in accordance with Chapter VI, Section 4, Subsection 2 or with its partial or full internal model in accordance with Chapter VI, Section 4, Subsection 3.

2 For the purposes of paragraph 1(a), the undertaking concerned shall have in place processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed. The undertaking shall demonstrate the methods used in that assessment.

[F2 2a Where the insurance or reinsurance undertaking applies the matching adjustment referred to in Article 77b, the volatility adjustment referred to in Article 77d or the transitional measures referred to in Article 308c and 308d, they shall perform the assessment of compliance with the capital requirements referred to in paragraph 1(b) with and without taking into account those adjustments and transitional measures.**]**

3 In the case referred to in paragraph 1(c), when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

4 The own-risk and solvency assessment shall be an integral part of the business strategy and shall be taken into account on an ongoing basis in the strategic decisions of the undertaking.

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5 Insurance and reinsurance undertakings shall perform the assessment referred to in paragraph 1 regularly and without any delay following any significant change in their risk profile.

6 The insurance and reinsurance undertakings shall inform the supervisory authorities of the results of each own-risk and solvency assessment as part of the information reported under Article 35.

7 The own-risk and solvency assessment shall not serve to calculate a capital requirement. The Solvency Capital Requirement shall be adjusted only in accordance with Articles 37, 231 to 233 and 238.

Textual Amendments

F2 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).

Article 46

Internal control

1 Insurance and reinsurance undertakings shall have in place an effective internal control system.

That system shall at least include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a compliance function.

2 The compliance function shall include advising the administrative, management or supervisory body on compliance with the laws, regulations and administrative provisions adopted pursuant to this Directive. It shall also include an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking concerned and the identification and assessment of compliance risk.

Article 47

Internal audit

1 Insurance and reinsurance undertakings shall provide for an effective internal audit function.

The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.

2 The internal audit function shall be objective and independent from the operational functions.

3 Any findings and recommendations of the internal audit shall be reported to the administrative, management or supervisory body which shall determine what actions are to be

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taken with respect to each of the internal audit findings and recommendations and shall ensure that those actions are carried out.

Article 48

Actuarial function

1 Insurance and reinsurance undertakings shall provide for an effective actuarial function to:

a coordinate the calculation of technical provisions;

b ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;

c assess the sufficiency and quality of the data used in the calculation of technical provisions;

d compare best estimates against experience;

e inform the administrative, management or supervisory body of the reliability and adequacy of the calculation of technical provisions;

f oversee the calculation of technical provisions in the cases set out in Article 82;

g express an opinion on the overall underwriting policy;

h express an opinion on the adequacy of reinsurance arrangements; and

i contribute to the effective implementation of the risk-management system referred to in Article 44, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Chapter VI, Sections 4 and 5, and to the assessment referred to in Article 45.

2 The actuarial function shall be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the insurance or reinsurance undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

Article 49

Outsourcing

1 Member States shall ensure that insurance and reinsurance undertakings remain fully responsible for discharging all of their obligations under this Directive when they outsource functions or any insurance or reinsurance activities.

2 Outsourcing of critical or important operational functions or activities shall not be undertaken in such a way as to lead to any of the following:

a materially impairing the quality of the system of governance of the undertaking concerned;

b unduly increasing the operational risk;

c impairing the ability of the supervisory authorities to monitor the compliance of the undertaking with its obligations;

d undermining continuous and satisfactory service to policy holders.

3 Insurance and reinsurance undertakings shall, in a timely manner, notify the supervisory authorities prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities.

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[F3 Article 50

Delegated acts and regulatory technical standards

1 The Commission shall adopt delegated acts in accordance with Article 301a to further specify the following:

a the elements of the systems referred to in Articles 41, 44, 46 and 47, and in particular the areas to be covered by the asset–liability management and investment policy, as referred to in Article 44(2), of insurance and reinsurance undertakings;

b the functions referred to in Articles 44, 46, 47 and 48.

2 In order to ensure consistent harmonisation in relation to this Section, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to further specify the following:

a the requirements set out in Article 42 and the functions subject thereto;

b the conditions for outsourcing, in particular to service providers located in third countries.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

3 In order to ensure consistent harmonisation in relation to the assessment referred to in Article 45(1)(a), EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to further specify the elements of that assessment.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F3 Substituted 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).

Section 3

Public disclosure

Article 51

Report on solvency and financial condition: contents

1 Member States shall, taking into account the information required in paragraph 3 and the principles set out in paragraph 4 of Article 35, require insurance and reinsurance undertakings to disclose publicly, on an annual basis, a report on their solvency and financial condition.

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That report shall contain the following information, either in full or by way of references to equivalent information, both in nature and scope, disclosed publicly under other legal or regulatory requirements:

a a description of the business and the performance of the undertaking;

b a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;

c a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;

d a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;

e a description of the capital management, including at least the following:

(i) the structure and amount of own funds, and their quality;

(ii) the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;

(iii) the option set out in Article 304 used for the calculation of the Solvency Capital Requirement;

(iv) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;

(v) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

[[F2]1a Where the matching adjustment referred to in Article 77b is applied, the description referred to in paragraph 1(d) shall include a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position.

The description referred to in paragraph 1(d) shall also include a statement on whether the volatility adjustment referred to in Article 77d is used by the undertaking and a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.**]**

2 The description referred to in point (e)(i) of paragraph 1 shall include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

The disclosure of the Solvency Capital Requirement referred to in point (e)(ii) of paragraph 1 shall show separately the amount calculated in accordance with Chapter VI, Section 4, Subsections 2 and 3 and any capital add-on imposed in accordance with Article 37 or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with Article 110, together with concise information on its justification by the supervisory authority concerned.

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[F3However, and without prejudice to any disclosure that is mandatory under any other legal or regulatory requirements, Member States may provide that, although the total Solvency Capital Requirement referred to in paragraph 1(e)(ii) is disclosed, the capital add-on or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with Article 110 need not be separately disclosed during a transitional period ending no later than 31 December 2020.]

The disclosure of the Solvency Capital Requirement shall be accompanied, where applicable, by an indication that its final amount is still subject to supervisory assessment.

Textual Amendments

F2 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).

F3 Substituted 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).

[F3 *Article 52*

Information for and reports by the European Insurance and Occupational Pensions Authority

1 Without prejudice to Article 35 of Regulation (EU) No 1094/2010, Member States shall require the supervisory authorities to provide the following information to EIOPA on an annual basis:

a the average capital add-on per undertaking and the distribution of capital add-ons imposed by the supervisory authority during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately for:

(i) insurance and reinsurance undertakings;

(ii) life insurance undertakings;

(iii) non-life insurance undertakings;

(iv) insurance undertakings pursuing both life and non-life activities;

(v) reinsurance undertakings;

b for each of the disclosures set out in point (a) of this paragraph, the proportion of capital add-ons imposed under Article 37(1)(a), (b) and (c) respectively;

c the number of insurance and reinsurance undertakings benefiting from the limitation from regular supervisory reporting and the number of insurance and reinsurance undertakings benefiting from the exemption of reporting on an item-by-item basis referred to in Article 35(6) and (7), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the

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total volume of capital requirements, premiums, technical provisions and assets of the insurance and reinsurance undertakings of the Member State;

d the number of groups benefiting from the limitation from regular supervisory reporting and the number of groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 254(2) together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all the groups.

2 EIOPA shall publicly disclose, on an annual basis, the following information:

a for all Member States together, the total distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, for each of the following:

(i) insurance and reinsurance undertakings;

(ii) life insurance undertakings;

(iii) non-life insurance undertakings;

(iv) insurance undertakings pursuing both life and non-life activities;

(v) reinsurance undertakings;

b for each Member State separately, the distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, covering all insurance and reinsurance undertakings in that Member State;

c for each of the disclosures referred to in points (a) and (b) of this paragraph, the proportion of capital add-ons imposed under Article 37(1)(a), (b) and (c) respectively;

d for all Member States collectively, the total number of insurance and reinsurance undertakings and groups benefiting from the limitation from regular supervisory reporting and the total number of insurance and reinsurance undertakings and groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 35(6) and (7) and Article 254(2), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all insurance and reinsurance undertakings and groups;

e for each Member State separately, the number of insurance and reinsurance undertakings and groups benefiting from the limitation from regular supervisory reporting and the number of insurance and reinsurance undertakings and groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 35(6) and (7) and Article 254(2), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of premiums, technical provisions and assets of the insurance and reinsurance undertakings and groups of the Member State.

3 EIOPA shall provide the information referred to in paragraph 2 to the European Parliament, the Council and the Commission, together with a report outlining the degree of supervisory convergence in the use of capital add-ons between supervisory authorities in the different Member States.**]**

Textual Amendments

F3 Substituted 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

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Article 53

Report on solvency and financial condition: applicable principles

1 Supervisory authorities shall permit insurance and reinsurance undertakings not to disclose information where:

a by disclosing such information, the competitors of the undertaking would gain significant undue advantage;

b there are obligations to policy holders or other counterparty relationships binding an undertaking to secrecy or confidentiality.

2 Where non-disclosure of information is permitted by the supervisory authority, undertakings shall make a statement to this effect in their report on solvency and financial condition and shall state the reasons.

3 Supervisory authorities shall permit insurance and reinsurance undertakings, to make use of – or refer to – public disclosures made under other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information required under Article 51 in both their nature and scope.

4 Paragraphs 1 and 2 shall not apply to the information referred to in Article 51(1)(e).

Article 54

Report on solvency and financial condition: updates and additional voluntary information

1 In the event of any major development affecting significantly the relevance of the information disclosed in accordance with Articles 51 and 53, insurance and reinsurance undertakings shall disclose appropriate information on the nature and effects of that major development.

For the purposes of the first subparagraph, at least the following shall be regarded as major developments:

a non-compliance with the Minimum Capital Requirement is observed and the supervisory authorities either consider that the undertaking will not be able to submit a realistic short-term finance scheme or do not obtain such a scheme within one month of the date when non-compliance was observed;

b significant non-compliance with the Solvency Capital Requirement is observed and the supervisory authorities do not obtain a realistic recovery plan within two months of the date when non-compliance was observed.

In regard to point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved three months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

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In regard to point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved six months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

2 Insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with Articles 51 and 53 and paragraph 1 of this Article.

Article 55

Report on solvency and financial condition: policy and approval

1 Member States shall require insurance and reinsurance undertakings to have appropriate systems and structures in place to fulfil the requirements laid down in Articles 51 and 53 and Article 54(1), as well as to have a written policy ensuring the ongoing appropriateness of any information disclosed in accordance with Articles 51, 53 and 54.

2 The solvency and financial condition report shall be subject to approval by the administrative, management or supervisory body of the insurance or reinsurance undertaking and be published only after that approval.

[*F3 Article 56*

Solvency and financial condition report: delegated acts and implementing technical standards

The Commission shall adopt delegated acts in accordance with Article 301a further specifying the information which must be disclosed and the deadlines for the annual disclosure of the information in accordance with Section 3.

In order to ensure uniform conditions of application of this Section, EIOPA shall develop draft implementing technical standards on the procedures, formats and templates.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second paragraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F3 Substituted 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).

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Section 4

Qualifying holdings

Article 57

Acquisitions

1 Member States shall require any natural or legal person or such persons acting in concert (the proposed acquirer) who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an insurance or reinsurance undertaking or to further increase, directly or indirectly, such a qualifying holding in an insurance or reinsurance undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the insurance or reinsurance undertaking would become its subsidiary (the proposed acquisition), first to notify in writing the supervisory authorities of the insurance or reinsurance undertaking in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 59(4). Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one third.

2 Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an insurance or reinsurance undertaking first to notify in writing the supervisory authorities of the home Member State, indicating the size of that person's holding after the intended disposal. Such a person shall likewise notify the supervisory authorities of a decision to reduce that person's qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the insurance or reinsurance undertaking would cease to be a subsidiary of that person. Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one third.

Article 58

Assessment period

1 The supervisory authorities shall, promptly and in any event within two working days following receipt of the notification required under Article 57(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2, acknowledge receipt thereof in writing to the proposed acquirer.

The supervisory authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 59(4) (the assessment period), to carry out the assessment provided for in Article 59(1) (the assessment).

The supervisory authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

2 The supervisory authorities may, during the assessment period, if necessary, and no later than on the fiftieth working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

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For the period between the date of request for information by the supervisory authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. That interruption shall not exceed 20 working days. Any further requests by the supervisory authorities for completion or clarification of the information shall be at their discretion but shall not result in an interruption of the assessment period.

3 The supervisory authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is:

a situated or regulated outside the Community; or

b a natural or legal person not subject to supervision under this Directive, Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[(7)], Directive 2004/39/EC, or Directive 2006/48/EC.

4 If the supervisory authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing stating the reasons. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the supervisory authority to make such disclosure in the absence of a request by the proposed acquirer.

5 If the supervisory authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

6 The supervisory authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

7 Member States shall not impose requirements for the notification to and approval by the supervisory authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

[[F3]8 In order to ensure consistent harmonisation in relation to this Section, EIOPA may develop draft regulatory technical standards to establish an exhaustive list of information, referred to in Article 59(4), to be included by proposed acquirers in their notification, without prejudice to Article 58(2).

In order to ensure consistent harmonisation in relation to this Section and to take account of future developments, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the adjustments of the criteria set out in Article 59(1).

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first and second subparagraphs in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

9 In order to ensure uniform conditions of application of this Directive, EIOPA may develop draft implementing technical standards on the procedures, forms and templates for the consultation process between the relevant supervisory authorities as referred to in Article 60.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

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Textual Amendments

F3 Substituted 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).

Article 59

Assessment

1 In assessing the notification provided for in Article 57(1) and the information referred to in Article 58(2) the supervisory authorities shall, in order to ensure the sound and prudent management of the insurance or reinsurance undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the insurance or reinsurance undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

a the reputation of the proposed acquirer;

b the reputation and experience of any person who will direct the business of the insurance or reinsurance undertaking as a result of the proposed acquisition;

c the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance or reinsurance undertaking in which the acquisition is proposed;

d whether the insurance or reinsurance undertaking will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, notably, Directive 2002/87/EC, in particular, whether the group of which it will become part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the supervisory authorities and determine the allocation of responsibilities among the supervisory authorities;

e whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[8] is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2 The supervisory authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3 Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their supervisory authorities to examine the proposed acquisition in terms of the economic needs of the market.

4 Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the supervisory authorities at the time of notification referred to in Article 57(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

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5 Notwithstanding Article 58(1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same insurance or reinsurance undertaking have been notified to the supervisory authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Article 60

Acquisitions by regulated financial undertakings

1 The relevant supervisory authorities shall work in full consultation with each other when carrying out the assessment if the proposed acquirer is one of the following:

a a credit institution, insurance or reinsurance undertaking, investment firm or management company within the meaning of point 2 of Article 1a of Directive 85/611/EEC (the UCITS management company) authorised in another Member State or in a sector other than that in which the acquisition is proposed;

b the parent undertaking of a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or

c a natural or legal person controlling a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

2 The supervisory authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the supervisory authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the supervisory authority that has authorised the insurance or reinsurance undertaking in which the acquisition is proposed shall indicate any views or reservations expressed by the supervisory authority responsible for the proposed acquirer.

Article 61

Information to the supervisory authority by the insurance or reinsurance undertaking

On becoming aware of them, the insurance or reinsurance undertaking shall inform the supervisory authority of its home Member State of any acquisitions or disposals of holdings in its capital that cause those holdings to exceed or fall below any of the thresholds referred to in Article 57 and Article 58(1) to (7).

The insurance or reinsurance undertaking shall also, at least once a year, inform the supervisory authority of its home Member State of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

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Article 62

Qualifying holdings, powers of the supervisory authority

Member States shall require that, where the influence exercised by the persons referred to in Article 57 is likely to operate against the sound and prudent management of an insurance or reinsurance undertaking, the supervisory authority of the home Member State of that undertaking in which a qualifying holding is sought or increased take appropriate measures to put an end to that situation. Such measures may consist, for example, of injunctions, penalties against directors and managers, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the notification obligation established in Article 57.

Where a holding is acquired despite the opposition of the supervisory authorities, the Member States shall, regardless of any other sanctions to be adopted, provide for:

(1) the suspension of the exercise of the corresponding voting rights; or

(2) the nullity of any votes cast or the possibility of their annulment.

Article 63

Voting rights

For the purposes of this Section, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

Section 5

Professional secrecy, exchange of information and promotion of supervisory convergence

Article 64

Professional secrecy

Member States shall provide that all persons who are working or who have worked for the supervisory authorities, as well as auditors and experts acting on behalf of those authorities, are bound by the obligation of professional secrecy.

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Without prejudice to cases covered by criminal law, any confidential information received by such persons whilst performing their duties shall not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual insurance and reinsurance undertakings cannot be identified.

However, where an insurance or reinsurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

Article 65

Exchange of information between supervisory authorities of Member States

Article 64 shall not preclude the exchange of information between supervisory authorities of different Member States. Such information shall be subject to the obligation of professional secrecy laid down in Article 64.

[*F2**Article 65a*

Cooperation with EIOPA

Member States shall ensure that the supervisory authorities cooperate with EIOPA for the purposes of this Directive in accordance with Regulation (EU) No 1094/2010.

Member States shall ensure that the supervisory authorities provide EIOPA, without delay, with all the information necessary to carry out its duties in accordance with Regulation (EU) No 1094/2010.**]**

Textual Amendments

F2 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).

Article 66

Cooperation agreements with third countries

Member States may conclude cooperation agreements providing for the exchange of information with the supervisory authorities of third countries or with authorities or bodies of third countries as defined in Article 68(1) and (2) only if the information to be disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Section. Such exchange of information must be intended for the performance of the supervisory task of those authorities or bodies.

Where the information to be disclosed by a Member State to a third country originates in another Member State, it shall not be disclosed without the express agreement of

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the supervisory authority of that Member State and, where appropriate, solely for the purposes for which that authority gave its agreement.

Article 67

Use of confidential information

Supervisory authorities which receive confidential information under Articles 64 or 65 may use it only in the course of their duties and for the following purposes:

(1) to check that the conditions governing the taking-up of the business of insurance or reinsurance are met and to facilitate the monitoring of the conduct of such business, especially with regard to the monitoring of the technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, and the system of governance;

(2) to impose sanctions;

(3) in administrative appeals against decisions of the supervisory authorities;

(4) in court proceedings under this Directive.

[*F2**Article 67a*

European Parliament powers of investigation

Articles 64 and 67 shall be without prejudice to the powers of investigation conferred on the European Parliament by Article 226 of the Treaty on the Functioning of the European Union (TFEU).**]**

Textual Amendments

F2 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).

Article 68

Exchange of information with other authorities

1 Articles 64 and 67 shall not preclude any of the following:

a the exchange of information between several supervisory authorities in the same Member State in the discharge of their supervisory functions;

b the exchange of information, in the discharge of their supervisory functions, between supervisory authorities and any of the following which are situated in the same Member State:

(i) authorities responsible for the supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;

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(ii) bodies involved in the liquidation and bankruptcy of insurance undertakings or reinsurance undertakings and in other similar procedures;

(iii) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions;

(iv) **[**[F4]authorities responsible for supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 of the European Parliament and of the Council[(9)] for compliance with that Directive;**]**

c the disclosure, to bodies which administer compulsory winding-up proceedings or guarantee funds, of information necessary for the performance of their duties.

The exchanges of information referred to in points (b) and (c) may also take place between different Member States.

The information received by those authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in Article 64.

2 Articles 64 to 67 shall not preclude Member States from authorising exchanges of information between the supervisory authorities and any of the following:

a the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of insurance undertakings, reinsurance undertakings and other similar procedures;

b the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions;

c independent actuaries of insurance undertakings or reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which apply the first subparagraph shall require at least that the following conditions are met:

a the information must be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph;

b the information received must be subject to the obligation of professional secrecy laid down in Article 64;

c where the information originates in another Member State, it must not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to the first and second subparagraphs.

3 Articles 64 to 67 shall not preclude Member States from authorising, with the aim of strengthening the stability, and integrity, of the financial system, the exchange of information between the supervisory authorities and the authorities or bodies responsible for the detection and investigation of breaches of company law.

Member States which apply the first subparagraph shall require that at least the following conditions are met:

a the information must be intended for the purpose of detection and investigation as referred to in the first subparagraph;

b information received must be subject to the obligation of professional secrecy laid down in Article 64;

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c where the information originates in another Member State, it shall not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid of persons appointed, in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions set out in the second subparagraph.

In order to implement point (c) of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the supervisory authority from which the information originates the names and precise responsibilities of the persons to whom it is to be sent.

4 Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons or bodies which may receive information pursuant to paragraph 3.

Textual Amendments

F4 Inserted by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance).

Article 69

Disclosure of information to government administrations responsible for financial legislation

Articles 64 and 67 shall not preclude Member States from authorising, under provisions laid down by law, the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance or reinsurance undertakings and to inspectors acting on behalf of those departments.

[[F3]Such disclosure shall be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under Article 65 and Article 68(1), and information obtained by means of on-site verification referred to in Article 33, may be disclosed only with the express consent of the supervisory authority from which the information originated or the supervisory authority of the Member State in which the on-site verification was carried out.**]**

Textual Amendments

F3 Substituted 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).

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[F3 Article 70

Transmission of information to central banks, monetary authorities, payment systems overseers and the European Systemic Risk Board

1 Without prejudice to Articles 64 to 69, a supervisory authority may transmit information intended for the performance of their tasks to the following:

a central banks of the European System of Central Banks (ESCB), including the European Central Bank (ECB) and other bodies with a similar function in their capacity as monetary authorities where this information is relevant to their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system;

b where appropriate, other national public authorities responsible for overseeing payment systems; and

c the European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council[10], where that information is relevant to carrying out its tasks.

2 In an emergency situation, including an emergency situation as referred to in Article 18 of Regulation (EU) No 1094/2010, Member States shall allow the supervisory authorities to communicate, without delay, information to the central banks of the ESCB, including the ECB, where that information is relevant to their statutory tasks including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, and to the ESRB, where such information is relevant to its tasks.

3 Such authorities or bodies may also communicate to the supervisory authorities such information as they may need for the purposes of Article 67. Information received in this context shall be subject to the provisions on professional secrecy laid down in this Section.**]**

Textual Amendments

F3 Substituted 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).

Article 71

Supervisory convergence

1 Member States shall ensure that the mandates of supervisory authorities take into account, in an appropriate way, a European Union dimension.

[F3 2 Member States shall ensure that in the exercise of their duties supervisory authorities have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

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a the supervisory authorities participate in the activities of EIOPA;

b the supervisory authorities make every effort to comply with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of Regulation (EU) No 1094/2010 and state reasons if they do not do so;

c national mandates conferred on the supervisory authorities do not inhibit the performance of their duties as members of EIOPA or under this Directive.**]**

F5 3 . . . . . .

Textual Amendments

F3 Substituted 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).

F5 Deleted 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).

Section 6

Duties of auditors

Article 72

Duties of auditors

1 Member States shall provide at least that persons authorised within the meaning of Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents[(11)], who perform in an insurance or reinsurance undertaking the statutory audit referred to in Article 51 of Directive 78/660/EEC, Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC or any other statutory task, shall have a duty to report promptly to the supervisory authorities any fact or decision concerning that undertaking of which they have become aware while carrying out that task and which is liable to bring about any of the following:

a a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance and reinsurance undertakings;

b the impairment of the continuous functioning of the insurance or reinsurance undertaking;

c a refusal to certify the accounts or to the expression of reservations;

d non-compliance with the Solvency Capital Requirement;

e non-compliance with the Minimum Capital Requirement.

The persons referred to in the first subparagraph shall also report any facts or decisions of which they have become aware in the course of carrying out a task as described

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in the first subparagraph in an undertaking which has close links resulting from a control relationship with the insurance or reinsurance undertaking within which they are carrying out that task.

2 The disclosure in good faith to the supervisory authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

CHAPTER V

Pursuit of life and non-life insurance activity

Article 73

Pursuit of life and non-life insurance activity

1 Insurance undertakings shall not be authorised to pursue life and non-life insurance activities simultaneously.

2 By way of derogation from paragraph 1, Member States may provide that:

a undertakings authorised to pursue life insurance activity may obtain authorisation for non-life insurance activities for the risks listed in classes 1 and 2 in Part A of Annex I;

b undertakings authorised solely for the risks listed in classes 1 and 2 in Part A of Annex I may obtain authorisation to pursue life insurance activity.

However, each activity shall be separately managed in accordance with Article 74.

3 Member States may provide that the undertakings referred to in paragraph 2 shall comply with the accounting rules governing life insurance undertakings for all of their activities. Pending coordination in this respect, Member States may also provide that, with regard to rules on winding-up, activities relating to the risks listed in classes 1 and 2 in Part A of Annex I pursued by those undertakings shall be governed by the rules applicable to life insurance activities.

4 Where a non-life insurance undertaking has financial, commercial or administrative links with a life insurance undertaking, the supervisory authorities of the home Member States shall ensure that the accounts of the undertakings concerned are not distorted by agreements between those undertakings or by any arrangement which could affect the apportionment of expenses and income.

5 Undertakings which on the following dates pursued simultaneously both life and non-life insurance activities covered by this Directive may continue to pursue those activities simultaneously, provided that each activity is separately managed in accordance with Article 74:

a 1 January 1981 for undertakings authorised in Greece;

b 1 January 1986 for undertakings authorised in Spain and Portugal;

c 1 January 1995 for undertakings authorised in Austria, Finland and Sweden;

d 1 May 2004 for undertakings authorised in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia, and Slovenia;

e 1 January 2007 for undertakings authorised in Bulgaria and Romania;

[[F6]ea 1 July 2013 for undertakings authorised in Croatia;**]**

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f 15 March 1979 for all other undertakings.

The home Member State may require insurance undertakings to cease, within a period to be determined by that Member State, the simultaneous pursuit of life and non-life insurance activities in which they were engaged on the dates referred to in the first subparagraph.

Textual Amendments

F6 Inserted by Council Directive 2013/23/EU of 13 May 2013 adapting certain directives in the field of financial services, by reason of the accession of the Republic of Croatia.

Article 74

Separation of life and non-life insurance management

1 The separate management referred to in Article 73 shall be organised in such a way that the life insurance activity is distinct from non-life insurance activity.

The respective interests of life and non-life policy holders shall not be prejudiced and, in particular, profits from life insurance shall benefit life policy holders as if the life insurance undertaking only pursued the activity of life insurance.

2 Without prejudice to Articles 100 and 128, the insurance undertakings referred to in Article 73(2) and (5) shall calculate:

a a notional life Minimum Capital Requirement with respect to their life insurance or reinsurance activity, calculated as if the undertaking concerned only pursued that activity, on the basis of the separate accounts referred to in paragraph 6; and

b a notional non-life Minimum Capital Requirement with respect to their non-life insurance or reinsurance activity, calculated as if the undertaking concerned only pursued that activity, on the basis of the separate accounts referred to in paragraph 6.

3 As a minimum, the insurance undertakings referred to in Article 73(2) and (5) shall cover the following by an equivalent amount of eligible basic own-fund items:

a the notional life Minimum Capital Requirement, in respect of the life activity;

b the notional non-life Minimum Capital Requirement, in respect of the non-life activity.

The minimum financial obligations referred to in the first subparagraph, in respect of the life insurance activity and the non-life insurance activity, shall not be borne by the other activity.

4 As long as the minimum financial obligations referred to in paragraph 3 are fulfilled and provided the supervisory authority is informed, the undertaking may use to cover the Solvency Capital Requirement referred to in Article 100, the explicit eligible own-fund items which are still available for one or the other activity.

5 The supervisory authorities shall analyse the results in both life and non-life insurance activities so as to ensure that the requirements of paragraphs 1 to 4 are fulfilled.

6 Accounts shall be drawn up so as to show the sources of the results for life and non-life insurance separately. All income, in particular premiums, payments by reinsurers and investment income, and expenditure, in particular insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business, shall be broken down according to origin. Items common to both activities shall be entered in

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the accounts in accordance with methods of apportionment to be accepted by the supervisory authority.

Insurance undertakings shall, on the basis of the accounts, prepare a statement in which the eligible basic own-fund items covering each notional Minimum Capital Requirement as referred to in paragraph 2 are clearly identified, in accordance with Article 98(4).

7 If the amount of eligible basic own-fund items with respect to one of the activities is insufficient to cover the minimum financial obligations referred to in first subparagraph of paragraph 3, the supervisory authorities shall apply to the deficient activity the measures provided for in this Directive, whatever the results in the other activity.

By way of derogation from the second subparagraph of paragraph 3, those measures may involve the authorisation of a transfer of explicit eligible basic own-fund items from one activity to the other.

CHAPTER VI

Rules relating to the valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules

Section 1

Valuation of assets and liabilities

Article 75

Valuation of assets and liabilities

1 Member States shall ensure that, unless otherwise stated, insurance and reinsurance undertakings value assets and liabilities as follows:

a assets shall be valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;

b liabilities shall be valued at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm's length transaction.

When valuing liabilities under point (b), no adjustment to take account of the own credit standing of the insurance or reinsurance undertaking shall be made.

[[F3]2 The Commission shall adopt delegated acts in accordance with Article 301a to lay down the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1.

3 In order to ensure consistent harmonisation in relation to valuation of assets and liabilities, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify:

a to the extent that the delegated acts referred to in paragraph 2 require the use of international accounting standards as adopted by the Commission in accordance with Regulation (EC) No 1606/2002, the consistency of those accounting standards with the valuation approach of assets and liabilities as laid down in paragraphs 1 and 2;

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b the methods and assumptions to be used where quoted market prices are either not available or where international accounting standards as adopted by the Commission in accordance with Regulation (EC) No 1606/2002 are either temporarily or permanently inconsistent with the valuation approach of assets and liabilities as laid down in paragraphs 1 and 2;

c the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1, where the delegated acts referred to in paragraph 2 allow for the use of alternative valuation methods.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F3 Substituted 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).

Section 2

Rules relating to technical provisions

Article 76

General provisions

1 Member States shall ensure that insurance and reinsurance undertakings establish technical provisions with respect to all of their insurance and reinsurance obligations towards policy holders and beneficiaries of insurance or reinsurance contracts.

2 The value of technical provisions shall correspond to the current amount insurance and reinsurance undertakings would have to pay if they were to transfer their insurance and reinsurance obligations immediately to another insurance or reinsurance undertaking.

3 The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on underwriting risks (market consistency).

4 Technical provisions shall be calculated in a prudent, reliable and objective manner.

5 Following the principles set out in paragraphs 2, 3 and 4 and taking into account the principles set out in Article 75(1), the calculation of technical provisions shall be carried out in accordance with Articles 77 to 82 and 86.

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Article 77

Calculation of technical provisions

1 The value of technical provisions shall be equal to the sum of a best estimate and a risk margin as set out in paragraphs 2 and 3.

2 The best estimate shall correspond to the probability-weighted average of future cash-flows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure.

The calculation of the best estimate shall be based upon up-to-date and credible information and realistic assumptions and be performed using adequate, applicable and relevant actuarial and statistical methods.

The cash-flow projection used in the calculation of the best estimate shall take account of all the cash in- and out-flows required to settle the insurance and reinsurance obligations over the lifetime thereof.

The best estimate shall be calculated gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles. Those amounts shall be calculated separately, in accordance with Article 81.

3 The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount that insurance and reinsurance undertakings would be expected to require in order to take over and meet the insurance and reinsurance obligations.

4 Insurance and reinsurance undertakings shall value the best estimate and the risk margin separately.

However, where future cash flows associated with insurance or reinsurance obligations can be replicated reliably using financial instruments for which a reliable market value is observable, the value of technical provisions associated with those future cash flows shall be determined on the basis of the market value of those financial instruments. In this case, separate calculations of the best estimate and the risk margin shall not be required.

5 Where insurance and reinsurance undertakings value the best estimate and the risk margin separately, the risk margin shall be calculated by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over the lifetime thereof.

The rate used in the determination of the cost of providing that amount of eligible own funds (Cost-of-Capital rate) shall be the same for all insurance and reinsurance undertakings and shall be reviewed periodically.

The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking would incur holding an amount of eligible own funds, as set out in Section 3, equal to the Solvency Capital Requirement necessary to support insurance and reinsurance obligations over the lifetime of those obligations.

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[F2 Article 77a

Extrapolation of the relevant risk-free interest rate term structure

The determination of the relevant risk-free interest rate term structure referred to in Article 77(2) shall make use of, and be consistent with, information derived from relevant financial instruments. That determination shall take into account relevant financial instruments of those maturities where the markets for those financial instruments as well as for bonds are deep, liquid and transparent. For maturities where the markets for the relevant financial instruments or for bonds are no longer deep, liquid and transparent, the relevant risk-free interest rate term structure shall be extrapolated.

The extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument and the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate.

Textual Amendments

F2 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).

Article 77b

Matching adjustment to the relevant risk-free interest rate term structure

1 Insurance and reinsurance undertakings may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts subject to prior approval by the supervisory authorities where the following conditions are met:

a the insurance or reinsurance undertaking has assigned a portfolio of assets, consisting of bonds and other assets with similar cash-flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations and maintains that assignment over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;

b the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed separately from other activities of the undertakings, and the assigned portfolio of assets cannot be used to cover losses arising from other activities of the undertakings;

c the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency and any mismatch does not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;

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d the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;

e the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk and mortality risk;

f where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5 % under a mortality risk stress that is calibrated in accordance with Article 101(2) to (5);

g the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the policy holder or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with Article 75, covering the insurance or reinsurance obligations at the time the surrender option is exercised;

h the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties;

i the insurance or reinsurance obligations of an insurance or reinsurance contract are not split into different parts when composing the portfolio of insurance or reinsurance obligations for the purpose of this paragraph.

Notwithstanding point (h) of the first subparagraph, insurance or reinsurance undertakings may use assets where the cash flows are fixed except for a dependence on inflation, provided that those assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation.

In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that the investor receives sufficient compensation to allow it to obtain the same cash flows by re-investing in assets of an equivalent or better credit quality, the right to change the cash flows shall not disqualify the asset for admissibility to the assigned portfolio in accordance with point (h) of the first subparagraph.

2 Insurance or reinsurance undertakings that apply the matching adjustment to a portfolio of insurance or reinsurance obligations shall not revert back to an approach that does not include a matching adjustment. Where an insurance or reinsurance undertaking that applies the matching adjustment is no longer able to comply with the conditions set out in paragraph 1, it shall immediately inform the supervisory authority and take the necessary measures to restore compliance with those conditions. Where the undertaking is not able to restore compliance with those conditions within two months of the date of non-compliance, it shall cease to apply the matching adjustment to any of its insurance or reinsurance obligations and shall not apply the matching adjustment for a period of a further 24 months.

3 The matching adjustment shall not be applied with respect to insurance or reinsurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment under Article 77d or transitional measure on the risk-free interest rates under Article 308c.

Textual Amendments

F2 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).

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Article 77c

Calculation of the matching adjustment

1 For each currency the matching adjustment referred to in Article 77b shall be calculated in accordance with the following principles:

a the matching adjustment must be equal to the difference of the following:

(i) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value in accordance with Article 75 of the portfolio of assigned assets;

(ii) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of insurance or reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure;

b the matching adjustment must not include the fundamental spread reflecting the risks retained by the insurance or reinsurance undertaking;

c notwithstanding point (a), the fundamental spread must be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and asset class;

d the use of external credit assessments in the calculation of the matching adjustment must be in accordance with Article 111(1)(n).

2 For the purposes of paragraph 1(b), the fundamental spread shall be:

a equal to the sum of the following:

(i) the credit spread corresponding to the probability of default of the assets;

(ii) the credit spread corresponding to the expected loss resulting from downgrading of the assets;

b for exposures to Member States' central governments and central banks, no lower than 30 % of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets;

c for assets other than exposures to Member States' central governments and central banks, no lower than 35 % of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets.

The probability of default referred to in point (a)(i) of the first subparagraph shall be based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class.

Where no reliable credit spread can be derived from the default statistics referred to in the second subparagraph, the fundamental spread shall be equal to the portion of the long-term average of the spread over the risk-free interest rate set out in points (b) and (c).

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Textual Amendments

F2 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).

Article 77d

Volatility adjustment to the relevant risk-free interest rate term structure

1 Member States may require prior approval by supervisory authorities for insurance and reinsurance undertakings to apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2).

2 For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure shall be based on the spread between the interest rate that could be earned from assets included in a reference portfolio for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency.

The reference portfolio for a currency shall be representative for the assets which are denominated in that currency and which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

3 The amount of the volatility adjustment to risk-free interest rates shall correspond to 65 % of the risk-corrected currency spread.

The risk-corrected currency spread shall be calculated as the difference between the spread referred to in paragraph 2 and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

The volatility adjustment shall apply only to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with Article 77a. The extrapolation of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.

4 For each relevant country, the volatility adjustment to the risk-free interest rates referred to in paragraph 3 for the currency of that country shall, before application of the 65 % factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread, whenever that difference is positive and the risk-corrected country spread is higher than 100 basis points. The increased volatility adjustment shall be applied to the calculation of the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country. The risk-corrected country spread is calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and denominated in the currency of that country.

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5 The volatility adjustment shall not be applied with respect to insurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment under Article 77b.

6 By way of derogation from Article 101, the Solvency Capital Requirement shall not cover the risk of loss of basic own funds resulting from changes of the volatility adjustment.

Textual Amendments

F2 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).

Article 77e

Technical information produced by the European Insurance and Occupational Pensions Authority

1 EIOPA shall lay down and publish for each relevant currency the following technical information at least on a quarterly basis:

a a relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2), without any matching adjustment or volatility adjustment;

b for each relevant duration, credit quality and asset class a fundamental spread for the calculation of the matching adjustment referred to in Article 77c(1)(b);

c for each relevant national insurance market a volatility adjustment to the relevant risk-free interest rate term structure referred to in Article 77d(1).

2 In order to ensure uniform conditions for the calculation of technical provisions and basic own funds, the Commission may adopt implementing acts which set out, for each relevant currency, the technical information referred to in paragraph 1. Those implementing acts shall make use of that information.

Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 301(2).

On duly justified imperative grounds of urgency relating to the availability of the relevant risk-free interest rate term structure, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 301(3).

3 Where the technical information referred to in paragraph 1 is adopted by the Commission in accordance with paragraph 2, insurance and reinsurance undertakings shall use that technical information in calculating the best estimate in accordance with Article 77, the matching adjustment in accordance with Article 77c, and the volatility adjustment in accordance with Article 77d.

With respect to currencies and national markets where the adjustment referred to in paragraph 1(c) is not set out in the implementing acts referred to in paragraph 2, no volatility adjustment shall be applied to the relevant risk-free interest rate term structure to calculate the best estimate.

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Textual Amendments

F2 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).

Article 77f

Review of long-term guarantees measures and measures on equity risk

1 EIOPA shall, on an annual basis and until 1 January 2021, report to the European Parliament, the Council and the Commission about the impact of the application of Articles 77a to 77e and 106, Article 138(4) and Articles 304, 308c and 308d, including the delegated or implementing acts adopted pursuant thereto.

Supervisory authorities shall, on an annual basis during that period, provide EIOPA with the following information:

a the availability of long-term guarantees in insurance products in their national markets and the behaviour of insurance and reinsurance undertakings as long-term investors;

b the number of insurance and reinsurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period in accordance with Article 138(4), the duration-based equity risk sub-module and the transitional measures set out in Articles 308c and 308d;

c the impact on the insurance and reinsurance undertakings' financial position of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge, the duration-based equity risk sub-module and the transitional measures set out in Articles 308c and 308d, at national level and in anonymised way for each undertaking;

d the effect of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge and the duration-based equity risk sub-module on the investment behaviour of insurance and reinsurance undertakings and whether they provide undue capital relief;

e the effect of any extension of the recovery period in accordance with Article 138(4) on the efforts of insurance and reinsurance undertakings to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile in order to ensure compliance with the Solvency Capital Requirement;

f where insurance and reinsurance undertakings apply the transitional measures set out in Articles 308c and 308d, whether they comply with the phasing-in plans referred to in Article 308e and the prospects for a reduced dependency on these transitional measures, including measures that have been taken or are expected to be taken by the undertakings and supervisory authorities, taking into account the regulatory environment of the Member State concerned.

2 EIOPA, where appropriate after consulting the ESRB and conducting a public consultation, shall submit to the Commission an opinion on the assessment of the application of Articles 77a to 77e and 106, Article 138(4), and Articles 304, 308c and 308d, including the delegated or implementing acts adopted pursuant thereto. That assessment shall be made in relation to the availability of long-term guarantees in insurance products, the behaviour of

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insurance and reinsurance undertakings as long-term investors and, more generally, financial stability.

3 Based on the opinion submitted by EIOPA, referred to in paragraph 2, the Commission shall submit a report to the European Parliament and to the Council by 1 January 2021, or, where appropriate, earlier. The report shall focus, in particular, on the effects on:

a policy holder protection;

b the functioning and stability of European insurance markets;

c the internal market and in particular the competition and the level playing field in European insurance markets;

d the extent to which insurance and reinsurance undertakings continue to operate as long-term investors;

e the availability and pricing of annuity products;

f the availability and pricing of competing products;

g long-term investment strategies by insurance undertakings in relation to products to which Articles 77b and 77c are applied relative to those in relation to other long-term guarantees;

h consumer choice and consumer awareness of risk;

i the degree of diversification in the insurance business and asset portfolio of insurance and reinsurance undertakings;

j financial stability.

In addition, the report shall build on the supervisory experience relating to the application of Articles 77a to 77e and 106, Article 138(4) and Articles 304, 308c and 308d, including the delegated or implementing acts adopted pursuant thereto.

4 The Commission report shall be accompanied, if necessary, by legislative proposals.**]**

Textual Amendments

F2 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).

Article 78

Other elements to be taken into account in the calculation of technical provisions

In addition to Article 77, when calculating technical provisions, insurance and reinsurance undertakings shall take account of the following:

(1) all expenses that will be incurred in servicing insurance and reinsurance obligations;

(2) inflation, including expenses and claims inflation;

(3) all payments to policy holders and beneficiaries, including future discretionary bonuses, which insurance and reinsurance undertakings expect to make, whether or not those payments are contractually guaranteed, unless those payments fall under Article 91(2).

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Article 79

Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts

When calculating technical provisions, insurance and reinsurance undertakings shall take account of the value of financial guarantees and any contractual options included in insurance and reinsurance policies.

Any assumptions made by insurance and reinsurance undertakings with respect to the likelihood that policy holders will exercise contractual options, including lapses and surrenders, shall be realistic and based on current and credible information. The assumptions shall take account, either explicitly or implicitly, of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

Article 80

Segmentation

Insurance and reinsurance undertakings shall segment their insurance and reinsurance obligations into homogeneous risk groups, and as a minimum by lines of business, when calculating their technical provisions.

Article 81

Recoverables from reinsurance contracts and special purpose vehicles

The calculation by insurance and reinsurance undertakings of amounts recoverable from reinsurance contracts and special purpose vehicles shall comply with Articles 76 to 80.

When calculating amounts recoverable from reinsurance contracts and special purpose vehicles, insurance and reinsurance undertakings shall take account of the time difference between recoveries and direct payments.

The result from that calculation shall be adjusted to take account of expected losses due to default of the counterparty. That adjustment shall be based on an assessment of the probability of default of the counterparty and the average loss resulting therefrom (loss-given-default).

Article 82

Data quality and application of approximations, including case-by-case approaches, for technical provisions

Member States shall ensure that insurance and reinsurance undertakings have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of their technical provisions.

Where, in specific circumstances, insurance and reinsurance undertakings have insufficient data of appropriate quality to apply a reliable actuarial method to a

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set or subset of their insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and special purpose vehicles, appropriate approximations, including case-by-case approaches, may be used in the calculation of the best estimate.

Article 83

Comparison against experience

Insurance and reinsurance undertakings shall have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.

Where the comparison identifies systematic deviation between experience and the best estimate calculations of insurance or reinsurance undertakings, the undertaking concerned shall make appropriate adjustments to the actuarial methods being used and/or the assumptions being made.

Article 84

Appropriateness of the level of technical provisions

Upon request from the supervisory authorities, insurance and reinsurance undertakings shall demonstrate the appropriateness of the level of their technical provisions, as well as the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used.

Article 85

Increase of technical provisions

To the extent that the calculation of technical provisions of insurance and reinsurance undertakings does not comply with Articles 76 to 83, the supervisory authorities may require insurance and reinsurance undertakings to increase the amount of technical provisions so that they correspond to the level determined pursuant to those Articles.

[F3 Article 86

Delegated acts and regulatory and implementing technical standards

1 The Commission shall adopt delegated acts in accordance with Article 301a laying down the following:

a actuarial and statistical methodologies to calculate the best estimate referred to in Article 77(2);

b the methodologies, principles and techniques for the determination of the relevant risk-free interest rate term structure to be used to calculate the best estimate referred to in Article 77(2);

c the circumstances in which technical provisions shall be calculated as a whole, or as a sum of a best estimate and a risk margin, and the methods to be used in the case where technical provisions are calculated as a whole, as referred to in Article 77(4);

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d the methods and assumptions to be used in the calculation of the risk margin including the determination of the amount of eligible own funds necessary to support the insurance and reinsurance obligations and the calibration of the cost-of-capital rate, as referred to in Article 77(5);

e the lines of business on the basis of which insurance and reinsurance obligations are to be segmented in order to calculate technical provisions referred to in Article 80;

f the standards to be met with respect to ensuring the appropriateness, completeness and accuracy of the data used in the calculation of technical provisions, and the specific circumstances in which it would be appropriate to use approximations, including case-by-case approaches, to calculate the best estimate, as referred to in Article 82;

g specifications with respect to the requirements set out in Article 77b(1) including the methods, assumptions and standard parameters to be used when calculating the impact of the mortality risk stress referred to in Article 77b(1)(e);

h specifications with respect to the requirements set out in Article 77c including assumptions and methods to apply in the calculation of the matching adjustment and the fundamental spread;

i methods and assumptions for the calculation of the volatility adjustment referred to in Article 77d including a formula for the calculation of the spread referred to in paragraph 2 of that Article.

2 In order to ensure consistent harmonisation in relation to the methods for the calculation of technical provisions, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify:

a the methodologies to be used when calculating the counterparty default adjustment referred to in Article 81 designed to capture expected losses due to default of the counterparty;

b where necessary, simplified methods and techniques to calculate technical provisions, in order to ensure the actuarial and statistical methods referred to in points (a) and (d) are proportionate to the nature, scale and complexity of the risks supported by insurance and reinsurance undertakings including captive insurance and reinsurance undertakings.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

3 In order to ensure consistent conditions of application of Article 77b, EIOPA shall develop draft implementing technical standards on the procedures for the approval of the application of a matching adjustment referred to in Article 77b(1).

EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.

Power is conferred on the Commission to adopt those implementing technical standards in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F3 Substituted 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).

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Section 3

Own funds

Subsection 1

Determination of own funds

Article 87

Own funds

Own funds shall comprise the sum of basic own funds, referred to in Article 88 and ancillary own funds referred to in Article 89.

Article 88

Basic own funds

Basic own funds shall consist of the following items:

(1) the excess of assets over liabilities, valued in accordance with Article 75 and Section 2;

(2) subordinated liabilities.

The excess amount referred to in point (1) shall be reduced by the amount of own shares held by the insurance or reinsurance undertaking.

Article 89

Ancillary own funds

1 Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses.

Ancillary own funds may comprise the following items to the extent that they are not basic own-fund items:

a unpaid share capital or initial fund that has not been called up;

b letters of credit and guarantees;

c any other legally binding commitments received by insurance and reinsurance undertakings.

In the case of a mutual or mutual-type association with variable contributions, ancillary own funds may also comprise any future claims which that association may have against its members by way of a call for supplementary contribution, within the following 12 months.

2 Where an ancillary own-fund item has been paid in or called up, it shall be treated as an asset and cease to form part of ancillary own-fund items.

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Article 90

Supervisory approval of ancillary own funds

1 The amounts of ancillary own-fund items to be taken into account when determining own funds shall be subject to prior supervisory approval.

2 The amount ascribed to each ancillary own-fund item shall reflect the loss-absorbency of the item and shall be based upon prudent and realistic assumptions. Where an ancillary own-fund item has a fixed nominal value, the amount of that item shall be equal to its nominal value, where it appropriately reflects its loss-absorbency.

3 Supervisory authorities shall approve either of the following:

a a monetary amount for each ancillary own-fund item;

b a method by which to determine the amount of each ancillary own-fund item, in which case supervisory approval of the amount determined in accordance with that method shall be granted for a specified period of time.

4 For each ancillary own-fund item, supervisory authorities shall base their approval on an assessment of the following:

a the status of the counterparties concerned, in relation to their ability and willingness to pay;

b the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up;

c any information on the outcome of past calls which insurance and reinsurance undertakings have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

Article 91

Surplus funds

1 Surplus funds shall be deemed to be accumulated profits which have not been made available for distribution to policy holders and beneficiaries.

2 In so far as authorised under national law, surplus funds shall not be considered as insurance and reinsurance liabilities to the extent that they fulfil the criteria set out in Article 94(1).

Article 92

[F3Delegated acts and regulatory and implementing technical standards]

[F3 1 In order to ensure consistent harmonisation in relation to the determination of own funds, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the criteria for granting supervisory approval of ancillary own funds in accordance with Article 90.

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Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

1a The Commission shall adopt delegated acts in accordance with Article 301a specifying the treatment of participations, within the meaning of the third subparagraph of Article 212(2), in financial and credit institutions with respect to the determination of own funds.**]**

2 Participations in financial and credit institutions as referred to in paragraph 1(b) shall comprise the following:

a participations which insurance and reinsurance undertakings hold in:

(i) credit institutions and financial institutions within the meaning of Article 4(1) and (5) of Directive 2006/48/EC,

(ii) investment firms within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC;

b subordinated claims and instruments referred to in Article 63 and Article 64(3) of Directive 2006/48/EC which insurance and reinsurance undertakings hold in respect of the entities defined in point (a) of this paragraph in which they hold a participation.

[F2 3 In order to ensure uniform conditions of application of Article 90, EIOPA shall develop draft implementing technical standards on the procedures for granting supervisory approval for the use of ancillary own funds.

EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F2 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).

F3 Substituted 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).

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Subsection 2

Classification of own funds

Article 93

Characteristics and features used to classify own funds into tiers

1 Own-fund items shall be classified into three tiers. The classification of those items shall depend upon whether they are basic own fund or ancillary own-fund items and the extent to which they possess the following characteristics:

a the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis, as well as in the case of winding-up (permanent availability);

b in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and reinsurance contracts, have been met (subordination).

2 When assessing the extent to which own-fund items possess the characteristics set out in points (a) and (b) of paragraph 1, currently and in the future, due consideration shall be given to the duration of the item, in particular whether the item is dated or not. Where an own-fund item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the undertaking shall be considered (sufficient duration).

In addition, the following features shall be considered:

a whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);

b whether the item is free from mandatory fixed charges (absence of mandatory servicing costs);

c whether the item is clear of encumbrances (absence of encumbrances).

Article 94

Main criteria for the classification into tiers

1 Basic own-fund items shall be classified in Tier 1 where they substantially possess the characteristics set out in Article 93(1)(a) and (b), taking into consideration the features set out in Article 93(2).

2 Basic own-fund items shall be classified in Tier 2 where they substantially possess the characteristic set out in Article 93(1)(b), taking into consideration the features set out in Article 93(2).

Ancillary own-fund items shall be classified in Tier 2 where they substantially possess the characteristics set out in Article 93(1)(a) and (b), taking into consideration the features set out in Article 93(2).

3 Any basic and ancillary own-fund items which do not fall under paragraphs 1 and 2 shall be classified in Tier 3.

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Article 95

Classification of own funds into tiers

Member States shall ensure that insurance and reinsurance undertakings classify their own-fund items on the basis of the criteria laid down in Article 94.

For that purpose, insurance and reinsurance undertakings shall refer to the list of own-fund items referred to in Article 97(1)(a), where applicable.

Where an own-fund item is not covered by that list, it shall be assessed and classified by insurance and reinsurance undertakings, in accordance with the first paragraph. That classification shall be subject to approval by the supervisory authority.

Article 96

Classification of specific insurance own-fund items

Without prejudice to Article 95 and Article 97(1)(a) for the purposes of this Directive the following classifications shall be applied:

(1) surplus funds falling under Article 91(2) shall be classified in Tier 1;

(2) letters of credit and guarantees which are held in trust for the benefit of insurance creditors by an independent trustee and provided by credit institutions authorised in accordance with Directive 2006/48/EC shall be classified in Tier 2;

(3) any future claims which mutual or mutual-type associations of shipowners with variable contributions solely insuring risks listed in classes 6, 12 and 17 in Part A of Annex I may have against their members by way of a call for supplementary contributions, within the following 12 months, shall be classified in Tier 2.

In accordance with the second subparagraph of Article 94(2), any future claims which mutual or mutual-type associations with variable contributions may have against their members by way of a call for supplementary contributions, within the following 12 months, not falling under point (3) of the first subparagraph shall be classified in Tier 2 where they substantially possess the characteristics set out in Article 93(1)(a) and (b), taking into consideration the features set out in Article 93(2).

[F3 Article 97

Delegated acts and regulatory technical standards

1 The Commission shall adopt delegated acts in accordance with Article 301a laying down a list of own-fund items, including those referred to in Article 96, deemed to fulfil the criteria, set out in Article 94, which contains for each own-fund item a precise description of the features which determined its classification.

2 In order to ensure consistent harmonisation in relation to classification of own funds, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the methods to be used by supervisory authorities, when approving the assessment and classification of own-fund items which are not covered by the list referred to in paragraph 1.

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Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

The Commission shall regularly review and, where appropriate, update the list referred to in paragraph 1 in light of market developments.**]**

Textual Amendments

F3 Substituted 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).

Subsection 3

Eligibility of own funds

Article 98

Eligibility and limits applicable to Tiers 1, 2 and 3

1 As far as the compliance with the Solvency Capital Requirement is concerned, the eligible amounts of Tier 2 and Tier 3 items shall be subject to quantitative limits. Those limits shall be such as to ensure that at least the following conditions are met:

a the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds;

b the eligible amount of Tier 3 items is less than one third of the total amount of eligible own funds.

2 As far as compliance with the Minimum Capital Requirement is concerned, the amount of basic own-fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 shall be subject to quantitative limits. Those limits shall be such as to ensure, as a minimum, that the proportion of Tier 1 items in the eligible basic own funds is higher than one half of the total amount of eligible basic own funds.

3 The eligible amount of own funds to cover the Solvency Capital Requirement set out in Article 100 shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.

4 The eligible amount of basic own funds to cover the Minimum Capital Requirement set out in Article 128 shall be equal to the sum of the amount of Tier 1 and the eligible amount of basic own-fund items classified in Tier 2.

[F3 Article 99

Delegated acts on the eligibility of own funds

The Commission shall adopt delegated acts in accordance with Article 301a laying down:

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(a) the quantitative limits referred to in Article 98(1) and (2);

(b) the adjustments that should be made to reflect the lack of transferability of those own-fund items that can be used only to cover losses arising from a particular segment of liabilities or from particular risks (ring-fenced funds).**]**

Textual Amendments

F3 Substituted 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).

Section 4

Solvency capital requirement

Subsection 1

General provisions for the solvency capital requirement using the standard formula or an internal model

Article 100

General provisions

Member States shall require that insurance and reinsurance undertakings hold eligible own funds covering the Solvency Capital Requirement.

The Solvency Capital Requirement shall be calculated, either in accordance with the standard formula in Subsection 2 or using an internal model, as set out in Subsection 3.

Article 101

Calculation of the Solvency Capital Requirement

1 The Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 5.

2 The Solvency Capital Requirement shall be calculated on the presumption that the undertaking will pursue its business as a going concern.

3 The Solvency Capital Requirement shall be calibrated so as to ensure that all quantifiable risks to which an insurance or reinsurance undertaking is exposed are taken into account. It shall cover existing business, as well as the new business expected to be written over the following 12 months. With respect to existing business, it shall cover only unexpected losses.

It shall correspond to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 99,5 % over a one-year period.

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4 The Solvency Capital Requirement shall cover at least the following risks:

a non-life underwriting risk;

b life underwriting risk;

c health underwriting risk;

d market risk;

e credit risk;

f operational risk.

Operational risk as referred to in point (f) of the first subparagraph shall include legal risks, and exclude risks arising from strategic decisions, as well as reputation risks.

5 When calculating the Solvency Capital Requirement, insurance and reinsurance undertakings shall take account of the effect of risk-mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

Article 102

Frequency of calculation

1 Insurance and reinsurance undertakings shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the supervisory authorities.

Insurance and reinsurance undertakings shall hold eligible own funds which cover the last reported Solvency Capital Requirement.

Insurance and reinsurance undertakings shall monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis.

If the risk profile of an insurance or reinsurance undertaking deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement, the undertaking concerned shall recalculate the Solvency Capital Requirement without delay and report it to the supervisory authorities.

2 Where there is evidence to suggest that the risk profile of the insurance or reinsurance undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the supervisory authorities may require the undertaking concerned to recalculate the Solvency Capital Requirement.

Subsection 2

Solvency capital requirement standard formula

Article 103

Structure of the standard formula

The Solvency Capital Requirement calculated on the basis of the standard formula shall be the sum of the following items:

(a) the Basic Solvency Capital Requirement, as laid down in Article 104;

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(b) the capital requirement for operational risk, as laid down in Article 107;

(c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in Article 108.

Article 104

Design of the Basic Solvency Capital Requirement

1 The Basic Solvency Capital Requirement shall comprise individual risk modules, which are aggregated in accordance with point (1) of Annex IV.

It shall consist of at least the following risk modules:

a non-life underwriting risk;
b life underwriting risk;
c health underwriting risk;
d market risk;
e counterparty default risk.

2 For the purposes of points (a), (b) and (c) of paragraph 1, insurance or reinsurance operations shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.

3 The correlation coefficients for the aggregation of the risk modules referred to in paragraph 1, as well as the calibration of the capital requirements for each risk module, shall result in an overall Solvency Capital Requirement which complies with the principles set out in Article 101.

4 Each of the risk modules referred to in paragraph 1 shall be calibrated using a Value-at-Risk measure, with a 99,5 % confidence level, over a one-year period.

Where appropriate, diversification effects shall be taken into account in the design of each risk module.

5 The same design and specifications for the risk modules shall be used for all insurance and reinsurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in Article 109.

6 With regard to risks arising from catastrophes, geographical specifications may, where appropriate, be used for the calculation of the life, non-life and health underwriting risk modules.

7 Subject to approval by the supervisory authorities, insurance and reinsurance undertakings may, within the design of the standard formula, replace a subset of its parameters by parameters specific to the undertaking concerned when calculating the life, non-life and health underwriting risk modules.

Such parameters shall be calibrated on the basis of the internal data of the undertaking concerned, or of data which is directly relevant for the operations of that undertaking using standardised methods.

When granting supervisory approval, supervisory authorities shall verify the completeness, accuracy and appropriateness of the data used.

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Article 105

Calculation of the Basic Solvency Capital Requirement

1 The Basic Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 6.

2 The non-life underwriting risk module shall reflect the risk arising from non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

It shall take account of the uncertainty in the results of insurance and reinsurance undertakings related to the existing insurance and reinsurance obligations as well as to the new business expected to be written over the following 12 months.

It shall be calculated, in accordance with point (2) of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

a the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk);

b the risk of loss, or of adverse change in the value of insurance liabilities, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events (non-life catastrophe risk).

3 The life underwriting risk module shall reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

It shall be calculated, in accordance with point (3) of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

a the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);

b the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);

c the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability – morbidity risk);

d the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts (life-expense risk);

e the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk);

f the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy lapses, terminations, renewals and surrenders (lapse risk);

g the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life-catastrophe risk).

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4 The health underwriting risk module shall reflect the risk arising from the underwriting of health insurance obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business.

It shall cover at least the following risks:

a the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts;

b the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning;

c the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.

5 The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking. It shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof.

It shall be calculated, in accordance with point (4) of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

a the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk);

b the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);

c the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);

d the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);

e the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk);

f additional risks to an insurance or reinsurance undertaking stemming either from lack of diversification in the asset portfolio or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).

6 The counterparty default risk module shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of insurance and reinsurance undertakings over the following 12 months. The counterparty default risk module shall cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module. It shall take appropriate account of collateral or other security held by or for the account of the insurance or reinsurance undertaking and the risks associated therewith.

For each counterparty, the counterparty default risk module shall take account of the overall counterparty risk exposure of the insurance or reinsurance undertaking concerned to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.

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Article 106

Calculation of the equity risk sub-module: symmetric adjustment mechanism

1 The equity risk sub-module calculated in accordance with the standard formula shall include a symmetric adjustment to the equity capital charge applied to cover the risk arising from changes in the level of equity prices.

2 The symmetric adjustment made to the standard equity capital charge, calibrated in accordance with Article 104(4), covering the risk arising from changes in the level of equity prices shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index. The weighted average shall be calculated over an appropriate period of time which shall be the same for all insurance and reinsurance undertakings.

3 The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices shall not result in an equity capital charge being applied that is more than 10 percentage points lower or 10 percentage points higher than the standard equity capital charge.

Article 107

Capital requirement for operational risk

1 The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in Article 104. That requirement shall be calibrated in accordance with Article 101(3).

2 With respect to life insurance contracts where the investment risk is borne by the policy holders, the calculation of the capital requirement for operational risk shall take account of the amount of annual expenses incurred in respect of those insurance obligations.

3 With respect to insurance and reinsurance operations other than those referred to in paragraph 2, the calculation of the capital requirement for operational risk shall take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations. In this case, the capital requirement for operational risks shall not exceed 30 % of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

Article 108

Adjustment for the loss-absorbing capacity of technical provisions and deferred taxes

The adjustment referred to in Article 103(c) for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of the two.

That adjustment shall take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent insurance and reinsurance undertakings can establish that a reduction in such benefits may be used to cover unexpected losses when they arise. The risk mitigating effect provided by future

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discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

For the purpose of the second paragraph, the value of future discretionary benefits under adverse circumstances shall be compared to the value of such benefits under the underlying assumptions of the best-estimate calculation.

Article 109

Simplifications in the standard formula

Insurance and reinsurance undertakings may use a simplified calculation for a specific sub-module or risk module where the nature, scale and complexity of the risks they face justifies it and where it would be disproportionate to require all insurance and reinsurance undertakings to apply the standardised calculation.

Simplified calculations shall be calibrated in accordance with Article 101(3).

[F2Article 109a

Harmonised technical inputs to standard formula

1 For the purposes of the calculation of the Solvency Capital Requirement in accordance with the standard formula, the ESAs through the Joint Committee shall develop draft implementing technical standards on the allocation of credit assessments of external credit assessment institutions (ECAIs) to an objective scale of credit quality steps applying the steps specified in accordance with Article 111(1)(n).

The ESAs' Joint Committee shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

2 In order to ensure uniform conditions of application of this Article and for the purposes of facilitating the calculation of the market risk module referred to in Article 105(5), facilitating the calculation of the counterparty default risk module referred to in Article 105(6), evaluating risk mitigation techniques referred to in Article 101(5), and calculating technical provisions, EIOPA shall develop draft implementing technical standards on:

a lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government of the jurisdiction in which they are established, provided that there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and specific institutional arrangements exist, the effect of which is to reduce the risk of default;

b the equity index referred to in Article 106(2), in accordance with the detailed criteria established under Article 111(1)(c) and (o);

c the adjustments to be made for currencies pegged to the euro in the currency risk sub-module referred to in Article 105(5), in accordance with the detailed criteria for the adjustments for currencies pegged to the euro for the purpose of facilitating the calculation of the currency risk sub-module, as established under Article 111(1)(p).

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EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

3 EIOPA shall publish technical information including information concerning the symmetric adjustment referred to in Article 106 on at least a quarterly basis.

4 In order to ensure uniform conditions of application of this Article and for the purpose of facilitating the calculation of the health underwriting risk module referred to in Article 105(4), EIOPA shall develop draft implementing technical standards, taking into account the calculations provided by the supervisory authorities of the Member States concerned, on standard deviations in relation to specific national legislative measures of Member States which permit the sharing of claims payments in respect of health risk amongst insurance and reinsurance undertakings and which meet the criteria in paragraph 5 and any additional criteria established by delegated acts.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5 The implementing technical standards referred to in paragraph 4 shall apply only to the national legislative measures of Member States which permit the sharing of claims payments in respect of health risk amongst insurance and reinsurance undertakings and which meet the following criteria:

a the mechanism for the sharing of claims is transparent and fully specified in advance of the annual period to which it applies;

b the mechanism for the sharing of claims, the number of insurance undertakings that participate in the health risk equalisation system (HRES) and the risk characteristics of the business subject to the HRES ensure that for each undertaking participating in the HRES the volatility of annual losses of the business subject to the HRES is significantly reduced by means of the HRES, both in relation to premium and to reserve risk;

c health insurance subject to the HRES is compulsory and serves as a partial or complete alternative to health cover provided by the statutory social security system;

d in the event of default of insurance undertakings participating in the HRES, one or more Member States' governments guarantee to meet the policy holder claims of the insurance business that is subject to the HRES in full.

The Commission shall adopt delegated acts in accordance with Article 301a which set out the additional criteria that the national legislative measures arrangements shall meet, and the methodology and the requirements for the calculation of the standard deviations referred to in paragraph 4 of this Article.**]**

Textual Amendments

F2 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

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Article 110

Significant deviations from the assumptions underlying the standard formula calculation

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance or reinsurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the supervisory authorities may, by means of a decision stating the reasons, require the undertaking concerned to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Article 104(7). Those specific parameters shall be calculated in such a way to ensure that the undertaking complies with Article 101(3).

I[F3 Article 111

Delegated acts and regulatory and implementing technical standards concerning Articles 103 to 109

1 The Commission shall adopt delegated acts in accordance with Article 301a providing for the following:

a a standard formula in accordance with Articles 101 and 103 to 109;

b any sub-modules necessary or covering more precisely the risks which fall under the respective risk modules referred to in Article 104 as well as any subsequent updates;

c the methods, assumptions and standard parameters to be calibrated to the confidence level referred to in Article 101(3) and to be used when calculating each of the risk modules or sub-modules of the basic Solvency Capital Requirement laid down in Articles 104, 105 and 304, the symmetric adjustment mechanism and the appropriate period of time, expressed in the number of months, as referred to in Article 106, and the appropriate approach for integrating the method referred to in Article 304 in the Solvency Capital Requirement as calculated in accordance with the standard formula;

d the correlation parameters, including, where necessary, those set out in Annex IV, and the procedures for updating those parameters;

e where insurance and reinsurance undertakings use risk-mitigation techniques, the methods and assumptions to be used to assess the changes in the risk profile of the undertaking concerned and to adjust the calculation of the Solvency Capital Requirement;

f the qualitative criteria that the risk-mitigation techniques referred to in point (e) must fulfil in order to ensure that the risk has been effectively transferred to a third party;

fa the method and parameters to be used when assessing the capital requirement for counterparty default risk in the case of exposures to qualifying central counterparties, those parameters ensuring consistency with the treatment of such exposures in the case of credit institutions and financial institutions within the meaning of Article 4(1)(1) and (26) of Regulation (EU) No 575/2013;

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g the methods and parameters to be used when assessing the capital requirement for operational risk set out in Article 107, including the percentage referred to in Article 107(3);

h the methods and adjustments to be used to reflect the reduced scope for risk diversification of insurance and reinsurance undertakings relating to ring-fenced funds;

i the method to be used when calculating the adjustment for the loss absorbing capacity of technical provisions or deferred taxes, as laid down in Article 108;

j the subset of standard parameters in the life, non-life and health underwriting risk modules that may be replaced by undertaking-specific parameters as set out in Article 104(7);

k the standardised methods to be used by the insurance or reinsurance undertaking to calculate the undertaking-specific parameters referred to in point (j), and any criteria with respect to the completeness, accuracy, and appropriateness of the data used that must be met before supervisory approval is given together with the procedure to be followed for such approval;

l the simplified calculations provided for specific sub-modules and risk modules, as well as the criteria that insurance and reinsurance undertakings, including captive insurance and reinsurance undertakings, shall be required to fulfil in order to be entitled to use each of those simplifications, as set out in Article 109;

m the approach to be used with respect to related undertakings within the meaning of Article 212 in the calculation of the Solvency Capital Requirement, in particular the calculation of the equity risk sub-module referred to in Article 105(5), taking into account the likely reduction in the volatility of the value of those related undertakings arising from the strategic nature of those investments and the influence exercised by the participating undertaking on those related undertakings;

n how to use external credit assessments from ECAIs in the calculation of the Solvency Capital Requirement in accordance with the standard formula and the allocation of external credit assessments to a scale of credit quality steps referred to in Article 109a(1) which shall be consistent with the use of external credit assessments from ECAIs in the calculation of the capital requirements for credit institutions as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 and financial institutions as defined in Article 4(1)(26) thereof;

o the detailed criteria for the equity index referred to in Article 109a(2)(c);

p the detailed criteria for the adjustments for currencies pegged to the euro for the purpose of facilitating the calculation of the currency risk sub-module referred to in Article 109a(2)(d);

q the conditions for a categorisation of regional governments and local authorities referred to in Article 109a(2)(a).

2 In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the procedures for supervisory approval of undertaking-specific parameters referred to in point (k) of paragraph 1.

EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

3 By 31 December 2020, the Commission shall make an assessment of the appropriateness of the methods, assumptions and standard parameters used when calculating

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the Solvency Capital Requirement standard formula. It shall in particular take into account the performance of any asset class and financial instruments, the behaviour of investors in those assets and financial instruments as well as developments in international standard setting in financial services. The review of certain asset classes may be prioritised. The Commission shall present a report to the European Parliament and to the Council, accompanied, where appropriate, by proposals for the amendment of this Directive, or of delegated or implementing acts adopted pursuant hereto.

4 In order to ensure consistent harmonisation in relation to the Solvency Capital Requirement, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify quantitative limits and asset eligibility criteria where those risks are not adequately covered by a sub-module.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Those regulatory technical standards shall apply to assets covering technical provisions, excluding assets held in respect of life insurance contracts where the investment risk is borne by the policy holders. They shall be reviewed by the Commission in the light of developments in the standard formula and financial markets.**]**

Textual Amendments

F3 Substituted 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).

Subsection 3

Solvency capital requirement full and partial internal models

Article 112

General provisions for the approval of full and partial internal models

1 Member States shall ensure that insurance or reinsurance undertakings may calculate the Solvency Capital Requirement using a full or partial internal model as approved by the supervisory authorities.

2 Insurance and reinsurance undertakings may use partial internal models for the calculation of one or more of the following:

a one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in Articles 104 and 105;

b the capital requirement for operational risk as set out in Article 107;

c the adjustment referred to in Article 108.

In addition, partial modelling may be applied to the whole business of insurance and reinsurance undertakings, or only to one or more major business units.

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3 In any application for approval, insurance and reinsurance undertakings shall submit, as a minimum, documentary evidence that the internal model fulfils the requirements set out in Articles 120 to 125.

Where the application for that approval relates to a partial internal model, the requirements set out in Articles 120 to 125 shall be adapted to take account of the limited scope of the application of the model.

4 The supervisory authorities shall decide on the application within six months from the receipt of the complete application.

5 Supervisory authorities shall give approval to the application only if they are satisfied that the systems of the insurance or reinsurance undertaking for identifying, measuring, monitoring, managing and reporting risk are adequate and in particular, that the internal model fulfils the requirements referred to in paragraph 3.

6 A decision by the supervisory authorities to reject the application for the use of an internal model shall state the reasons on which it is based.

7 After having received approval from supervisory authorities to use an internal model, insurance and reinsurance undertakings may, by means of a decision stating the reasons, be required to provide supervisory authorities with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2.

Article 113

Specific provisions for the approval of partial internal models

1 In the case of a partial internal model, supervisory approval shall be given only where that model fulfils the requirements set out in Article 112 and the following additional conditions:

a the reason for the limited scope of application of the model is properly justified by the undertaking;

b the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and in particular complies with the principles set out in Subsection 1;

c its design is consistent with the principles set out in Subsection 1 so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement standard formula.

2 When assessing an application for the use of a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of an insurance or reinsurance undertaking with respect to a specific risk module, or parts of both, supervisory authorities may require the insurance and reinsurance undertakings concerned to submit a realistic transitional plan to extend the scope of the model.

The transitional plan shall set out the manner in which insurance and reinsurance undertakings plan to extend the scope of the model to other sub-modules or business units, in order to ensure that the model covers a predominant part of their insurance operations with respect to that specific risk module.

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[F3 Article 114

Delegated acts and implementing technical standards concerning the Solvency Capital Requirement internal models

1 The Commission shall adopt delegated acts in accordance with Article 301a setting out the following:

a the adaptations to be made to the standards set out in Articles 120 to 125 in light of the limited scope of the application of the partial internal model;

b the manner in which a partial internal model is to be fully integrated into the Solvency Capital Requirement standard formula referred to in Article 113(1)(c) and the requirements for the use of alternative integration techniques.

2 In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the procedures for:

a the approval of an internal model in accordance with Article 112; and

b the approval of major changes to an internal model and changes to the policy for changing an internal model referred to in Article 115.

EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F3 Substituted 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).

Article 115

Policy for changing the full and partial internal models

As part of the initial approval process of an internal model, the supervisory authorities shall approve the policy for changing the model of the insurance or reinsurance undertaking. Insurance and reinsurance undertakings may change their internal model in accordance with that policy.

The policy shall include a specification of minor and major changes to the internal model.

Major changes to the internal model, as well as changes to that policy, shall always be subject to prior supervisory approval, as laid down in Article 112.

Minor changes to the internal model shall not be subject to prior supervisory approval, insofar as they are developed in accordance with that policy.

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Article 116

Responsibilities of the administrative, management or supervisory bodies

The administrative, management or supervisory bodies of the insurance and reinsurance undertakings shall approve the application to the supervisory authorities for approval of the internal model referred to in Article 112, as well as the application for approval of any subsequent major changes made to that model.

The administrative, management or supervisory body shall have responsibility for putting in place systems which ensure that the internal model operates properly on a continuous basis.

Article 117

Reversion to the standard formula

After having received approval in accordance with Article 112, insurance and reinsurance undertakings shall not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, except in duly justified circumstances and subject to the approval of the supervisory authorities.

Article 118

Non-compliance of the internal model

1 If, after having received approval from the supervisory authorities to use an internal model, insurance and reinsurance undertakings cease to comply with the requirements set out in Articles 120 to 125, they shall, without delay, either present to the supervisory authorities a plan to restore compliance within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.

2 In the event that insurance and reinsurance undertakings fail to implement the plan referred to in paragraph 1, the supervisory authorities may require insurance and reinsurance undertakings to revert to calculating the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2.

Article 119

Significant deviations from the assumptions underlying the standard formula calculation

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance or reinsurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the supervisory authorities may, by means of a decision stating the reasons, require the undertaking concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules thereof.

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Article 120

Use test

Insurance and reinsurance undertakings shall demonstrate that the internal model is widely used in and plays an important role in their system of governance, referred to in Articles 41 to 50, in particular:

(a) their risk-management system as laid down in Article 44 and their decision-making processes;

(b) their economic and solvency capital assessment and allocation processes, including the assessment referred to in Article 45.

In addition, insurance and reinsurance undertakings shall demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which they use their internal model for the other purposes covered by the first paragraph.

The administrative, management or supervisory body shall be responsible for ensuring the ongoing appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the insurance and reinsurance undertakings concerned.

Article 121

Statistical quality standards

1 The internal model, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the criteria set out in paragraphs 2 to 9.

2 The methods used to calculate the probability distribution forecast shall be based on adequate, applicable and relevant actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

The methods used to calculate the probability distribution forecast shall be based upon current and credible information and realistic assumptions.

Insurance and reinsurance undertakings shall be able to justify the assumptions underlying their internal model to the supervisory authorities.

3 Data used for the internal model shall be accurate, complete and appropriate.

Insurance and reinsurance undertakings shall update the data sets used in the calculation of the probability distribution forecast at least annually.

4 No particular method for the calculation of the probability distribution forecast shall be prescribed.

Regardless of the calculation method chosen, the ability of the internal model to rank risk shall be sufficient to ensure that it is widely used in and plays an important role in the system of governance of insurance and reinsurance undertakings, in particular their risk-management system and decision-making processes, and capital allocation in accordance with Article 120.

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The internal model shall cover all of the material risks to which insurance and reinsurance undertakings are exposed. Internal models shall cover at least the risks set out in Article 101(4).

5 As regards diversification effects, insurance and reinsurance undertakings may take account in their internal model of dependencies within and across risk categories, provided that supervisory authorities are satisfied that the system used for measuring those diversification effects is adequate.

6 Insurance and reinsurance undertakings may take full account of the effect of risk-mitigation techniques in their internal model, as long as credit risk and other risks arising from the use of risk-mitigation techniques are properly reflected in the internal model.

7 Insurance and reinsurance undertakings shall accurately assess the particular risks associated with financial guarantees and any contractual options in their internal model, where material. They shall also assess the risks associated with both policy holder options and contractual options for insurance and reinsurance undertakings. For that purpose, they shall take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

8 In their internal model, insurance and reinsurance undertakings may take account of future management actions that they would reasonably expect to carry out in specific circumstances.

In the case set out in the first subparagraph, the undertaking concerned shall make allowance for the time necessary to implement such actions.

9 In their internal model, insurance and reinsurance undertakings shall take account of all payments to policy holders and beneficiaries which they expect to make, whether or not those payments are contractually guaranteed.

Article 122

Calibration standards

1 Insurance and reinsurance undertakings may use a different time period or risk measure than that set out in Article 101(3) for internal modelling purposes as long as the outputs of the internal model can be used by those undertakings to calculate the Solvency Capital Requirement in a manner that provides policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101.

2 Where practicable, insurance and reinsurance undertakings shall derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model of those undertakings, using the Value-at-Risk measure set out in Article 101(3).

3 Where insurance and reinsurance undertakings cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model, the supervisory authorities may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as those undertakings can demonstrate to the supervisory authorities that policy holders are provided with a level of protection equivalent to that provided for in Article 101.

4 Supervisory authorities may require insurance and reinsurance undertakings to run their internal model on relevant benchmark portfolios and using assumptions based on external

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rather than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

Article 123

Profit and loss attribution

Insurance and reinsurance undertakings shall review, at least annually, the causes and sources of profits and losses for each major business unit.

They shall demonstrate how the categorisation of risk chosen in the internal model explains the causes and sources of profits and losses. The categorisation of risk and attribution of profits and losses shall reflect the risk profile of the insurance and reinsurance undertakings.

Article 124

Validation standards

Insurance and reinsurance undertakings shall have a regular cycle of model validation which includes monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specification, and testing its results against experience.

The model validation process shall include an effective statistical process for validating the internal model which enables the insurance and reinsurance undertakings to demonstrate to their supervisory authorities that the resulting capital requirements are appropriate.

The statistical methods applied shall test the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating thereto.

The model validation process shall include an analysis of the stability of the internal model and in particular the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions. It shall also include an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

Article 125

Documentation standards

Insurance and reinsurance undertakings shall document the design and operational details of their internal model.

The documentation shall demonstrate compliance with Articles 120 to 124.

The documentation shall provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model.

The documentation shall indicate any circumstances under which the internal model does not work effectively.

Insurance and reinsurance undertakings shall document all major changes to their internal model, as set out in Article 115.

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Article 126

External models and data

The use of a model or data obtained from a third party shall not be considered to be a justification for exemption from any of the requirements for the internal model set out in Articles 120 to 125.

[F3 Article 127

Delegated acts concerning Articles 120 to 126

The Commission shall adopt delegated acts in accordance with Article 301a with respect to Articles 120 to 126 to enhance the better assessment of the risk profile and management of the business of insurance and reinsurance undertakings regarding the use of internal models throughout the Union.**]**

Textual Amendments

F3 Substituted 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).

Section 5

Minimum capital requirement

Article 128

General provisions

Member States shall require that insurance and reinsurance undertakings hold eligible basic own funds, to cover the Minimum Capital Requirement.

Article 129

Calculation of the Minimum Capital Requirement

1 The Minimum Capital Requirement shall be calculated in accordance with the following principles:

a it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;

b it shall correspond to an amount of eligible basic own funds below which policy holders and beneficiaries are exposed to an unacceptable level of risk were insurance and reinsurance undertakings allowed to continue their operations;

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c the linear function referred to in paragraph 2 used to calculate the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 85 % over a one-year period;

d it shall have an absolute floor of:

(i) **[**F3EUR 2 500 000 for non-life insurance undertakings, including captive insurance undertakings, save in the case where all or some of the risks included in one of the classes 10 to 15 listed in Part A of Annex I are covered, in which case it shall be no less than EUR 3 700 000;

(ii) EUR 3 700 000 for life insurance undertakings, including captive insurance undertakings;

(iii) EUR 3 600 000 for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be not less than EUR 1 200 000;**]**

(iv) the sum of the amounts set out in points (i) and (ii) for insurance undertakings as referred to in Article 73(5).

2 Subject to paragraph 3, the Minimum Capital Requirement shall be calculated as a linear function of a set or sub-set of the following variables: the undertaking's technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses. The variables used shall be measured net of reinsurance.

3 Without prejudice to paragraph 1(d), the Minimum Capital Requirement shall neither fall below 25 % nor exceed 45 % of the undertaking's Solvency Capital Requirement, calculated in accordance with Chapter VI, Section 4, Subsections 2 or 3, and including any capital add-on imposed in accordance with Article 37.

[F3Member States shall allow their supervisory authorities, for a period ending no later than 31 December 2017, to require an insurance or reinsurance undertaking to apply the percentages referred to in the first subparagraph exclusively to the undertaking's Solvency Capital Requirement calculated in accordance with Chapter VI, Section 4, Subsection 2.**]**

4 Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to supervisory authorities.

[F2For the purposes of calculating the limits referred to in paragraph 3, undertakings shall not be required to calculate the Solvency Capital Requirement on a quarterly basis.**]**

Where either of the limits referred to in paragraph 3 determines an undertaking's Minimum Capital Requirement, the undertaking shall provide to the supervisory authority information allowing a proper understanding of the reasons therefor.

[F35 The Commission shall submit to the European Parliament and the Council by 31 December 2020 a report on Member States' rules and supervisory authorities' practices adopted pursuant to paragraphs 1 to 4.**]**

That report shall address, in particular, the use and level of the cap and the floor set out in paragraph 3 as well as any problems faced by supervisory authorities and by undertakings in the application of this Article.

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Textual Amendments

F2 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).

F3 Substituted 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).

[F3 Article 130

Delegated acts

The Commission shall adopt delegated acts in accordance with Article 301a specifying the calculation of the Minimum Capital Requirement, referred to in Articles 128 and 129.**]**

Textual Amendments

F3 Substituted 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).

Article 131

Transitional arrangements regarding compliance with the Minimum Capital Requirement

By way of derogation from Articles 139 and 144, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 28 of Directive 2002/83/EC, Article 16a of Directive 73/239/EEC or Article 37, 38 or 39 of Directive 2005/68/EC respectively on **[**F3 31 December 2015**]** but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertakings concerned shall comply with Article 128 by **[**F3 31 December 2016**]**.

Where the undertaking concerned fails to comply with Article 128 within the period set out in the first paragraph, the authorisation of the undertaking shall be withdrawn, subject to the applicable processes provided for in the national legislation.

Textual Amendments

F3 Substituted 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

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Section 6

Investments

Article 132

Prudent person principle

1 Member States shall ensure that insurance and reinsurance undertakings invest all their assets in accordance with the prudent person principle, as specified in paragraphs 2, 3 and 4.

2 With respect to the whole portfolio of assets, insurance and reinsurance undertakings shall only invest in assets and instruments whose risks the undertaking concerned can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with point (a) of the second subparagraph of Article 45(1).

All assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole. In addition the localisation of those assets shall be such as to ensure their availability.

Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective.

In the case of a conflict of interest, insurance undertakings, or the entity which manages their asset portfolio, shall ensure that the investment is made in the best interest of policy holders and beneficiaries.

3 Without prejudice to paragraph 2, with respect to assets held in respect of life insurance contracts where the investment risk is borne by the policy holders, the second, third and fourth subparagraphs of this paragraph shall apply.

Where the benefits provided by a contract are directly linked to the value of units in an UCITS as defined in Directive 85/611/EEC, or to the value of assets contained in an internal fund held by the insurance undertakings, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets.

Where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in the second subparagraph, the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based.

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Where the benefits referred to in the second and third subparagraphs include a guarantee of investment performance or some other guaranteed benefit, the assets held to cover the corresponding additional technical provisions shall be subject to paragraph 4.

4 Without prejudice to paragraph 2, with respect to assets other than those covered by paragraph 3, the second to fifth subparagraphs of this paragraph shall apply.

The use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management.

Investment and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels.

Assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area and excessive accumulation of risk in the portfolio as a whole.

Investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the insurance undertakings to excessive risk concentration.

Article 133

Freedom of investment

1 Member States shall not require insurance and reinsurance undertakings to invest in particular categories of asset.

2 Member States shall not subject the investment decisions of an insurance or reinsurance undertaking or its investment manager to any kind of prior approval or systematic notification requirements.

3 This Article is without prejudice to Member States' requirements restricting the types of assets or reference values to which policy benefits may be linked. Any such rules shall be applied only where the investment risk is borne by a policy holder who is a natural person and shall not be more restrictive than those set out in the Directive 85/611/EEC.

Article 134

Localisation of assets and prohibition of pledging of assets

1 With respect to insurance risks situated in the Community, Member States shall not require that the assets held to cover the technical provisions related to those risks are localised within the Community or in any particular Member States.

In addition, with respect to recoverables from reinsurance contracts against undertakings authorised in accordance with this Directive or which have their head office in a third country whose solvency regime is deemed to be equivalent in accordance with Article 172, Member States shall not require the localisation within the Community of the assets representing those recoverables.

2 Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is an insurance or reinsurance undertaking authorised in accordance with this Directive.

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[F3 Article 135

Delegated acts and regulatory technical standards concerning qualitative requirements

1 The Commission may adopt delegated acts in accordance with Article 301a specifying qualitative requirements in the following areas:

a the identification, measurement, monitoring and managing of risks arising from investments in relation to the first subparagraph of Article 132(2);

b the identification, measurement, monitoring and managing of specific risks arising from investment in derivative instruments and assets referred to in the second subparagraph of Article 132(4) and the determination of the extent to which the use of such assets qualifies as risk reduction or efficient portfolio management as referred to in the third subparagraph of Article 132(4).

[F7 2 The Commission shall adopt delegated acts in accordance with Article 301a of this Directive supplementing this Directive by laying down the specifications for the circumstances under which a proportionate additional capital charge may be imposed when the requirements provided for in Articles 5 or 6 of Regulation (EU) 2017/2402 of the European Parliament and of the Council[(12)] have been breached, without prejudice to Article 101(3) of this Directive.

3 In order to ensure consistent harmonisation in relation to paragraph 2 of this Article, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the methodologies for the calculation of a proportionate additional capital charge referred to therein.

The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.**]]**

Textual Amendments

F3 Substituted 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).

F7 Substituted by Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

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CHAPTER VII

Insurance and reinsurance undertakings in difficulty or in an irregular situation

Article 136

Identification and notification of deteriorating financial conditions by the insurance and reinsurance undertaking

Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the supervisory authorities when such deterioration occurs.

Article 137

Non-Compliance with technical provisions

Where an insurance or reinsurance undertaking does not comply with Chapter VI, Section 2, the supervisory authorities of its home Member State may prohibit the free disposal of its assets after having communicated their intentions to the supervisory authorities of the host Member States. The supervisory authorities of the home Member State shall designate the assets to be covered by such measures.

Article 138

Non-Compliance with the Solvency Capital Requirement

1 Insurance and reinsurance undertakings shall immediately inform the supervisory authority as soon as they observe that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

2 Within two months from the observation of non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the supervisory authority.

3 The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

The supervisory authority may, if appropriate, extend that period by three months.

[[F3]4 In the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, as declared by EIOPA, and where appropriate after consulting the ESRB, the supervisory authority may extend, for affected undertakings, the period set out in the second subparagraph of paragraph 3 by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.

Without prejudice to the powers of EIOPA under Article 18 of Regulation (EU) No 1094/2010, for the purposes of this paragraph EIOPA shall, following a request by the supervisory authority concerned, declare the existence of exceptional adverse

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situations. The supervisory authority concerned may make a request if insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in paragraph 3. Exceptional adverse situations exist where the financial situation of insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions:

a a fall in financial markets which is unforeseen, sharp and steep;

b a persistent low interest rate environment;

c a high-impact catastrophic event.

EIOPA shall, in cooperation with the supervisory authority concerned, assess on a regular basis whether the conditions referred to in the second subparagraph still apply. EIOPA shall, in cooperation with the supervisory authority concerned, declare when an exceptional adverse situation has ceased to exist.

The insurance or reinsurance undertaking concerned shall, every three months, submit a progress report to its supervisory authority setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

The extension referred to in the first subparagraph shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.**]**

5 In exceptional circumstances, where the supervisory authority is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. That supervisory authority shall inform the supervisory authorities of the host Member States of any measures it has taken. Those authorities shall, at the request of the supervisory authority of the home Member State, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.

Textual Amendments

F3 Substituted 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).

Article 139

Non-Compliance with the Minimum Capital Requirement

1 Insurance and reinsurance undertakings shall inform the supervisory authority immediately where they observe that the Minimum Capital Requirement is no longer complied with or where there is a risk of non-compliance in the following three months.

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2 Within one month from the observation of non-compliance with the Minimum Capital Requirement, the insurance or reinsurance undertaking concerned shall submit, for approval by the supervisory authority, a short-term realistic finance scheme to restore, within three months of that observation, the eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce its risk profile to ensure compliance with the Minimum Capital Requirement.

3 The supervisory authority of the home Member State may also restrict or prohibit the free disposal of the assets of the insurance or reinsurance undertaking. It shall inform the supervisory authorities of the host Member States accordingly. At the request of the supervisory authority of the home Member State, those authorities shall, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.

Article 140

Prohibition of free disposal of assets located within the territory of a Member State

Member States shall take the measures necessary to be able, in accordance with national law, to prohibit the free disposal of assets located within their territory at the request, in the cases provided for in Articles 137 to 139 and Article 144(2) of the undertaking's home Member State, which shall designate the assets to be covered by such measures.

Article 141

Supervisory powers in deteriorating financial conditions

Notwithstanding Articles 138 and 139, where the solvency position of the undertaking continues to deteriorate, the supervisory authorities shall have the power to take all measures necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

Those measures shall be proportionate and thus reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

Article 142

Recovery plan and finance scheme

1 The recovery plan referred to in Article 138(2) and the finance scheme referred to in Article 139(2) shall, at least include particulars or evidence concerning the following:

a estimates of management expenses, in particular current general expenses and commissions;

b estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;

c a forecast balance sheet;

d estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement;

e the overall reinsurance policy.

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2 Where the supervisory authorities have required a recovery plan referred to in Article 138(2) or a finance scheme referred to in Article 139(2) in accordance with paragraph 1 of this Article, they shall refrain from issuing a certificate in accordance with Article 39 for as long as they consider that the rights of the policy holders, or the contractual obligations of the reinsurance undertaking are threatened.

[F3 Article 143

Delegated acts and regulatory technical standards concerning Article 138(4)

1 The Commission shall adopt delegated acts in accordance with Article 301a supplementing the types of exceptional adverse situations and specifying the factors and criteria to be taken into account by EIOPA in declaring the existence of exceptional adverse situations and by supervisory authorities in determining the extension to recovery period in accordance with Article 138(4).

2 In order to ensure consistent harmonisation in relation to Article 138(2), Article 139(2) and Article 141, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the recovery plan referred to in Article 138(2), and the finance scheme referred to in Article 139(2) and with respect to Article 141, taking due care to avoid pro-cyclical effects.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F3 Substituted 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).

Article 144

Withdrawal of authorisation

1 The supervisory authority of the home Member State may withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:

a the undertaking concerned does not make use of the authorisation within 12 months, expressly renounces it or ceases to pursue business for more than six months, unless the Member State concerned has made provision for authorisation to lapse in such cases;

b the undertaking concerned no longer fulfils the conditions for authorisation;

c the undertaking concerned fails seriously in its obligations under the regulations to which it is subject.

The supervisory authority of the home Member State shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the event that the undertaking does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is manifestly inadequate or the undertaking

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concerned fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.

2 In the event of the withdrawal or lapse of authorisation, the supervisory authority of the home Member State shall notify the supervisory authorities of the other Member States accordingly, and those authorities shall take appropriate measures to prevent the insurance or reinsurance undertaking from commencing new operations within their territories.

The supervisory authority of the home Member State shall, together with those authorities, take all measures necessary to safeguard the interests of insured persons and, in particular, shall restrict the free disposal of the assets of the insurance undertaking in accordance with Article 140.

3 Any decision to withdraw authorisation shall state the full reasons and shall be communicated to the insurance or reinsurance undertaking concerned.

CHAPTER VIII

Right of establishment and freedom to provide services

Section 1

Establishment by insurance undertakings

Article 145

Conditions for branch establishment

1 Member States shall ensure that an insurance undertaking which proposes to establish a branch within the territory of another Member State notifies the supervisory authorities of its home Member State.

Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

2 Member States shall require every insurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

a the Member State within the territory of which it proposes to establish a branch;

b a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;

c the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking or, in the case of Lloyd's, the underwriters concerned and to represent it or them in relations with the authorities and courts of the host Member State (the authorised agent);

d the address in the host Member State from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent.

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With regard to Lloyd's, in the event of any litigation in the host Member State arising out of underwritten commitments, the insured persons shall not be treated less favourably than if the litigation had been brought against businesses of a conventional type.

3 Where a non-life insurance undertaking intends its branch to cover risks in class 10 in Part A of Annex I, not including carrier's liability, it shall produce a declaration that it has become a member of the national bureau and the national guarantee fund of the host Member State.

4 In the event of a change in any of the particulars communicated under point (b), (c) or (d) of paragraph 2, an insurance undertaking shall give written notice of the change to the supervisory authorities of the home Member State and of the Member State where that branch is situated at least one month before making the change so that the supervisory authorities of the home Member State and the supervisory authorities of the Member State where that branch is situated may fulfil their respective obligations under Article 146.

Article 146

Communication of information

1 Unless the supervisory authorities of the home Member State have reason to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements in accordance with Article 42 of the authorised agent, taking into account the business planned, they shall, within three months of receiving all the information referred to in Article 145(2), communicate that information to the supervisory authorities of the host Member State and shall inform the insurance undertaking concerned thereof.

The supervisory authorities of the home Member State shall also attest that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 129.

2 Where the supervisory authorities of the home Member State refuse to communicate the information referred to in Article 145(2) to the supervisory authorities of the host Member State they shall state the reasons for their refusal to the insurance undertaking concerned within three months of receiving all the information in question.

Such a refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

3 Before the branch of an insurance undertaking starts business, the supervisory authorities of the host Member State shall, where applicable, within two months of receiving the information referred to in paragraph 1, inform the supervisory authority of the home Member State of the conditions under which, in the interest of the general good, that business must be pursued in the host Member State. The supervisory authority of the home Member State shall communicate this information to the insurance undertaking concerned.

The insurance undertaking may establish the branch and start business as from the date upon which the supervisory authority of the home Member State has received such a communication or, if no communication is received, on expiry of the period provided for in the first subparagraph.

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Section 2

Freedom to provide services: by insurance undertakings

Subsection 1

General provisions

Article 147

Prior notification to the home Member State

Any insurance undertaking that intends to pursue business for the first time in one or more Member States under the freedom to provide services shall first notify the supervisory authorities of the home Member State, indicating the nature of the risks or commitments it proposes to cover.

Article 148

Notification by the home Member State

1 Within one month of the notification provided for in Article 147, the supervisory authorities of the home Member State shall communicate the following to the Member State or States within the territories of which an insurance undertaking intends to pursue business under the freedom to provide services:

a a certificate attesting that the insurance undertaking covers the Solvency Capital Requirement and Minimum Capital Requirement calculated in accordance with Articles 100 and 129;

b the classes of insurance which the insurance undertaking has been authorised to offer;

c the nature of the risks or commitments which the insurance undertaking proposes to cover in the host Member State.

At the same time, the supervisory authorities of the home Member State shall inform the insurance undertaking concerned of that communication.

2 Member States within the territory of which a non-life insurance undertaking intends, under the freedom to provide services, to cover risks in class 10 in Part A of Annex I other than carrier's liability may require that insurance undertaking to submit the following:

a the name and address of the representative referred to in Article 18(1)(h);

b a declaration that it has become a member of the national bureau and national guarantee fund of the host Member State.

3 Where the supervisory authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down therein, they shall state the reasons for their refusal to the insurance undertaking within that same period.

Such a refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

4 The insurance undertaking may start business as from the date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.

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[F3 Article 149

Changes in the nature of the risks or commitments

Any change which an insurance undertaking intends to make to the information referred to in Article 147 shall be subject to the procedure provided for in Articles 147 and 148.**]**

Textual Amendments

F3 Substituted 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).

Subsection 2

Third party motor vehicle liability

Article 150

Compulsory insurance on third party motor vehicle liability

1 Where a non-life insurance undertaking, through an establishment situated in one Member State, covers a risk, other than carrier's liability, classified under class 10 in Part A of Annex I which is situated in another Member State, the host Member State shall require that undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.

2 The financial contribution referred to in paragraph 1 shall be made only in relation to risks, other than carrier's liability, classified under class 10 in Part A of Annex I covered by way of provision of services. That contribution shall be calculated on the same basis as for non-life insurance undertakings covering those risks, through an establishment situated in that Member State.

The calculation shall be made by reference to the insurance undertakings' premium income from that class in the host Member State or the number of risks in that class covered there.

3 The host Member State may require an insurance undertaking providing services to comply with the rules in that Member State concerning the cover of aggravated risks, insofar as they apply to non-life insurance undertakings established in that State.

Article 151

Non-discrimination of persons pursuing claims

The host Member State shall require the non-life insurance undertaking to ensure that persons pursuing claims arising out of events occurring in its territory are not placed in

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a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier's liability, classified under class 10 in Part A of Annex I by way of provision of services rather than through an establishment situated in that State.

Article 152

Representative

1 For the purposes referred to in Article 151, the host Member State shall require the non-life insurance undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to those claims.

That representative may also be required to represent the non-life insurance undertaking before the supervisory authorities of the host Member State with regard to checking the existence and validity of motor vehicle liability insurance policies.

2 The host Member State shall not require that representative to undertake activities on behalf of the non-life insurance undertaking which appointed him other than those set out in paragraph 1.

3 The appointment of the representative shall not in itself constitute the opening of a branch for the purpose of Article 145.

4 Where the insurance undertaking has failed to appoint a representative, Member States may give their approval to the claims representative appointed in accordance with Article 4 of Directive 2000/26/EC to assume the function of the representative referred to in paragraph 1 of this Article.

Section 3

Competencies of the supervisory authorities of the host member state

Subsection 1

Insurance

Article 153

Language

The supervisory authorities of the host Member State may require the information which they are authorised to request with regard to the business of insurance undertakings operating in the territory of that Member State to be supplied to them in the official language or languages of that State.

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Article 154

Prior notification and prior approval

1 The host Member State shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or, in the case of life insurance, the technical bases used in particular for calculating scales of premiums and technical provisions, or the forms and other documents which an insurance undertaking intends to use in its dealings with policy holders.

2 The host Member State shall only require an insurance undertaking that proposes to pursue insurance business within its territory to effect non-systematic notification of policy conditions and other documents for the purpose of verifying compliance with its national provisions concerning insurance contracts, and that requirement shall not constitute a prior condition for an insurance undertaking to pursue its business.

3 The host Member State shall not retain or introduce a requirement for prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Article 155

Insurance undertakings not complying with the legal provisions

1 Where the supervisory authorities of a host Member State establish that an insurance undertaking with a branch or pursuing business under the freedom to provide services in its territory is not complying with the legal provisions applicable to it in that Member State, they shall require the insurance undertaking concerned to remedy such irregularity.

2 Where the insurance undertaking concerned fails to take the necessary action, the supervisory authorities of the Member State concerned shall inform the supervisory authorities of the home Member State accordingly.

The supervisory authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the insurance undertaking concerned remedies that irregular situation.

The supervisory authorities of the home Member State shall inform the supervisory authorities of the host Member State of the measures taken.

3 Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking in that Member State, the insurance undertaking persists in violating the legal provisions in force in the host Member State, the supervisory authorities of the host Member State may, after informing the supervisory authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new insurance contracts within the territory of the host Member State.

[[F2]In addition, the supervisory authority of the home or the host Member State 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.**]**

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Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on insurance undertakings.

4 Paragraphs 1, 2 and 3 shall not affect the power of the Member States concerned to take appropriate emergency measures to prevent or penalise irregularities within their territories. That power shall include the possibility of preventing insurance undertakings from continuing to conclude new insurance contracts within their territories.

5 Paragraphs 1, 2 and 3 shall not affect the power of the Member States to penalise infringements within their territories.

6 Where an insurance undertaking which has committed an infringement has an establishment or possesses property in the Member State concerned, the supervisory authorities of that Member State may, in accordance with national law, apply the national administrative penalties prescribed for that infringement by way of enforcement against that establishment or property.

7 Any measure adopted under paragraphs 2 to 6 involving restrictions on the conduct of insurance business must be properly reasoned and communicated to the insurance undertaking concerned.

8 Insurance undertakings shall submit to the supervisory authorities of the host Member State at their request all documents requested of them for the purposes of paragraphs 1 to 7 to the extent that insurance undertakings the head office of which is in that Member State are also obliged to do so.

[[F3]9 Member States shall inform the Commission and EIOPA of the number and types of cases which led to refusals under Articles 146 and 148 or in which measures have been taken under paragraphs 3 and 4 of this Article.**]**

Textual Amendments

F2 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).

F3 Substituted 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).

Article 156

Advertising

Insurance undertakings with head offices in Member States may advertise their services, through all available means of communication, in the host Member State, subject to the rules governing the form and content of such advertising adopted in the interest of the general good.

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Article 157

Taxes on premiums

1 Without prejudice to any subsequent harmonisation, every insurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated or the Member State of the commitment

For the purposes of the first subparagraph, movable property contained in a building situated within the territory of a Member State, except for goods in commercial transit, shall be considered as a risk situated in that Member State, even where the building and its contents are not covered by the same insurance policy.

In the case of Spain, an insurance contract shall also be subject to the surcharges legally established in favour of the Spanish 'Consorcio de Compensación de Seguros' for the performance of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.

2 The law applicable to the contract under Article 178 of this Directive and under Regulation (EC) No 593/2008 shall not affect the fiscal arrangements applicable.

3 Each Member State shall apply its own national provisions to those insurance undertakings which cover risks or commitments situated within its territory for measures to ensure the collection of indirect taxes and parafiscal charges due under paragraph 1.

Subsection 2

Reinsurance

Article 158

Reinsurance undertakings not complying with the legal provisions

1 Where the supervisory authorities of a Member State establish that a reinsurance undertaking with a branch or pursuing business under the freedom to provide services within its territory is not complying with the legal provisions applicable to it in that Member State, they shall require the reinsurance undertaking concerned to remedy that irregular situation. At the same time, they shall refer those findings to the supervisory authority of the home Member State.

2 Where, despite the measures taken by the home Member State or because such measures prove inadequate, the reinsurance undertaking persists in violating the legal provisions applicable to it in the host Member State, the supervisory authorities of the host Member State may, after informing the supervisory authority of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing that reinsurance undertaking from continuing to conclude new reinsurance contracts within the territory of the host Member State.

[[F2]In addition, the supervisory authority of the home or the host Member State 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.**]**

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Member States shall ensure that within their territories it is possible to serve the legal documents necessary for such measures on reinsurance undertakings.

3 Any measure adopted under paragraphs 1 and 2 involving sanctions or restrictions on the conduct of reinsurance business shall state the reasons and shall be communicated to the reinsurance undertaking concerned.

Textual Amendments

F2 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).

Section 4

Statistical information

[F3 Article 159

Statistical information on cross-border activities

Every insurance undertaking shall inform the competent supervisory authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commissions, without deduction of reinsurance, by Member State and as follows:

(a) for non-life insurance, by lines of business in accordance with the relevant delegated act;

(b) for life insurance, by lines of business in accordance with the relevant delegated act.

As regards class 10 in Part A of Annex I, excluding carrier's liability, the undertaking concerned shall also inform that supervisory authority of the frequency and average cost of claims.

The supervisory authority of the home Member State shall submit the information referred to in the first and second subparagraphs within reasonable time and in aggregate form to the supervisory authorities of each of the Member States concerned, upon their request.**]**

Textual Amendments

F3 Substituted 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).

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Section 5

Treatment of contracts of branches in winding-up proceedings

Article 160

Winding-up of insurance undertakings

Where an insurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other insurance contracts of that undertaking, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

Article 161

Winding-up of reinsurance undertakings

Where a reinsurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other reinsurance contracts of that undertaking.

CHAPTER IX

Branches established within the community and belonging to insurance or reinsurance undertakings with head offices situated outside the community

Section 1

Taking-up of business

Article 162

Principle of authorisation and conditions

1 Member States shall make access to the business referred to in the first subparagraph of Article 2(1) by any undertaking with a head office outside the Community subject to an authorisation.

2 A Member State may grant an authorisation where the undertaking fulfils at least the following conditions:

a it is entitled to pursue insurance business under its national law;

b it establishes a branch in the territory of the Member State in which authorisation is sought;

c it undertakes to set up at the place of management of the branch accounts specific to the business which it pursues there, and to keep there all the records relating to the business transacted;

d it designates a general representative, to be approved by the supervisory authorities;

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e it possesses in the Member State in which authorisation is sought assets of an amount equal to at least one half of the absolute floor prescribed in Article 129(1)(d) in respect of the Minimum Capital Requirement and deposits one fourth of that absolute floor as security;

f it undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements referred to in Articles 100 and 128;

g it communicates the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought where the risks to be covered are classified under class 10 of Part A of Annex I, other than carrier's liability;

h it submits a scheme of operations in accordance with the provisions in Article 163;

i it fulfils the governance requirements laid down in Chapter IV, Section 2.

3 For the purposes of this Chapter, 'branch' means a permanent presence in the territory of a Member State of an undertaking referred to in paragraph 1, which receives authorisation in that Member State and which pursues insurance business.

Article 163

Scheme of operations of the branch

1 The scheme of operations of the branch referred to in Article 162(2)(h) shall set out the following:

a the nature of the risks or commitments which the undertaking proposes to cover;

b the guiding principles as to reinsurance;

c estimates of the future Solvency Capital Requirement, as laid down in Chapter VI, Section 4, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

d estimates of the future Minimum Capital Requirement, as laid down in Chapter VI, Section 5, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;

e the state of the eligible own funds and eligible basic own funds of the undertaking with respect to the Solvency Capital Requirement and Minimum Capital Requirement as referred to in Chapter VI, Sections 4 and 5;

f estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, where the risks to be covered are classified under class 18 in Part A of Annex I, the resources available for the provision of the assistance;

g information on the structure of the system of governance.

2 In addition to the requirements set out in paragraph 1, the scheme of operations shall include the following, for the first three financial years:

a a forecast balance sheet;

b estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement,

c for non-life insurance:

(i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;

(ii) estimates of premiums or contributions and claims;

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d for life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

3 In regard to life insurance, Member States may require insurance undertakings to submit systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for a life insurance undertaking to pursue its business.

Article 164

Transfer of portfolio

1 Under the conditions laid down by national law, Member States shall authorise branches set up within their territory and covered by this Chapter to transfer all or part of their portfolios of contracts to an accepting undertaking established in the same Member State where the supervisory authorities of that Member State or, where appropriate, of the Member State referred to in Article 167, certify that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in the first paragraph of Article 100.

2 Under the conditions laid down by national law, Member States shall authorise branches set up within their territory and covered by this Chapter to transfer all or part of their portfolios of contracts to an insurance undertaking with a head office in another Member State where the supervisory authorities of that Member State certify that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in the first paragraph of Article 100.

3 Where under the conditions laid down by national law, a Member State authorises branches set up within its territory and covered by this Chapter to transfer all or part of their portfolios of contracts to a branch covered by this Chapter and set up within the territory of another Member State, it shall ensure that the supervisory authorities of the Member State of the accepting undertaking or, if appropriate, of the Member State referred to in Article 167 certify that:

a after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement;

b the law of the Member State of the accepting undertaking permits such a transfer; and

c that Member State has agreed to the transfer.

4 In the circumstances referred to in paragraphs 1 *to* 3, the Member State in which the transferring branch is situated shall authorise the transfer after obtaining the agreement of the supervisory authorities of the Member State in which the risks are situated, or the Member State of the commitment, where different from the Member State in which the transferring branch is situated.

5 The supervisory authorities of the Member States consulted shall give their opinion or consent to the supervisory authorities of the home Member State of the transferring branch within three months of receiving a request. The absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.

6 A transfer authorised in accordance with paragraphs 1 to 5 shall be published as laid down by national law in the Member State in which the risk is situated or the Member State of the commitment.

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Such transfers shall automatically be valid against policy holders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

Article 165

Technical provisions

Member States shall require undertakings to establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in their territories calculated in accordance with Chapter VI, Section 2. Member States shall require undertakings to value assets and liabilities in accordance with Chapter VI, Section 1 and determine own funds in accordance with Chapter VI, Section 3.

Article 166

Solvency Capital Requirement and Minimum Capital Requirement

1 Each Member State shall require for branches which are set up in its territory an amount of eligible own funds consisting of the items referred to in Article 98(3).

The Solvency Capital Requirement and the Minimum Capital Requirement shall be calculated in accordance with the provisions of Chapter VI, Sections 4 and 5.

However, for the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement, both for life and non-life insurance, account shall be taken only of the operations effected by the branch concerned.

2 The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement shall be constituted in accordance with Article 98(4).

3 The eligible amount of basic own funds shall not be less than half of the absolute floor required under Article 129(1)(d).

The deposit lodged in accordance with Article 162(2)(e) shall be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

4 The assets representing the Solvency Capital Requirement must be kept within the Member State where the activities are pursued up to the amount of the Minimum Capital Requirement and the excess within the Community.

Article 167

Advantages to undertakings authorised in more than one Member State

1 Any undertaking which has requested or obtained authorisation from more than one Member State may apply for the following advantages which may be granted only jointly:

a the Solvency Capital Requirement referred to in Article 166 shall be calculated in relation to the entire business which it pursues within the Community;

b the deposit required under Article 162(2)(e) shall be lodged in only one of those Member States;

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c the assets representing the Minimum Capital Requirement shall be localised, in accordance with Article 134, in any one of the Member States in which it pursues its activities.

In the cases referred to in point (a) of the first subparagraph, account shall be taken only of the operations effected by all the branches established within the Community for the purposes of this calculation.

2 Application to benefit from the advantages provided for in paragraph 1 shall be made to the supervisory authorities of the Member States concerned. The application shall state the authority of the Member State which in future is to supervise the solvency of the entire business of the branches established within the Community. Reasons must be given for the choice of authority made by the undertaking.

The deposit referred to in Article 162(2)(e) shall be lodged with that Member State.

3 The advantages provided for in paragraph 1 may be granted only where the supervisory authorities of all Member States in which an application has been made agree to them.

Those advantages shall take effect from the time when the selected supervisory authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the branches within the Community.

The supervisory authority selected shall obtain from the other Member States the information necessary for the supervision of the overall solvency of the branches established in their territory.

4 At the request of one or more of the Member States concerned, the advantages granted under paragraphs 1, 2 and 3 shall be withdrawn simultaneously by all Member States concerned.

Article 168

Accounting, prudential and statistical information and undertakings in difficulty

For the purposes of this Section, Article 34, Article 139(3) and Articles 140 and 141 shall apply.

As regards the application of Articles 137 to 139, where an undertaking qualifies for the advantages provided for in Article 167(1), (2) and (3), the supervisory authority responsible for verifying the solvency of branches established within the Community with respect to their entire business shall be treated in the same way as the supervisory authority of the Member State in the territory of which the head office of an undertaking established in the Community.

Article 169

Separation of non-life and life business

1 Branches referred to in this Section shall not simultaneously pursue life and non-life insurance activities in the same Member State.

2 By way of derogation from paragraph 1 Member States may provide that branches referred to in this Section which, on the relevant date referred to in the first subparagraph of Article 73(5), pursued both activities simultaneously in a Member State may continue to do so there provided that each activity is separately managed in accordance with Article 74.

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3 Any Member State which under the second subparagraph of Article 73(5) requires undertakings established in its territory to cease the simultaneous pursuit of the activities in which they were engaged on the relevant date referred to in the first subparagraph of Article 73(5) must also impose this requirement on branches referred to in this Section which are established in its territory and simultaneously pursue both activities there.

Member States may provide that branches referred to in this Section whose head office simultaneously pursues both activities and which on the dates referred to in the first subparagraph of Article 73(5) pursued in the territory of a Member State solely life insurance activity may continue their activity there. Where the undertaking wishes to pursue non-life insurance activity in that territory it may only pursue life insurance activity through a subsidiary.

Article 170

Withdrawal of authorisation for undertakings authorised in more than one Member State

In the case of a withdrawal of authorisation by the authority referred to in Article 167(2) that authority shall notify the supervisory authorities of the other Member States where the undertaking operates and those authorities shall take the appropriate measures.

Where the reason for that withdrawal is the inadequacy of the overall state of solvency as fixed by the Member States which agreed to the request referred to in Article 167, the Member States which gave their approval shall also withdraw their authorisations.

Article 171

Agreements with third countries

The Community may, by means of agreements concluded pursuant to the Treaty with one or more third countries, agree to the application of provisions different to those provided for in this Section, for the purpose of ensuring, under conditions of reciprocity, adequate protection for policy holders and insured persons in the Member States.

Section 2

Reinsurance

[F3 Article 172

Equivalence in relation to reinsurance undertakings

1 The Commission shall adopt delegated acts in accordance with Article 301a specifying the criteria for assessing whether the solvency regime of a third country that applies to reinsurance activities of undertakings with their head office in that third country is equivalent to that laid down in Title I.

2 If the criteria adopted in accordance with paragraph 1 have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts

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determining that the solvency regime of that third country that applies to reinsurance activities of undertakings with the head office in that third country is equivalent to that laid down in Title I of this Directive.

Those delegated acts shall be regularly reviewed, to take into account any significant changes to the supervisory regime laid down in Title I, and to the supervisory regime in the third country.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

3 Where, in accordance with paragraph 2, the solvency regime of a third country has been deemed to be equivalent to that laid down in this Directive, reinsurance contracts concluded with undertakings having their head office in that third country shall be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with this Directive.

4 By way of derogation from paragraph 2, and even if the criteria specified in accordance with paragraph 1 have not been fulfilled, the Commission may, for a limited period, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the solvency regime of a third country applied to reinsurance activities of undertakings with the head office in that third country is temporarily equivalent to that laid down in Title I, if that third country has complied with at least the following criteria:

a it has given a commitment to the Union to adopt and apply a solvency regime that is capable of being assessed equivalent in accordance with paragraph 2, before the end of that limited period and to engage in the equivalence assessment process;

b it has established a work programme to fulfil the commitment referred to in point (a);

c it has allocated sufficient resources to fulfil the commitment referred to in point (a);

d it has a solvency regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency;

e it has entered into written arrangements to cooperate and exchange confidential supervisory information with EIOPA and supervisory authorities;

f it has an independent system of supervision; and

g it has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities, in particular on the exchange of information with EIOPA and supervisory authorities.

Any delegated acts on temporary equivalence shall take into account the reports by the Commission in accordance with Article 177(2). Those delegated acts shall be regularly reviewed on the basis of progress reports by the relevant third country, which are presented to and assessed by the Commission annually. EIOPA shall assist the Commission in the assessment of those progress reports.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

The Commission may adopt delegated acts in accordance with Article 301a further specifying the conditions laid down in the first subparagraph.

5 The limited period referred to in the first subparagraph of paragraph 4 shall end on 31 December 2020 or on the date on which, in accordance with paragraph 2, the supervisory regime

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of that third country has been deemed to be equivalent to that laid down in Title I, whichever is the earlier.

That period may be extended by up to one year where necessary for EIOPA and the Commission to carry out the assessment of equivalence for the purposes of paragraph 2.

6 Reinsurance contracts concluded with undertakings having their head office in a third country, the supervisory regime of which has been deemed to be temporarily equivalent in accordance with paragraph 4, shall be accorded the same treatment as that set out in paragraph 3. Article 173 shall also apply to reinsurance undertakings having their head office in a third country, the supervisory regime of which has been deemed temporarily equivalent in accordance with paragraph 4.**]**

Textual Amendments

F3 Substituted 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).

Article 173

Prohibition of pledging of assets

Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country whose solvency regime is deemed to be equivalent to that laid down in this Directive in accordance with Article 172.

Article 174

Principle and conditions for conducting reinsurance activity

A Member State shall not apply to third-country reinsurance undertakings taking-up or pursuing reinsurance activity in its territory provisions which result in a more favourable treatment than that granted to reinsurance undertakings which have their head office in that Member State.

Article 175

Agreements with third countries

1 The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising supervision over the following:

a third-country reinsurance undertakings which conduct reinsurance business in the Community;

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b Community reinsurance undertakings which conduct reinsurance business in the territory of a third country.

2 The agreements referred to in paragraph 1 shall in particular seek to ensure, under conditions of equivalence of prudential regulation, effective market access for reinsurance undertakings in the territory of each contracting party and provide for mutual recognition of supervisory rules and practices on reinsurance. They shall also seek to ensure the following:

a that the supervisory authorities of the Member States are able to obtain the information necessary for the supervision of reinsurance undertakings which have their head offices situated in the Community and conduct business in the territory of third countries concerned;

b that the supervisory authorities of third countries are able to obtain the information necessary for the supervision of reinsurance undertakings which have their head offices situated within their territories and conduct business in the Community.

3 Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall with the assistance of the European Insurance and Occupational Pensions Committee examine the outcome of the negotiations referred to in paragraph 1 of this Article and the resulting situation.

CHAPTER X

Subsidiaries of insurance and reinsurance undertakings governed by the laws of a third country and acquisitions of holdings by such undertakings

[F3 Article 176

Information from Member States to the Commission and EIOPA

The supervisory authorities of the Member States shall inform the Commission, EIOPA and the supervisory authorities of the other Member States of any authorisation of a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the law of a third country.

That information shall also contain an indication of the structure of the group concerned.

Where an undertaking governed by the law of a third country acquires a holding in an insurance or reinsurance undertaking authorised in the Union which would turn that insurance or reinsurance undertaking into a subsidiary of that third country undertaking, the supervisory authorities of the home Member State shall inform the Commission, EIOPA and the supervisory authorities of the other Member States.**]**

Textual Amendments

F3 Substituted 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).

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Article 177

Third-country treatment of Community insurance and reinsurance undertakings

[[F3]1 Member States shall inform the Commission and EIOPA of any general difficulties encountered by their insurance or reinsurance undertakings in establishing themselves and operating in a third country or pursuing activities in a third country.**]**

2 The Commission shall, periodically, submit a report to the Council examining the treatment accorded, in third countries, to insurance or reinsurance undertakings authorised in the Community, as regards the following:

a the establishment in third countries of insurance or reinsurance undertakings authorised in the Community;

b the acquisition of holdings in third-country insurance or reinsurance undertakings;

c the pursuit of insurance or reinsurance activities by such established undertakings;

d the cross-border provision of insurance or reinsurance activities from the Community to third countries.

The Commission shall submit those reports to the Council, together with any appropriate proposals or recommendations.

Textual Amendments

F3 Substituted 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).

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TITLE II

SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE

CHAPTER I

Applicable law and conditions of direct insurance contracts

Section 1

Applicable law

Article 178

Applicable Law

Any Member State not subject to the application of Regulation (EC) No 593/2008 shall apply the provisions of that Regulation in order to determine the law applicable to insurance contracts falling within the scope of Article 7 of that Regulation.

Section 2

Compulsory insurance

Article 179

Related obligations

1 Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this Article.

2 Where a Member State imposes an obligation to take out insurance, an insurance contract shall not satisfy that obligation unless it complies with the specific provisions relating to that insurance laid down by that Member State.

3 Where a Member State imposes compulsory insurance and the insurance undertaking is required to notify the supervisory authorities of any cessation of cover, such cessation may be invoked against injured third parties only in the circumstances laid down by that Member State.

4 Each Member State shall communicate to the Commission the risks against which insurance is compulsory under its legislation, stating the following:

a the specific legal provisions relating to that insurance;

b the particulars which must be given in the certificate which a non-life insurance undertaking must issue to an insured person where that Member State requires proof that the obligation to take out insurance has been complied with.

A Member State may require that the particulars referred to in point (b) of the first subparagraph include a declaration by the insurance undertaking to the effect that the contract complies with the specific provisions relating to that insurance.

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The Commission shall publish the particulars referred to in point (b) of the first subparagraph in the *Official Journal of the European Union*.

Section 3

General good

Article 180

General good

Neither the Member State in which a risk is situated nor the Member State of the commitment shall prevent a policy holder from concluding a contract with an insurance undertaking authorised under the conditions of Article 14 as long as that conclusion of contract does not conflict with legal provisions protecting the general good in the Member State in which the risk is situated or in the Member State of the commitment.

Section 4

Conditions of insurance contracts and scales of premiums

Article 181

Non-life insurance

1 Member States shall not require the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policy holders.

Member States may require non-systematic notification of those policy conditions and other documents only for the purpose of verifying compliance with national provisions concerning insurance contracts. Those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

2 A Member State which makes insurance compulsory may require that insurance undertakings communicate to its supervisory authority the general and special conditions of such insurance before circulating them.

3 Member States shall not retain or introduce an obligation of prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Article 182

Life insurance

Member States shall not require the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions or forms and other printed documents which a life insurance undertaking intends to use in its dealings with policy holders.

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However, the home Member State may, for the sole purpose of verifying compliance with national provisions concerning actuarial principles, require systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions. Those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

Section 5

Information for policy holders

Subsection 1

Non-life insurance

Article 183

General Information for policy holders

1 Before a non-life insurance contract is concluded the non-life insurance undertaking shall inform the policy holder of the following:

a the law applicable to the contract, where the parties do not have a free choice;

b the fact that the parties are free to choose the law applicable and the law the insurer proposes to choose.

The insurance undertaking shall also inform the policy holder of the arrangements for handling complaints of policy holders concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the right of the policy holder to take legal proceedings.

2 The obligations referred to in paragraph 1 shall apply only where the policy holder is a natural person.

3 The detailed rules for implementing paragraphs 1 and 2 shall be laid down by the Member State in which the risk is situated.

Article 184

Additional information in the case of non-life insurance offered under the right of establishment or the freedom to provide services

1 Where non-life insurance is offered under the right of establishment or the freedom to provide services, the policy holder shall, before any commitment is entered into, be informed of the Member State in which the head office or, where appropriate, the branch with which the contract is to be concluded is situated.

Any documents issued to the policy holder shall convey the information referred to in the first subparagraph.

The obligations imposed in the first and second subparagraphs shall not apply to large risks.

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2 The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policy holder, shall state the address of the head office or, where appropriate, of the branch of the non-life insurance undertaking which grants the cover.

The Member States may require that the name and address of the representative of the non-life insurance undertaking referred to in Article 148(2)(a) also appear in the documents referred to in the first subparagraph of this paragraph.

Subsection 2

Life insurance

Article 185

Information for policy holders

1 Before the life insurance contract is concluded, at least the information set out in paragraphs 2 to 4 shall be communicated to the policy holder.

2 The following information about the life insurance undertaking shall be communicated:

a the name of the undertaking and its legal form;

b the name of the Member State in which the head office and, where appropriate, the branch concluding the contract is situated;

c the address of the head office and, where appropriate, of the branch concluding the contract;

d a concrete reference to the report on the solvency and financial condition as laid down in Article 51, allowing the policy holder easy access to this information.

3 The following information relating to the commitment shall be communicated:

a the definition of each benefit and each option;

b the term of the contract;

c the means of terminating the contract;

d the means of payment of premiums and duration of payments;

e the means of calculation and distribution of bonuses;

f an indication of surrender and paid-up values and the extent to which they are guaranteed;

g information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate;

h for unit-linked policies, the definition of the units to which the benefits are linked;

i an indication of the nature of the underlying assets for unit-linked policies;

j arrangements for application of the cooling-off period;

k general information on the tax arrangements applicable to the type of policy;

l the arrangements for handling complaints concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings;

m the law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the life insurance undertaking proposes to choose.

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4 In addition, specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder.

5 The policy holder shall be kept informed throughout the term of the contract of any change concerning the following information:

a the policy conditions, both general and special;

b the name of the life insurance undertaking, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract;

c all the information listed in points (d) to (j) of paragraph 3 in the event of a change in the policy conditions or amendment of the law applicable to the contract;

d annually, information on the state of bonuses.

Where, in connection with an offer for or conclusion of a life insurance contract, the insurer provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurer shall provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The insurer shall inform the policy holder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policy holder shall not derive any contractual claims from the specimen calculation.

In the case of insurances with profit participation, the insurer shall inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation. Furthermore, where the insurer has provided figures about the potential future development of the profit participation, the insurer shall inform the policy holder of differences between the actual development and the initial data.

6 The information referred to in paragraphs 2 to 5 shall be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

However, such information may be in another language if the policy holder so requests and the law of the Member State so permits or the policy holder is free to choose the law applicable.

7 The Member State of the commitment may require life insurance undertakings to furnish information in addition to that listed in paragraphs 2 to 5 only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.

8 The detailed rules for implementing paragraphs 1 to 7 shall be laid down by the Member State of the commitment.

Article 186

Cancellation period

1 Member States shall provide for policy holders who conclude individual life insurance contracts to have a period of between 14 and 30 days from the time when they were informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policy holders shall have the effect of releasing them from any future obligation arising from the contract.

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The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract, notably as regards the arrangements for informing the policy holder that the contract has been concluded.

2 The Member States may opt not to apply paragraph 1 in the following cases:

a where a contract has a duration of six months or less;

b where, because of the status of the policy holder or the circumstances in which the contract is concluded, the policy holder does not need special protection.

Where Member States make use of the option set out in the first subparagraph they shall specify that fact in their law.

CHAPTER II

Provisions specific to non-life insurance

Section 1

General provisions

Article 187

Policy Conditions

General and special policy conditions shall not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

Article 188

Abolition of monopolies

Member States shall ensure that monopolies in respect of the taking-up of the business of certain classes of insurance, granted to bodies established within their territories and referred to in Article 8, are abolished.

Article 189

Participation in national guarantee schemes

Host Member States may require non-life insurance undertakings to join and participate, on the same terms as non-life insurance undertakings authorised in their territories, in any scheme designed to guarantee the payment of insurance claims to insured persons and injured third parties.

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Section 2

Community co-insurance

Article 190

Community co-insurance operations

1 This Section shall apply to Community co-insurance operations which shall be those co-insurance operations which relate to one or more risks classified under classes 3 to 16 of Part A of Annex I and which fulfil the following conditions:

a the risk is a large risk;

b the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;

c the risk is situated within the Community;

d for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;

e at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance undertaking;

f the leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

2 Articles 147 to 152 shall apply only to the leading insurance undertaking.

3 Co-insurance operations which do not satisfy the conditions set out in paragraph 1 shall remain subject to the provisions of this Directive except those of this Section.

Article 191

Participation in Community co-insurance

The right of insurance undertakings to participate in Community co-insurance shall not be made subject to any provisions other than those of this Section.

Article 192

Technical provisions

The amount of the technical provisions shall be determined by the different co-insurers according to the rules fixed by their home Member State or, in the absence of such rules, according to customary practice in that State.

However, the technical provisions shall be at least equal to those determined by the leading insurer according to the rules of its home Member State.

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Article 193

Statistical data

Home Member States shall ensure that co-insurers keep statistical data showing the extent of Community co-insurance operations in which they participate and the Member States concerned.

Article 194

Treatment of co-insurance contracts in winding-up proceedings

In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under the other insurance contracts of that undertaking without distinction as to the nationality of the insured and of the beneficiaries.

Article 195

Exchange of information between supervisory authorities

For the purposes of the implementation of this Section the supervisory authorities of the Member States shall, in the framework of the cooperation referred to in Title I, Chapter IV, Section 5, provide each other with all necessary information.

Article 196

Cooperation on implementation

The Commission and the supervisory authorities of the Member States shall cooperate closely for the purposes of examining any difficulties which might arise in implementing this Section.

In the course of *that* cooperation they shall examine in particular any practices which might indicate that the leading insurance undertaking does not assume the role of the leader in co-insurance practice or that the risks clearly do not require the participation of two or more insurers for their coverage.

Section 3

Assistance

Article 197

Activities similar to tourist assistance

Member States may make provision *for* assistance to persons who get into difficulties in circumstances other than those referred to in Article 2(2) subject to this Directive.

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Where a Member State makes such provision, it shall treat such activity as if it were classified under class 18 in Part A of Annex I.

The second paragraph shall in no way affect the possibilities for classification laid down in Annex I for activities which obviously come under other classes.

Section 4

Legal expenses insurance

Article 198

Scope of this Section

1 This Section shall apply to legal expenses insurance referred to in class 17 in Part A of Annex I whereby an insurance undertaking promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following:

a securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings;

b defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

2 This Section shall not apply to any of the following:

a legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels;

b the activity pursued by an insurance undertaking providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings where that activity is at the same time pursued in the own interest of that insurance undertaking under such cover;

c where a Member State so decides, the activity of legal expenses insurance undertaken by an assistance insurer which complies with the following conditions:

(i) the activity is pursued in a Member State other than that in which the insured person is habitually resident;

(ii) the activity forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence.

For the purposes of point (c) of the first subparagraph, the contract shall clearly state that the cover concerned is limited to the circumstances referred to in that point and is ancillary to the assistance.

Article 199

Separate contracts

Legal expenses cover shall be the subject of a contract separate from that drawn up for the other classes of insurance or shall be dealt with in a separate section of a single policy in which the nature of the legal expenses cover and, should the Member State so request, the amount of the relevant premium are specified.

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Article 200

Management of claims

1 The home Member State shall ensure that insurance undertakings adopt, in accordance with the option chosen by the Member State, or at their own choice, where the Member State so agrees, at least one of the methods for the management of claims set out in paragraphs 2, 3 and 4.

Whichever solution is adopted, the interest of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner under this Section.

2 Insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity in another undertaking having financial, commercial or administrative links with the first insurance undertaking and pursuing one or more of the other classes of insurance set out in Annex I.

Composite insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity for another class transacted by them.

3 The insurance undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality. That undertaking shall be mentioned in the separate contract or separate section referred to in Article 199.

Where the undertaking having separate legal personality has links to an insurance undertaking which carries on one or more of the classes of insurance referred to in Part A of Annex I, members of the staff of the undertaking having separate legal personality who are concerned with the management of claims or with legal advice connected with such management shall not pursue the same or a similar activity in the other insurance undertaking at the same time. Member States may impose the same requirements on the members of the administrative, management or supervisory body.

4 The contract shall provide that the insured persons may instruct a lawyer of their choice or, to the extent that national law so permits, any other appropriately qualified person, from the moment that those insured persons have a claim under that contract.

Article 201

Free choice of lawyer

1 Any contract of legal expenses insurance shall expressly provide that:

a where recourse is had to a lawyer or other person appropriately qualified according to national law in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings, that insured person shall be free to choose such lawyer or other person;

b the insured persons shall be free to choose a lawyer or, where they so prefer and to the extent that national law so permits, any other appropriately qualified person, to serve their interests whenever a conflict of interests arises.

2 For the purposes of this Section ‘lawyer’ means any person entitled to pursue his professional activities under one of the denominations laid down in Council Directive 77/249/

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EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services[13].

Article 202

Exception to the free choice of lawyer

1 Member States may provide for exemption from Article 201(1) for legal expenses insurance if all the following conditions are met:

a the insurance is limited to cases arising from the use of road vehicles in the territory of the Member State concerned;

b the insurance is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;

c neither the legal expenses insurance undertaking nor the assistance insurer carries out any class of liability insurance;

d measures are taken so that the legal counsel and representation of each of the parties to a dispute is effected by wholly independent lawyers where those parties are insured for legal expenses by the same insurance undertaking.

2 An exemption granted pursuant to paragraph 1 shall not affect the application of Article 200.

Article 203

Arbitration

Member States shall, for the settlement of any dispute between the legal expenses insurance undertaking and the insured and without prejudice to any right of appeal to a judicial body which might be provided for by national law, provide for arbitration or other procedures offering comparable guarantees of objectivity.

The insurance contract shall provide for the right of the insured person to have recourse to such procedures.

Article 204

Conflict of interest

Whenever a conflict of interests arises or there is disagreement over the settlement of the dispute, the legal expenses insurer or, where appropriate, the claims settlement office shall inform the person insured of the right referred to in Article 201(1) and of the possibility of having recourse to the procedure referred to in Article 203.

Article 205

Abolition of specialisation of legal expenses insurance

Member States shall abolish all provisions which prohibit an insurance undertaking from pursuing within their territory legal expenses insurance and other classes of insurance at the same time.

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Section 5

Health insurance

Article 206

Health insurance as an alternative to social security

1 Member States in which contracts covering the risks under class 2 in Part A of Annex I may serve as a partial or complete alternative to health cover provided by the statutory social security system may require that:

a those contracts comply with the specific legal provisions adopted by that Member State to protect the general good in that class of insurance;

b the general and special conditions of that insurance be communicated to the supervisory authorities of that Member State before use.

2 Member States may require that the health insurance system referred to in paragraph 1 be operated on a technical basis similar to that of life insurance where all the following conditions are fulfilled:

a the premiums paid are calculated on the basis of sickness tables and other statistical data relevant to the Member State in which the risk is situated in accordance with the mathematical methods used in insurance;

b a reserve is set up for increasing age;

c the insurer may cancel the contract only within a fixed period determined by the Member State in which the risk is situated;

d the contract provides that premiums may be increased or payments reduced, even for current contracts;

e the contract provides that the policy holders may change their existing contract into a new contract complying with paragraph 1, offered by the same insurance undertaking or the same branch and taking account of their acquired rights.

In the case referred to in point (e) of the first subparagraph, account shall be taken of the reserve for increasing age and a new medical examination may be required only for increased cover.

The supervisory authorities of the Member State concerned shall publish the sickness tables and other relevant statistical data referred to in point (a) of the first subparagraph and transmit them to the supervisory authorities of the home Member State.

The premiums must be sufficient, on reasonable actuarial assumptions, for insurance undertakings to be able to meet all their commitments having regard to all aspects of their financial situation. The home Member State shall require the technical basis for the calculation of premiums to be communicated to its supervisory authorities before the product is circulated.

The third and fourth subparagraphs shall also apply where existing contracts are modified.

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Section 6

Insurance against accidents at work

Article 207

Compulsory insurance against accidents at work

Member States may require that any insurance undertaking offering, at its own risk, compulsory insurance against accidents at work within their territories comply with the specific provisions of their national law concerning such insurance, except for the provisions concerning financial supervision, which shall be the exclusive responsibility of the home Member State.

CHAPTER III

Provisions specific to life insurance

Article 208

Prohibition on compulsory ceding of part of underwriting

Member States shall not require life insurance undertakings to cede part of their underwriting of activities listed in Article 2(3) to an organisation or organisations designated by national law.

Article 209

Premiums for new business

Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable life insurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

For that purpose, all aspects of the financial situation of a life insurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in a way that it may jeopardise the solvency of the undertaking concerned in the long term.

CHAPTER IV

Rules specific to reinsurance

Article 210

Finite reinsurance

1 Member States shall ensure that insurance and reinsurance undertakings which conclude finite reinsurance contracts or pursue finite reinsurance activities are able to properly

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identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.

[[F3]2 The Commission may adopt delegated acts in accordance with Article 301a specifying the provisions referred to in paragraph 1 of this Article with respect to the monitoring, management and control of risks arising from finite reinsurance activities.**]**

3 For the purposes of paragraphs 1 and 2 finite reinsurance means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:

a explicit and material consideration of the time value of money;

b contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

Textual Amendments

F3 Substituted 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).

Article 211

Special purpose vehicles

1 Member States shall allow the establishment within their territory of special purpose vehicles, subject to prior supervisory approval.

[[F3]2 The Commission shall adopt delegated acts in accordance with Article 301a specifying the following criteria for supervisory approval:

a the scope of authorisation;

b mandatory conditions to be included in all contracts issued;

c fit and proper requirements, as referred to in Article 42, of the persons running the special purpose vehicle;

d fit and proper requirements for shareholders or members having a qualifying holding in the special purpose vehicle;

e sound administrative and accounting procedures, adequate internal control mechanisms and risk-management requirements;

f accounting, prudential and statistical information requirements;

g solvency requirements.

2a In order to ensure uniform conditions of application of Article 211(1) and (2), EIOPA shall develop draft implementing technical standards on the procedures for granting supervisory approval to establish special purpose vehicles and on the formats and templates to be used for the purposes of point (f) of paragraph 2.

EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.

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Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

2b In order to ensure uniform conditions of application of Article 211(1) and (2), EIOPA may develop draft implementing technical standards on the procedures for the cooperation and exchange of information between supervisory authorities, where the special purpose vehicle which assumes risk from an insurance or reinsurance undertaking is established in a Member State which is not the Member State in which the insurance or reinsurance undertaking is authorised.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

3 Special purpose vehicles authorised before 31 December 2015 shall be subject to the law of the Member State that authorised the special purpose vehicle. However, any new activity commenced by such a special purpose vehicle after that date shall be subject to paragraphs 1, 2 and 2a.**]**

Textual Amendments

F3 Substituted 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).

TITLE III

SUPERVISION OF INSURANCE AND REINSURANCE UNDERTAKINGS IN A GROUP

CHAPTER I

Group supervision: definitions, cases of application, scope and levels

Section 1

Definitions

Article 212

Definitions

1 For the purposes of this Title, the following definitions shall apply:

a ‘participating undertaking’ means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;

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b ‘related undertaking’ means either a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;

c ‘group’ means a group of undertakings that:

(i) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC; or

(ii) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:

— one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and,

— the establishment and dissolution of such relationships for the purposes of this Title are subject to prior approval by the group supervisor,

where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

d ‘group supervisor’ means the supervisory authority responsible for group supervision, determined in accordance with Article 247;

[[F3]e ‘college of supervisors’ means a permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group;**]**

[[F8]f ‘insurance holding company’ means a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking;

g ‘mixed-activity insurance holding company’ means a parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;

h ‘mixed financial holding company’ means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC.**]**

2 For the purposes of this Title, the supervisory authorities shall also consider as a parent undertaking any undertaking which, in the opinion of the supervisory authorities, effectively exercises a dominant influence over another undertaking.

They shall also consider as a subsidiary undertaking any undertaking over which, in the opinion of the supervisory authorities, a parent undertaking effectively exercises a dominant influence.

They shall also consider as participation the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the supervisory authorities, a significant influence is effectively exercised.

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Textual Amendments

F3 Substituted 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).

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Section 2

Cases of application and scope

Article 213

Cases of application of group supervision

1 Member States shall provide for supervision, at the level of the group, of insurance and reinsurance undertakings which are part of a group, in accordance with this Title.

The provisions of this Directive which lay down the rules for the supervision of insurance and reinsurance undertakings taken individually shall continue to apply to such undertakings, except where otherwise provided under this Title.

[F8 2 Member States shall ensure that supervision at the level of the group applies to the following:

a insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 218 to 258;

b insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the Union, in accordance with Articles 218 to 258;

c insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking, in accordance with Articles 260 to 263;

d insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 265.

3 In the cases referred to in points (a) and (b) of paragraph 2, where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in the Union is either a related undertaking of, or is itself a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244 of this Directive, the supervision of intra-group transactions referred to in Article 245 of this Directive, or both, at the level of that

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participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company.

4 Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the group supervisor may, after consulting the other supervisory authorities concerned, apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.

5 Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the group supervisor may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provisions of the Directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

6 The group supervisor shall inform the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[(14)] (EBA) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (EIOPA)[(15)] of the decisions taken under paragraphs 4 and 5. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010[(16)] (ESMA) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of those guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.**]**

Textual Amendments

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 214

Scope of group supervision

[[F8]1 The exercise of group supervision in accordance with Article 213 shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking, the insurance holding company, the mixed financial holding company or the mixed-activity insurance holding company taken individually, without prejudice to Article 257 as far as insurance holding companies or mixed financial holding companies are concerned.**]**

2 The group supervisor may decide on a case-by-case basis not to include an undertaking in the group supervision referred to in Article 213 where:

a the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 229;

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b the undertaking which should be included is of negligible interest with respect to the objectives of group supervision; or

c the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

However, where several undertakings of the same group, taken individually, may be excluded pursuant to point (b) of the first subparagraph, they must nevertheless be included where, collectively, they are of non-negligible interest.

Where the group supervisor is of the opinion that an insurance or reinsurance undertaking should not be included in the group supervision under points (b) or (c) of the first subparagraph, it shall consult the other supervisory authorities concerned before taking a decision.

Where the group supervisor does not include an insurance or reinsurance undertaking in the group supervision under point (b) or (c) of the first subparagraph, the supervisory authorities of the Member State in which that undertaking is situated may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance or reinsurance undertaking concerned.

Textual Amendments

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Section 3

Levels

Article 215

Ultimate parent undertaking at Community level

[[F8]1 Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company referred to in Article 213(2)(a) and (b) is itself a subsidiary undertaking of another insurance or reinsurance undertaking or of another insurance holding company or of another mixed financial holding company which has its head office in the Union, Articles 218 to 258 shall apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union.

2 Where the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial holding company which has its head office in the Union, as referred to in paragraph 1, is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244, the supervision of intra-group transactions referred to in Article 245, or both, at the level of that ultimate parent undertaking or company.**]**

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Textual Amendments

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 216

Ultimate parent undertaking at national level

[[F8]1 Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company which has its head office in the Union, as referred to in Article 213(2)(a) and (b), does not have its head office in the same Member State as the ultimate parent undertaking at Union level referred to in Article 215, Member States may allow their supervisory authorities to decide, after consulting the group supervisor and that ultimate parent undertaking at Union level, to subject the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at national level to group supervision.

[[F2]In such a case, the supervisory authority shall explain its decision to both the group supervisor and the ultimate parent undertaking at Union level. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).

Articles 218 to 258 shall apply *mutatis mutandis*, subject to paragraphs 2 to 6 of this Article.**]]**

2 The supervisory authority may restrict group supervision of the ultimate parent undertaking at national level to one or several sections of Chapter II.

3 Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, the choice of method made in accordance with Article 220 by the group supervisor in respect of the ultimate parent undertaking at Community level referred to in Article 215 shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

4 Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, and where the ultimate parent undertaking at Community level referred to in Article 215 has obtained, in accordance with Article 231 or Article 233(5), permission to calculate the group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, that decision shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

In such a situation, where the supervisory authority considers that the risk profile of the ultimate parent undertaking at national level deviates significantly from the internal model approved at Community level, and as long as that undertaking does not properly address the concerns of the supervisory authority, that supervisory authority may decide to impose a capital add-on to the group Solvency Capital Requirement of that undertaking resulting from the application of such model or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

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[F3The supervisory authority shall explain such decisions to both the undertaking and the group supervisor. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).]

5 Where the supervisory authority decides to apply Chapter II, Section 1 to the ultimate parent undertaking at national level, that undertaking shall not be permitted to introduce, in accordance with Articles 236 or 243, an application for permission to subject any of its subsidiaries to Articles 238 and 239.

6 Where Member States allow their supervisory authorities to make the decision referred to in paragraph 1, they shall provide that no such decisions can be made or maintained where the ultimate parent undertaking at national level is a subsidiary of the ultimate parent undertaking at Community level referred to in Article 215 and the latter has obtained in accordance with Articles 237 or 243 permission for that subsidiary to be subject to Articles 238 and 239.

[F37 The Commission may adopt delegated acts in accordance with Article 301a specifying the circumstances under which the decision referred to in paragraph 1 of this Article can be made.]

Textual Amendments

F2 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).

F3 Substituted 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).

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 217

Parent undertaking covering several Member States

1 Where Member States allow their supervisory authorities to make the decision referred to in Article 216, they shall also allow them to decide to conclude an agreement with supervisory authorities in other Member States where another related ultimate parent undertaking at national level is present, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

Where the supervisory authorities concerned have concluded an agreement as referred to in the first subparagraph, group supervision shall not be carried out at the level of any ultimate parent undertaking referred to in Article 216 present in Member States other than the Member State where the subgroup referred to in the first subparagraph of this paragraph is located.

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[[F2]In such a case, the supervisory authorities shall explain their agreement to both the group supervisor and the ultimate parent undertaking at Union level. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).**]**

2 Article 216(2) to (6) shall apply *mutatis mutandis*.

[[F3]3 The Commission shall adopt delegated acts in accordance with Article 301a specifying the circumstances under which the decision referred to in paragraph 1 of this Article can be made.**]**

Textual Amendments

F2 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).

F3 Substituted 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).

CHAPTER II

Financial position

Section 1

Group solvency

Subsection 1

General provisions

Article 218

Supervision of group solvency

1 Supervision of the group solvency shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 246 and Chapter III.

2 In the case referred to in Article 213(2)(a), Member States shall require the participating insurance or reinsurance undertakings to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsections 2, 3 and 4.

3 In the case referred to in Article 213(2)(b), Member States shall require insurance and reinsurance undertakings in a group to ensure that eligible own funds are available in the group

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which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsection 5.

4 The requirements referred to in paragraphs 2 and 3 shall be subject to supervisory review by the group supervisor in accordance with Chapter III. Article 136 and Article 138(1) to (4) shall apply *mutatis mutandis*.

5 As soon as the participating undertaking has observed and informed the group supervisor that the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance in the following three months, the group supervisor shall inform the other supervisory authorities within the college of supervisors, which shall analyse the situation of the group.

[F8 Article 219

Frequency of calculation

1 The group supervisor shall ensure that the calculations referred to in Article 218(2) and (3) are carried out at least annually, by the participating insurance or reinsurance undertaking, by the insurance holding company or by the mixed financial holding company.

The relevant data for and the results of that calculation shall be submitted to the group supervisor by the participating insurance or reinsurance undertaking or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or the mixed financial holding company or by the undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group itself.

2 The insurance undertaking, reinsurance undertaking, insurance holding company and mixed financial holding company shall monitor the group Solvency Capital Requirement on an ongoing basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.

Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the group supervisor may require a recalculation of the group Solvency Capital Requirement.**]**

Textual Amendments

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

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Subsection 2

Choice of calculation method and general principles

Article 220

Choice of method

1 The calculation of the solvency at the level of the group of the insurance and reinsurance undertakings referred to in Article 213(2)(a) shall be carried out in accordance with the technical principles and one of the methods set out in Articles 221 to 233.

2 Member States shall provide that the calculation of the solvency at the level of the group of insurance and reinsurance undertakings referred to in Article 213(2)(a) shall be carried out in accordance with method 1, which is laid down in Articles 230 to 232.

However, Member States shall allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, after consulting the other supervisory authorities concerned and the group itself, to apply to that group method 2, which is laid down in Articles 233 and 234, or a combination of methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

Article 221

Inclusion of proportional share

1 The calculation of the group solvency shall take account of the proportional share held by the participating undertaking in its related undertakings.

For the purposes of the first subparagraph, the proportional share shall comprise either of the following:

a where method 1 is used, the percentages used for the establishment of the consolidated accounts; or

b where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

However, regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account.

Where in the opinion of the supervisory authorities, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the group supervisor may nevertheless allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

2 The group supervisor shall determine, after consulting the other supervisory authorities concerned and the group itself, the proportional share which shall be taken into account in the following cases:

a where there are no capital ties between some of the undertakings in a group;

b where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking;

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c where a supervisory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of that supervisory authority, it effectively exercises a dominant influence over that other undertaking.

Article 222

Elimination of double use of eligible own funds

1 The double use of own funds eligible for the Solvency Capital Requirement among the different insurance or reinsurance undertakings taken into account in that calculation shall not be allowed.

For that purpose, when calculating the group solvency and where the methods described in Subsection 4 do not provide for it, the following amounts shall be excluded:

a the value of any asset of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;

b the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking;

c the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

2 Without prejudice to paragraph 1, the following may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned:

(a) surplus funds falling under Article 91(2) arising in a related life insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated;

(b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

However, the following shall in any event be excluded from the calculation:

(i) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;

(ii) subscribed but not paid-up capital of the participating insurance or reinsurance undertaking which represents a potential obligation on the part of a related insurance or reinsurance undertaking;

(iii) subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.

3 Where the supervisory authorities consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in paragraph 2 cannot effectively be made available to cover the Solvency

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Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

4 The sum of the own funds referred to in paragraphs 2 and 3 shall not exceed the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

5 Any eligible own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the supervisory authority in accordance with Article 90 shall be included in the calculation only in so far as they have been duly authorised by the supervisory authority responsible for the supervision of that related undertaking.

Article 223

Elimination of the intra-group creation of capital

1 When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following:

a a related undertaking;

b a participating undertaking;

c another related undertaking of any of its participating undertakings.

2 When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.

3 Reciprocal financing shall be deemed to exist at least where an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Article 224

Valuation

The value of the assets and liabilities shall be assessed in accordance with Article 75.

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Subsection 3

Application of the calculation methods

Article 225

Related insurance and reinsurance undertakings

Where the insurance or reinsurance undertaking has more than one related insurance or reinsurance undertaking, the group solvency calculation shall be carried out by including each of those related insurance or reinsurance undertakings.

Member States may provide that where the related insurance or reinsurance undertaking has its head office in a Member State other than that of the insurance or reinsurance undertaking for which the group solvency calculation is carried out, the calculation takes account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other Member State.

[*F8**Article 226*

Intermediate insurance holding companies

1 When calculating the group solvency of an insurance or reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking, through an insurance holding company or a mixed financial holding company, the situation of such an insurance holding company or mixed financial holding company shall be taken into account.

For the sole purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I in respect of the Solvency Capital Requirement and were subject to the same conditions as are laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I in respect of own funds eligible for the Solvency Capital Requirement.

2 In cases where an intermediate insurance holding company or intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 98, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Article 98 to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company, which would require prior authorisation from the supervisory authority in accordance with Article 90 if they were held by an insurance or reinsurance undertaking, may be included in the calculation of the group solvency only in so far as they have been duly authorised by the group supervisor.**]**

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Textual Amendments

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[F3 Article 227

Equivalence concerning related third-country insurance and re-insurance undertakings

1 When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, in accordance with Article 233, the third-country insurance or reinsurance undertaking shall, solely for the purposes of that calculation, be treated as a related insurance or reinsurance undertaking.

However, where the third country in which that undertaking has its head office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that laid down in Title I, Chapter VI, Member States may provide that the calculation take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country concerned.

2 Where no delegated act has been adopted in accordance with paragraph 4 or 5 of this Article, the verification of whether the third-country regime is at least equivalent shall be carried out by the group supervisor at the request of the participating undertaking or on its own initiative. EIOPA shall assist the group supervisor in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

The group supervisor, assisted by EIOPA, shall consult the other supervisory authorities concerned before taking a decision on equivalence. That decision shall be taken in accordance with the criteria adopted in accordance with paragraph 3. The group supervisor shall not take any decision in relation to a third country that is contradicting any decision taken vis-à-vis that third country previously save where it is necessary to take into account significant changes to the supervisory regime laid down in Title I, Chapter VI and to the supervisory regime in the third country.

Where supervisory authorities disagree with the decision taken in accordance with subparagraph 2, they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the group supervisor. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

3 The Commission may adopt delegated acts in accordance with Article 301a specifying the criteria for assessing whether the solvency regime of a third country is equivalent to that laid down in Title I, Chapter VI.

4 If the criteria adopted in accordance with paragraph 3 have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the supervisory regime of that third country is equivalent to that laid down in Title I, Chapter VI.

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Those delegated acts shall be regularly reviewed, to take into account any significant changes to the supervisory regime laid down in Title I, Chapter VI, and to the supervisory regime in the third country.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

5 By way of derogation from paragraph 4, and even where the criteria specified in accordance with paragraph 3 have not been fulfilled, the Commission may, for the period referred to in paragraph 6, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the solvency regime of a third country applied to undertakings with the head office in that third country is provisionally equivalent to that laid down in Title I, Chapter VI, where:

a it can be shown that a solvency regime capable of being assessed equivalent in accordance with paragraph 4 is currently in place or may be adopted and applied by the third country;

b the third country has a solvency regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency;

c the third country's law, in principle, allows cooperation, and exchange of confidential supervisory information, with EIOPA and supervisory authorities;

d the third country has an independent system of supervision; and

e the third country has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

6 The initial period of provisional equivalence referred to in paragraph 5 shall be 10 years, unless before the expiry of that period:

a that delegated act has been revoked; or

b a delegated act has been adopted in accordance with paragraph 4 to the effect that the supervisory regime of that third country has been deemed to be equivalent to that laid down in Title I, Chapter VI.

Provisional equivalence shall be subject to renewals for further periods of 10 years where the criteria referred to in paragraph 5 continue to be met. The Commission shall adopt any such delegated act in accordance with Article 301a and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

Any delegated acts determining provisional equivalence shall take into account the reports by the Commission in accordance with Article 177(2). Such delegated acts shall be reviewed regularly by the Commission. EIOPA shall assist the Commission in the assessment of those decisions. The Commission shall inform the Parliament of any reviews taking place and shall report to the European Parliament on its conclusions.

7 Where, in accordance with paragraph 5, a delegated act determining that the supervisory regime of a third country is provisionally equivalent has been adopted, that third country shall be deemed to be equivalent of the purposes of the second subparagraph of paragraph 1.**]**

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Article 228

Related credit institutions, investment firms and financial institutions

When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, Member States shall allow their participating insurance and reinsurance undertakings to apply methods 1 or 2 set out in Annex I to Directive 2002/87/EC *mutatis mutandis*. However, method 1 set out in that Annex shall be applied only where the group supervisor is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Member States shall however allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, at the request of the participating undertaking or on their own initiative, to deduct any participation as referred to in the first paragraph from the own funds eligible for the group solvency of the participating undertaking.

Article 229

Non-availability of the necessary information

Where the information necessary for calculating the group solvency of an insurance or reinsurance undertaking, concerning a related undertaking with its head office in a Member State or a third country, is not available to the supervisory authorities concerned, the book value of that undertaking in the participating insurance or reinsurance undertaking shall be deducted from the own funds eligible for the group solvency.

In that case, the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

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Subsection 4

Calculation methods

Article 230

Method 1 (Default method): Accounting consolidation-based method

1 The calculation of the group solvency of the participating insurance or reinsurance undertaking shall be carried out on the basis of the consolidated accounts.

The group solvency of the participating insurance or reinsurance undertaking is the difference between the following:

a the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;

b the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

The rules laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 and in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.

2 The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in Title I, Chapter VI, Section 4, Subsections 1 and 2 and Title I, Chapter VI, Section 4, Subsections 1 and 3, respectively.

The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:

a the Minimum Capital Requirement as referred to in Article 129 of the participating insurance or reinsurance undertaking;

b the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.

That minimum shall be covered by eligible basic own funds as determined in Article 98(4).

For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 221 to 229 shall apply *mutatis mutandis*. Article 139(1) and (2) shall apply *mutatis mutandis*.

I[F3 Article 231

Group internal model

1 In the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, the supervisory authorities concerned shall cooperate to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.

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An application as referred to in the first subparagraph shall be submitted to the group supervisor.

The group supervisor shall inform the other members of the college of supervisors and forward the complete application to them, without delay.

2 The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor.

3 If, within the six-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the six-month period or after a joint decision has been reached.

If, in accordance with Article 41(2) and (3) and Article 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the group supervisor shall take a final decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The six-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

4 EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5 Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the group supervisor shall provide the applicant with a document setting out the full reasons.

6 In the absence of the adoption of a joint decision within six months from the date of receipt of the complete application by the group, the group supervisor shall make its own decision on the application.

The group supervisor shall duly take into account any views and reservations of the other supervisory authorities concerned expressed during that six-month period.

The group supervisor shall provide the applicant and the other supervisory authorities concerned with a document setting out its fully reasoned decision.

That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

7 Where any of the supervisory authorities concerned considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the supervisory authority, that authority may, in accordance with Article 37, impose a capital add-on to the Solvency Capital

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Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model.

In exceptional circumstances, where such capital add-on would not be appropriate, the supervisory authority may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Title I, Chapter VI, Section 4, Subsections 1 and 2. In accordance with Article 37(1)(a) and (c), the supervisory authority may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula.

The supervisory authority shall explain any decision referred to in the first and second subparagraphs to both the insurance or reinsurance undertaking and the other members of the college of supervisors.

EIOPA may issue guidelines to ensure consistent and coherent application of this paragraph.**]**

Textual Amendments

F3 Substituted 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).

Article 232

Group capital add-on

[[F3]In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the group supervisor shall pay particular attention to any case where the circumstances referred to in Article 37(1)(a) to (d) may arise at group level, in particular where:**]**

(a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;

(b) a capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is imposed by the supervisory authorities concerned, in accordance with Articles 37 and 231(7).

Where the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed.

[[F3]Article 37(1) to (5), together with the delegated acts and implementing technical standards taken in accordance with Article 37(6), (7) and (8) shall apply *mutatis mutandis*.**]**

Textual Amendments

F3 Substituted 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

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Article 233

Method 2 (Alternative method): Deduction and aggregation method

1 The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:

a the aggregated group eligible own funds, as provided for in paragraph 2;

b the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in paragraph 3.

2 The aggregated group eligible own funds are the sum of the following:

a the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;

b the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

3 The aggregated group Solvency Capital Requirement is the sum of the following:

a the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;

b the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

4 Where the participation in the related insurance or reinsurance undertakings consists, wholly or in part, of an indirect ownership, the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and the items referred to in paragraph 2(b) and paragraph 3(b) shall include the corresponding proportional shares, respectively, of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

[[F8]5 In the case of an application for permission to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or mixed financial holding company, Article 231 shall apply *mutatis mutandis*.**]**

6 In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in paragraph 3, appropriately reflects the risk profile of the group, the supervisory authorities concerned shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify.

Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, a capital add-on to the aggregated group Solvency Capital Requirement may be imposed.

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[F3Article 37(1) to (5), together with the delegated acts and implementing technical standards taken in accordance with Article 37(6), (7) and (8), shall apply *mutatis mutandis*.]

Textual Amendments

F3 Substituted 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).

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

[F3*Article 234*

Delegated acts concerning Articles 220 to 229 and 230 to 233

The Commission shall adopt delegated acts in accordance with Article 301a specifying the technical principles and methods set out in Articles 220 to 229 and the application of Articles 230 to 233, reflecting the economic nature of specific legal structures.]

Textual Amendments

F3 Substituted 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).

Subsection 5

[F8Supervision of group solvency for insurance and reinsurance undertakings that are subsidiaries of an insurance holding company or a mixed financial holding company]

[F8*Article 235*

Group solvency of an insurance holding company or a mixed financial holding company

1 Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company or mixed financial holding company, the group supervisor shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or mixed financial holding company applying Article 220(2) to Article 233.

2 For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I as regards the Solvency Capital Requirement and subject

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to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I as regards the own funds eligible for the Solvency Capital Requirement.**]**

Subsection 6

Supervision of group solvency for groups with centralised risk management

Article 236

Subsidiaries of an insurance or reinsurance undertaking: conditions

Member States shall provide that the rules laid down in Articles 238 and 239 shall apply to any insurance or reinsurance undertaking which is the subsidiary of an insurance or reinsurance undertaking where all of the following conditions are satisfied:

(a) the subsidiary, in relation to which the group supervisor has not made a decision under Article 214(2), is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with this Title;

(b) the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;

(c) the parent undertaking has received the agreement referred to in the third subparagraph of Article 246(4);

(d) the parent undertaking has received the agreement referred to in Article 256(2);

(e) an application for permission to be subject to Articles 238 and 239 has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article *237*.

[*F3**Article 237*

Subsidiaries of an insurance or reinsurance undertaking: decision on the application

1 In the case of applications for permission to be subject to the rules laid down in Articles 238 and 239, the supervisory authorities concerned shall work together within the college of supervisors, in full cooperation, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the supervisory authority having authorised the subsidiary. That supervisory authority shall inform the other members of the college of supervisors and forward the complete application to them, without delay.

2 The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college of supervisors.

3 If, within the three-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor shall defer its decision and await any

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decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached.

If, in accordance with Article 41(2) and (3) and Article 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the group supervisor shall take a final decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

4 EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5 Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the supervisory authority having authorised the subsidiary shall provide the applicant with the decision stating the full reasons. The joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

6 In the absence of a joint decision of the supervisory authorities concerned within the three-month period set out in paragraph 2, the group supervisor shall take its own decision with regard to the application.

During that period the group supervisor shall duly consider the following:

a any views and reservations of the supervisory authorities concerned;

b any reservations of the other supervisory authorities within the college of supervisors.

The decision shall state the full reasons and shall contain an explanation of any significant deviation from the reservations of the other supervisory authorities concerned. The group supervisor shall provide the applicant and the other supervisory authorities concerned with a copy of the decision. The decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.**]**

Textual Amendments

F3 Substituted 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).

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Article 238

Subsidiaries of an insurance or reinsurance undertaking: determination of the Solvency Capital Requirement

1 Without prejudice to Article 231, the Solvency Capital Requirement of the subsidiary shall be calculated as set out in paragraphs 2, 4, and 5 of this Article.

2 Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 231 and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose to set a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The supervisory authority shall discuss its proposal within the college of supervisors and communicate the grounds for such proposals to both the subsidiary and the college of supervisors.

3 Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in exceptional circumstances, propose that the undertaking replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Article 110, or in the cases referred to in Article 37, to set a capital add-on to the Solvency Capital Requirement of that subsidiary.

The supervisory authority shall discuss its proposal within the college of supervisors and communicate the grounds for such proposal to both the subsidiary and the college of supervisors.

[F3 4 The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority having authorised the subsidiary or on other possible measures.

That agreement shall be recognised as determinative and shall be applied by the supervisory authorities concerned.**]**

[F3 5 Where the supervisory authority and the group supervisor disagree, either supervisor may, within one month from the proposal of the supervisory authority, 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 to it by that Article, and shall take its decision within one month of such referral. The one-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation. The matter shall not be referred to EIOPA after the end of the one-month period referred to in this subparagraph or after an agreement has been reached within the college in accordance with paragraph 4 of this Article.

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19 of that Regulation, and shall take its decision in conformity with EIOPA's decision.

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That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

The decision shall state the full reasons on which it is based.

The decision shall be submitted to the subsidiary and to the college of supervisors.**]**

Textual Amendments

F3 Substituted 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).

Article 239

Subsidiaries of an insurance or reinsurance undertaking: non-compliance with the Solvency and Minimum Capital Requirements

1 In the event of non-compliance with the Solvency Capital Requirement and without prejudice to Article 138, the supervisory authority having authorised the subsidiary shall, without delay, forward to the college of supervisors the recovery plan submitted by the subsidiary in order to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority regarding the approval of the recovery plan within four months from the date on which non-compliance with the Solvency Capital Requirement was first observed.

In the absence of such agreement, the supervisory authority having authorised the subsidiary shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

2 Where the supervisory authority having authorised the subsidiary identifies, in accordance with Article 136, deteriorating financial conditions, it shall notify the college of supervisors without delay of the proposed measures to be taken. Save in emergency situations, the measures to be taken shall be discussed within the college of supervisors.

The college of supervisors shall do everything within its power to reach an agreement on the proposed measures to be taken within one month of notification.

In the absence of such agreement, the supervisory authority having authorised the subsidiary shall decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

3 In the event of non-compliance with the Minimum Capital Requirement and without prejudice to Article 139, the supervisory authority having authorised the subsidiary shall, without delay, forward to the college of supervisors the short-term finance scheme submitted by the subsidiary in order to achieve, within three months from the date on which non-compliance

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with the Minimum Capital Requirement was first observed, the reestablishment of the level of eligible own funds covering the Minimum Capital Requirement or the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement. The college of supervisors shall also be informed of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

[[F2]4 The supervisory authority or the group supervisor may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 where they disagree regarding either of the following:

a on the approval of the recovery plan, including any extension of the recovery period, within the four-month period referred to in paragraph 1; or

b on the approval of the proposed measures, within the one-month period referred to in paragraph 2.

In those cases, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within one month of such referral.

The matter shall not be referred to EIOPA:

a after the end of the four-month or the one-month period respectively referred to in the first subparagraph;

b after an agreement has been reached within the college in accordance with the second subparagraph of paragraph 1 or the second subparagraph of paragraph 2;

c in the case of emergency situations as referred to in paragraph 2.

The four-month or the one-month period respectively shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that regulation, and shall take its final decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

The decision shall state the full reasons on which it is based.

The decision shall be submitted to the subsidiary and to the college of supervisors.**]**

Textual Amendments

F2 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).

Article 240

Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary

1 The rules provided for in Articles 238 and 239 shall cease to apply where:

a the condition referred to in Article 236(a) is no longer complied with;

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b the condition referred to in Article 236(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time;

c the conditions referred to in Article 236(c) and (d) are no longer complied with.

In the case referred to in point (a) of the first subparagraph, where the group supervisor decides, after consulting the college of supervisors, no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the supervisory authority concerned and the parent undertaking.

For the purposes of Article 236(b), (c) and (d), the parent undertaking shall be responsible for ensuring that the conditions are complied with on an ongoing basis. In the event of non-compliance, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

Without prejudice to the third subparagraph, the group supervisor shall verify at least annually, on its own initiative, that the conditions referred to in Article 236(b), (c) and (d) continue to be complied with. The group supervisor shall also perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions.

Where the verification performed identifies weaknesses, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

Where, after consulting the college of supervisors, the group supervisor determines that the plan referred to in the third or fifth subparagraph is insufficient or subsequently that it is not being implemented within the agreed period of time, the group supervisor shall conclude that the conditions referred to in Article 236(b), (c) and (d) are no longer complied with and it shall immediately inform the supervisory authority concerned.

2 The regime provided for in Articles 238 and 239 shall be applicable again where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Article 237.

[F3 Article 241

Subsidiaries of an insurance or reinsurance undertaking: delegated acts

The Commission shall adopt delegated acts in accordance with Article 301a specifying:

(a) the criteria for assessing whether the conditions stated in Article 236 are satisfied;

(b) the criteria for assessing what should be considered an emergency situation under Article 239(2);

(c) the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties in accordance with Articles 237 to 240.**]**

Textual Amendments

F3 Substituted 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

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Article 242

Review

[[F3]1 By 31 December 2017, the Commission shall make an assessment of the application of Title III, in particular as regards the cooperation of supervisory authorities within, and functionality of, the college of supervisors and the supervisory practices concerning setting the capital add-ons, and shall present a report to the European Parliament and to the Council accompanied, where appropriate, by proposals for the amendment of this Directive.**]**

2 By **[**[F3]31 December 2018**]**, the Commission shall make an assessment of the benefit of enhancing group supervision and capital management within a group of insurance or reinsurance undertakings including a reference to COM(2008)0119 and the report of the Committee on Economic and Monetary Affairs of the European Parliament on this proposal of 16 October 2008 (A6-0413/2008). That assessment shall include possible measures to enhance a sound cross-border management of insurance groups notably of risks and asset management. In its assessment, the Commission shall, *inter alia*, take into account new developments and progress concerning:

a a harmonised framework on early intervention;

b practices in centralised group risk management and functioning of group internal models including stress testing;

c intra-group transactions and risk concentrations;

d the behaviour of diversification and concentration effects over time;

e a legally binding framework for the mediation of supervisory disputes;

f a harmonised framework on asset transferability, insolvency and winding-up procedures which eliminates the relevant national company or corporate law barriers to asset transferability;

g an equivalent level of protection of policy holders and beneficiaries of the undertakings of the same group particularly in crisis situations;

h a harmonised and adequately funded EU-wide solution for insurance guarantee schemes;

i a harmonised and legally binding framework between competent authorities, central banks and ministries of finance concerning crisis management, resolution and fiscal burden-sharing which aligns supervisory powers with fiscal responsibilities.

The Commission shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals for the amendment of this Directive.

Textual Amendments

F3 Substituted 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).

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[F8 Article 243

Subsidiaries of an insurance holding company and mixed financial holding company

Articles 236 to 242 shall apply *mutatis mutandis* to insurance and reinsurance undertakings which are the subsidiary of an insurance holding company or mixed financial holding company.**]**

Textual Amendments

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Section 2

Risk concentration and intra-group transactions

Article 244

Supervision of risk concentration

1 Supervision of the risk concentration at group level shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 246 and Chapter III.

[F8 2 Member States shall require insurance and reinsurance undertakings or insurance holding companies or mixed financial holding companies to report on a regular basis and at least annually to the group supervisor any significant risk concentration at the level of the group, unless Article 215(2) applies.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by a insurance or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The risk concentrations referred to in the first subparagraph shall be subject to supervisory review by the group supervisor.**]**

3 The group supervisor, after consulting the other supervisory authorities concerned and the group, shall identify the type of risks insurance and reinsurance undertakings in a particular group shall report in all circumstances.

When defining or giving their opinion about the type of risks, the group supervisor and the other supervisory authorities concerned shall take into account the specific group and risk-management structure of the group.

In order to identify significant risk concentration to be reported, the group supervisor, after consulting the other supervisory authorities concerned and the group, shall impose

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appropriate thresholds based on solvency capital requirements, technical provisions, or both.

When reviewing the risk concentrations, the group supervisor shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

[F3 4 The Commission shall adopt delegated acts in accordance with Article 301a as regards the definition of a significant risk concentration for the purposes of paragraphs 2 and 3 of this Article.

5 In order to ensure consistent harmonisation in relation to supervision of risk concentration, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the identification of a significant risk concentration and the determination of appropriate thresholds for the purposes of paragraph 3.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

6 In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the forms and templates for reporting on such risk concentrations for the purposes of paragraph 2.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 September 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F3 Substituted 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).

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 245

Supervision of intra-group transactions

1 Supervision of intra-group transactions shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 246 and Chapter III.

[F8 2 Member States shall require insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to report on a regular basis and at least annually to the group supervisor all significant intra-group transactions by insurance and reinsurance undertakings within a group, including those performed with a natural person with close links to an undertaking in the group, unless Article 215(2) applies.

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In addition, Member States shall require reporting of very significant intra-group transactions as soon as practicable.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The intra-group transactions shall be subject to supervisory review by the group supervisor.**]**

3 The group supervisor, after consulting the other supervisory authorities concerned and the group, shall identify the type of intra-group transactions insurance and reinsurance undertakings in a particular group must report in all circumstances. Article 244(3) shall apply *mutatis mutandis*.

[F3 4 The Commission shall adopt delegated acts in accordance with Article 301a as regards the definition of a significant intra-group transaction for the purposes of paragraphs 2 and 3 of this Article.

5 In order to ensure consistent harmonisation in relation to supervision of intra-group transactions, EIOPA may develop draft regulatory technical standards to specify the identification of a significant intra-group transaction for the purposes of paragraph 3.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

6 In order to ensure uniform conditions of application of this Article, EIOPA may develop draft implementing technical standards on the procedures, forms and templates for the reporting on such intra-group transactions for the purposes of paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F3 Substituted 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).

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

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Section 3

Risk management and internal control

Article 246

Supervision of the system of governance

1 The requirements set out in Title I, Chapter IV, Section 2 shall apply *mutatis mutandis* at the level of the group.

Without prejudice to the first subparagraph, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to Article 213(2)(a) and (b) so that those systems and reporting procedures can be controlled at the level of the group.

2 Without prejudice to paragraph 1, the group internal control mechanisms shall include at least the following:

a adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;

b sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

3 The systems and reporting procedures referred to in paragraphs 1 and 2 shall be subject to supervisory review by the group supervisor, in accordance with the rules laid down in Chapter III.

[[F8]4 Member States shall require the participating insurance undertaking or reinsurance undertaking, the insurance holding company or the mixed financial holding company to undertake at the level of the group the assessment required by Article 45. The own-risk and solvency assessment conducted at group level shall be subject to supervisory review by the group supervisor in accordance with Chapter III.

Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, as referred to in Article 230, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company may, subject to the agreement of the group supervisor, undertake any assessments required pursuant to Article 45 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.**]**

Before granting an agreement in accordance with the third subparagraph, the group supervisor shall consult the members of the college of supervisors and duly take into account their views or reservations.

Where the group exercises the option provided in the third subparagraph, it shall submit the document to all supervisory authorities concerned at the same time. The exercise of

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that option shall not exempt the subsidiaries concerned from the obligation to ensure that the requirements of Article 45 are met.

Textual Amendments

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

CHAPTER III

Measures to facilitate group supervision

Article 247

Group Supervisor

1 A single supervisor, responsible for coordination and exercise of group supervision (group supervisor), shall be designated from among the supervisory authorities of the Member States concerned.

2 Where the same supervisory authority is competent for all insurance and reinsurance undertakings in a group, the task of group supervisor shall be exercised by that supervisory authority.

In all other cases and subject to paragraph 3, the task of group supervisor shall be exercised:

a where a group is headed by an insurance or reinsurance undertaking, by the supervisory authority which has authorised that undertaking;

[F8 b where a group is not headed by an insurance or reinsurance undertaking, by the following supervisory authority:

(i) where the parent of an insurance or reinsurance undertaking is an insurance holding company or mixed financial holding company, the supervisory authority which has authorised that insurance or reinsurance undertaking,

(ii) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or mixed financial holding company, and one of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority of the insurance or reinsurance undertaking authorised in that Member State,

(iii) where the group is headed by more than one insurance holding company or mixed financial holding company which have their head offices in different Member States and there is an insurance or reinsurance undertaking in each of those Member States, the supervisory authority of the insurance or reinsurance undertaking with the largest balance sheet total,

(iv) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or mixed financial holding company and none of those

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undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total, or

(v) where the group is a group without a parent undertaking, or in any circumstances not referred to in points (i) to (iv), the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total.**]**

[[F3]3 In particular cases, the supervisory authorities concerned may, at the request of any of the other supervisory authorities, take a joint decision to derogate from the criteria set out in paragraph 2 where their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings' activities in different countries, and designate a different supervisory authority as group supervisor.

For that purpose, any of the supervisory authorities concerned may request that a discussion be opened on whether the criteria referred to in paragraph 2 are appropriate. Such a discussion shall not take place more often than annually.

The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months from the request for discussion. Before taking their decision, the supervisory authorities concerned shall give the group an opportunity to state its opinion.

The designated group supervisor shall submit the joint decision to the group stating the full reasons.

4 If, within the three-month period referred to in the third subparagraph of paragraph 3, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the supervisory authorities concerned shall defer their joint decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take their joint decision in conformity with EIOPA's decision. That joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

5 EIOPA shall take its decision within one month of a referral under paragraph 4. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached. The designated group supervisor shall submit the joint decision to the group and to the college of supervisors stating the full reasons.

6 In the absence of a joint decision, the task of group supervisor shall be exercised by the supervisory authority identified in accordance with paragraph 2 of this Article.

7 EIOPA shall inform the European Parliament, the Council and the Commission of any major difficulties with the application of paragraphs 2, 3 and 6 on at least an annual basis.

In the event that any major difficulties arise from the application of the criteria set out in paragraphs 2 and 3 of this Article, the Commission shall adopt delegated acts in accordance with Article 301a further specifying those criteria.**]**

8 Where a Member State has more than one supervisory authority for the prudential supervision of insurance and reinsurance undertakings, such Member State shall take the necessary measures to ensure coordination between those authorities.

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Textual Amendments

F3 Substituted 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).

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 248

Rights and duties of the group supervisor and the other supervisors College of supervisors

1 The rights and duties assigned to the group supervisor with regard to group supervision shall comprise the following:

a coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;

b supervisory review and assessment of the financial situation of the group;

c assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 218 to 245;

d assessment of the system of governance of the group, as set out in Article 246, and of whether the members of the administrative, management or supervisory body of the participating undertaking fulfil the requirements set out in Articles 42 and 257;

e planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

f other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 231 and 233 and leading the process for permitting the application of the regime established in Articles 237 to 240.

2 In order to facilitate the exercise of the group supervision tasks referred to in paragraph 1, a college of supervisors, chaired by the group supervisor, shall be established.

The college of supervisors shall ensure that cooperation, exchange of information and consultation processes among the supervisory authorities that are members of the college of supervisors, are effectively applied in accordance with Title III, with a view to promoting the convergence of their respective decisions and activities.

[F2Where the group supervisor fails to carry out the tasks referred to in paragraph 1 or where the members of the college of supervisors do not cooperate to the extent required in this paragraph, any of the supervisory authorities concerned may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No

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1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.**]**

[F3 3 The membership of the college of supervisors shall include the group supervisor, the supervisory authorities of all the Member States in which the head offices of all subsidiary undertakings are situated, and EIOPA in accordance with Article 21 of Regulation (EU) No 1094/2010.**]**

The supervisory authorities of significant branches and related undertakings shall also be allowed to participate in the college of supervisors. However, their participation shall be limited to achieving the objective of an efficient exchange of information.

The effective functioning of the college of supervisors may require that some activities be carried out by a reduced number of supervisory authorities therein.

4 Without prejudice to any measure adopted pursuant to this Directive, the establishment and functioning of the college of supervisors shall be based on coordination arrangements concluded by the group supervisor and the other supervisory authorities concerned.

[F3 Where diverging views concerning the coordination arrangements arise, any member of the college of supervisors 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. The group supervisor shall take its final decision in conformity with EIOPA's decision. The group supervisor shall transmit the decision to the other supervisory authorities concerned.**]**

After consulting the supervisory authorities concerned, the group supervisor shall duly consider any advice produced by CEIOPS within two months of receipt thereof before taking its final decision. The decision shall state the full reasons and shall contain an explanation of any significant deviation from any advice given by CEIOPS. The group supervisor shall transmit the decision to the other supervisory authorities concerned.

5 Without prejudice to any measure adopted pursuant to this Directive, the coordination arrangements referred to in paragraph 4 shall specify the procedures for:

a the decision-making process among the supervisory authorities concerned in accordance with Articles 231, 232 and 247;

b consultation under paragraph 4 of this Article and under Article 218(5).

[F3 Without prejudice to the rights and duties allocated by this Directive to the group supervisor and to other supervisory authorities, the coordination arrangements may entrust additional tasks to the group supervisor, the other supervisory authorities or EIOPA where this would result in the more efficient supervision of the group and would not impair the supervisory activities of the members of the college of supervisors in respect of their individual responsibilities.**]**

In addition, the coordination arrangements may set out procedures for:

a consultation among the supervisory authorities concerned, in particular as referred to in Articles 213 to 217, 219 to 221, 227, 244 to 246, 250, 256, 260 and 262;

b cooperation with other supervisory authorities.

[F3 6 EIOPA shall issue guidelines for the operational functioning of colleges of supervisors on the basis of comprehensive reviews of their work in order to assess the level of convergence between them. Such reviews shall be carried out at least every three years. Member States shall ensure that the group supervisor transmits to EIOPA the information on the functioning of the colleges of supervisors and on any difficulties encountered that are relevant for those reviews.

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In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA may develop draft regulatory technical standards to specify the operational functioning of colleges of supervisors based on the guidelines referred to in the first subparagraph.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

7 In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the coordination of group supervision for the purposes of paragraphs 1 to 6.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

8 The Commission shall adopt delegated acts in accordance with Article 301a in regard to the definition of 'significant branch'.**]**

Textual Amendments

F2 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).

F3 Substituted 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).

Article 249

Cooperation and exchange of information between supervisory authorities

1 The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.

[[F3]With the objective of ensuring that the supervisory authorities, including the group supervisor, have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and irrespective of whether they are established in the same Member State, they shall provide one another with such information in order to allow and facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In that regard, the supervisory authorities concerned and the group supervisor shall communicate to one another without delay all relevant information as soon as it becomes available, or exchange information on request. The information referred to in this subparagraph includes, but is not limited to, information about actions of the group and supervisory authorities, and information provided by the group.**]**

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[[F9]The group supervisor shall provide the supervisory authorities concerned and EIOPA with information regarding the group, in accordance with Article 19, Article 51(1) and Article 254(2), in particular regarding the legal structure and the governance and organisational structure of the group.**]**

[[F2]1a Where a supervisory authority has not communicated relevant information or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within two weeks, the supervisory authorities may refer the matter to EIOPA.

Where the matter is referred to it, EIOPA may, without prejudice to Article 258 TFEU, act in accordance with the powers conferred on it by Article 19 of Regulation (EU) No 1094/2010.**]**

2 The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall each call immediately for a meeting of all supervisory authorities involved in group supervision in at least the following circumstances:

a where they become aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking;

b where they become aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used in accordance with Title III, Chapter II, Section 1, Subsection 4;

c where other exceptional circumstances are occurring or have occurred.

[[F3]3 In order to ensure consistent harmonisation in relation to the coordination and exchange of information between supervisory authorities, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify:

a the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned;

b the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

4 In order to ensure uniform conditions of application in relation to the coordination and exchange of information between supervisory authorities, EIOPA shall develop draft implementing technical standards on the procedures and templates for the submission of information to the group supervisor as well as the procedure for the cooperation and the exchange of information between supervisory authorities as laid down in this Article.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 September 2015.;

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

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Textual Amendments

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F3 Substituted 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).

F9 Inserted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

[F3 Article 250

Consultation between supervisory authorities

1 Without prejudice to Article 248, the supervisory authorities concerned shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other in the college of supervisors with regard to the following:

a changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group, which require the approval or authorisation of supervisory authorities;

b the decision on the extension of the recovery period under Article 138(3) and (4);

c major sanctions or exceptional measures taken by supervisory authorities, including the imposition of a capital add-on to the Solvency Capital Requirement under Article 37 and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under Title I, Chapter VI, Section 4, Subsection 3.

For the purposes of points (b) and (c) of the first subparagraph, the group supervisor shall always be consulted.

In addition, the supervisory authorities concerned shall, where a decision is based on information received from other supervisory authorities, consult each other prior to that decision.

2 Without prejudice to Article 248, a supervisory authority may decide not to consult other supervisory authorities in cases of urgency or where such consultation could jeopardise the effectiveness of the decision. In that case, the supervisory authority shall, without delay, inform the other supervisory authorities concerned.**]**

Textual Amendments

F3 Substituted 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).

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Article 251

Requests from the group supervisor to other supervisory authorities

The group supervisor may invite the supervisory authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the group supervision pursuant to Article 247, to request from the parent undertaking any information which would be relevant for the exercise of its coordination rights and duties as laid down in Article 248, and to transmit that information to the group supervisor.

The group supervisor shall, when it needs information referred to in Article 254(2) which has already been given to another supervisory authority, contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Article 252

Cooperation with authorities responsible for credit institutions and investment firms

Where an insurance or reinsurance undertaking and either a credit institution as defined in Directive 2006/48/EC or an investment firm as defined in Directive 2004/39/EC, or both, are directly or indirectly related or have a common participating undertaking, the supervisory authorities concerned and the authorities responsible for the supervision of those other undertakings shall cooperate closely.

Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular as set out in this Title.

Article 253

Professional secrecy and confidentiality

Member States shall authorise the exchange of information between their supervisory authorities and between their supervisory authorities and other authorities, as referred to in Articles 249 to 252.

Information received in the framework of group supervision, and in particular any exchange of information between supervisory authorities and between supervisory authorities and other authorities which is provided for in this Title, shall be subject to the provisions of Article 295.

Article 254

Access to information

1 Member States shall ensure that the natural and legal persons included within the scope of group supervision, and their related undertakings and participating undertakings, are able to exchange any information which could be relevant for the purposes of group supervision.

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[[F3]2 Member States shall provide that their authorities responsible for exercising group supervision have access to any information relevant for the purpose of that supervision regardless of the nature of the undertaking concerned. Article 35(1) to (5) shall apply *mutatis mutandis*.

The group supervisor may limit regular supervisory reporting with a frequency shorter than one year at the level of the group where all insurance or reinsurance undertakings within the group benefit from the limitation in accordance with Article 35(6) taking into account the nature, scale and complexity of the risks inherent in the business of the group.

The group supervisor may exempt from reporting on an item-by-item basis at the level of the group where all insurance or reinsurance undertakings within the group benefit from the exemption in accordance with Article 35(7), taking into account the nature, scale and complexity of the risks inherent in the business of the group and the objective of financial stability.**]**

The supervisory authorities concerned may address the undertakings in the group directly to obtain the necessary information, only where such information has been requested from the insurance undertaking or reinsurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time.

Textual Amendments

F3 Substituted 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).

Article 255

Verification of information

1 Member States shall ensure that their supervisory authorities may carry out within their territory, either directly or through the intermediary of persons whom they appoint for that purpose, on-site verification of the information referred to in Article 254 on the premises of any of the following:

a the insurance or reinsurance undertaking subject to group supervision;

b related undertakings of that insurance or reinsurance undertaking;

c parent undertakings of that insurance or reinsurance undertaking;

d related undertakings of a parent undertaking of that insurance or reinsurance undertaking.

2 Where supervisory authorities wish in specific cases to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in another Member State, they shall ask the supervisory authorities of that other Member State to have the verification carried out.

The authorities which receive such a request shall, within the framework of their competences, act upon that request either by carrying out the verification directly, by

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allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself. The group supervisor shall be informed of the action taken.

The supervisory authority which made the request may, where it so wishes, participate in the verification when it does not carry out the verification directly.

[[F2]Where the request to another supervisory authority to have a verification carried out in accordance with this paragraph has not been acted upon within two weeks, or where the supervisory authority is unable in practice to exercise its right to participate in accordance with the third subparagraph, the requesting authority may refer the matter to EIOPA and may 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.

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

Textual Amendments

F2 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).

Article 256

Group solvency and financial condition report

[[F8]1 Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group. Articles 51, 53, 54 and 55 shall apply *mutatis mutandis*.

2 A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the agreement of the group supervisor, provide a single report on its solvency and financial condition which shall comprise the following:

a the information at the level of the group to be disclosed in accordance with paragraph 1;

b the information for any of the subsidiaries within the group, which information must be individually identifiable and must be disclosed in accordance with Articles 51, 53, 54 and 55.

Before granting the agreement in accordance with the first subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors.**]**

3 Where the report referred to in paragraph 2 fails to include information which the supervisory authority having authorised a subsidiary within the group requires comparable undertakings to provide, and where the omission is material, the supervisory authority concerned shall have the power to require the subsidiary concerned to disclose the necessary additional information.

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[F3 4 The Commission shall adopt delegated acts in accordance with Article 301a further specifying the information which must be disclosed and the deadlines for the annual disclosure of the information as regards the single solvency and financial condition report in accordance with paragraph 2 and the report on the solvency and financial condition report at the level of the group in accordance with paragraph 1.**]**

[F2 5 In order to ensure uniform conditions of application in relation to the single and group solvency and financial condition report, EIOPA shall develop draft implementing technical standards on the procedures and templates for, and the means of, disclosure of the single and group solvency and financial report as laid down in this Article.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F2 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).

F3 Substituted 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).

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

*[*F2 *Article 256a*

Group structure

Member States shall require insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, at the level of the group, on an annual basis, the legal structure and the governance and organisational structure, including a description of all subsidiaries, material related undertakings and significant branches belonging to the group.**]**

Textual Amendments

F2 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).

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[F8 Article 257

Administrative, management or supervisory body of insurance holding companies and mixed financial holding companies

Member States shall require that all persons who effectively run the insurance holding company or the mixed financial holding company are fit and proper to perform their duties.

Article 42 shall apply *mutatis mutandis*.**]**

Textual Amendments

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 258

Enforcement measures

[F8 1 Where the insurance or reinsurance undertakings in a group do not comply with the requirements provided for in Articles 218 to 246 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance or reinsurance undertakings, measures necessary to rectify the situation as soon as possible shall be adopted by:

a the group supervisor with respect to insurance holding companies and mixed financial holding companies;

b the supervisory authorities with respect to insurance and reinsurance undertakings.

Where, in the case referred to in point (a) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance holding company or mixed financial holding company has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Where, in the case referred to in point (b) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance or reinsurance undertaking has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Without prejudice to paragraph 2, Member States shall determine the measures which may be taken by their supervisory authorities with respect to insurance holding companies and mixed financial holding companies.

The supervisory authorities concerned, including the group supervisor, shall, where appropriate, coordinate their measures.

2 Without prejudice to their criminal law provisions, Member States shall impose sanctions on or adopt measures relating to insurance holding companies and mixed financial holding companies which infringe laws, regulations or administrative provisions brought into

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force to transpose this Title, or in relation to the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such sanctions or measures are effective, in particular where the central administration or main establishment of an insurance holding company or mixed financial holding company is not located in the same Member State as its head office.**]**

[F3 3 The Commission may adopt delegated acts in accordance with Article 301a for the coordination of enforcement measures referred to in paragraphs 1 and 2 of this Article.**]**

Textual Amendments

F3 Substituted 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).

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

[F3 Article 259

Reporting of EIOPA

1 EIOPA shall report to the European Parliament annually in accordance with Article 50 of Regulation (EU) No 1094/2010.

2 EIOPA shall report, inter alia, on all relevant and significant experiences of the supervisory activities and cooperation between supervisors in the framework of Title III, and, in particular:

a the process of the nomination of the group supervisor, the number of group supervisors and their geographical spread;

b the working of the college of supervisors, in particular the involvement and commitment of supervisory authorities where they are not the group supervisor.

3 EIOPA may, for the purposes of paragraph 1 of this Article, also report on the main lessons drawn from the reviews referred to in Article 248(6), where appropriate.**]**

Textual Amendments

F3 Substituted 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).

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CHAPTER IV

Third countries

[F3 Article 260

Parent undertakings outside the Union: verification of equivalence

1 In the case referred to in Article 213(2)(c), the supervisory authorities concerned shall verify whether the insurance and reinsurance undertakings, the parent undertaking of which has its head office outside the Union, are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by this Title on the supervision at the level of the group of insurance and reinsurance undertakings referred to in Article 213(2)(a) and (b).

Where no delegated act has been adopted in accordance with paragraph 2, 3 or 5 of this Article, the verification shall be carried out by the supervisory authority, which would be the group supervisor if the criteria set out in Article 247(2) were to apply (the 'acting group supervisor'), at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Union or on its own initiative. EIOPA shall assist the acting group supervisor in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

In so doing, that acting group supervisor shall, assisted by EIOPA, consult the other supervisory authorities concerned, before taking a decision on equivalence. That decision shall be taken in accordance with the criteria adopted in accordance with paragraph 2. The acting group supervisor shall not take any decision in relation to a third country that is in opposition to any previous decision taken vis-à-vis that third country, save where it is necessary to take into account significant changes to the supervisory regime laid down in Title I and to the supervisory regime in the third country.

Where supervisory authorities disagree with the decision taken in accordance with the third subparagraph, they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the acting group supervisor. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

2 The Commission may adopt delegated acts in accordance with Article 301a specifying the criteria for assessing whether the prudential regime in a third country for the supervision of groups is equivalent to that laid down in this Title.

3 If the criteria adopted in accordance with paragraph 2 of this Article have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the prudential regime of that third country is equivalent to that laid down in this Title.

Such a delegated act shall be regularly reviewed to take into account any changes to the prudential regime for the supervision of groups laid down in this Title, and to the prudential regime in the third country for the supervision of groups, and to any other change in regulation that may affect the decision on equivalence.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

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4 In the absence of a delegated act adopted by the Commission in accordance with paragraph 3 or 5 of this Article, Article 262 shall apply.

5 By way of derogation from paragraph 3, and even if the criteria specified in paragraph 2 have not been fulfilled, the Commission may, for a limited period and in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the prudential regime of a third country applied to undertakings the parent undertaking of which has its head office outside the Union on 1 January 2014 is temporarily equivalent to that laid down in Title I, if that third country has complied with at least the following criteria:

a it has given a commitment to the Union to adopt and apply a prudential regime that is capable of being assessed equivalent in accordance with paragraph 3, before the end of that limited period and to engage in the equivalence assessment process;

b it has established a work programme to fulfil the commitment under point (a);

c it has allocated sufficient resources to fulfil the commitment under point (a);

d it has a prudential regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency and to the supervision of groups;

e it has entered into written arrangements to cooperate and exchange confidential supervisory information with EIOPA and supervisory authorities as defined in Article 13(10);

f it has an independent system of supervision;

g it has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities, in particular on the exchange of information with EIOPA and supervisory authorities as defined in Article 13(10).

Any delegated acts on temporary equivalence shall take into account the reports by the Commission in accordance with Article 177(2). Those delegated acts shall be regularly reviewed, on the basis of progress reports by the relevant third country, which are presented to and assessed by the Commission annually. EIOPA shall assist the Commission in the assessment of those progress reports.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

The Commission may adopt delegated acts in accordance with Article 301a further specifying the conditions laid down in the first subparagraph. Delegated acts may also cover powers for supervisory authorities to impose additional supervisory reporting requirements during the period of temporary equivalence.

6 The limited period referred to in paragraph 5 shall end on 31 December 2020 or on the date on which, in accordance with paragraph 3, the prudential regime of that third country has been deemed to be equivalent to that laid down in this Title, whichever is the earlier.

That period may be extended by a maximum of one more year, where such time is necessary for EIOPA and the Commission to carry out the assessment of equivalence for the purposes of paragraph 3.

7 Where a delegated act determining that the prudential regime of a third country is temporarily equivalent is adopted in accordance with paragraph 5, Member States shall apply Article 261, unless there is an insurance or reinsurance undertaking situated in a Member State which has a balance sheet total that exceeds the balance sheet total of the parent undertaking situated outside the Union. In that case, the task of the group supervisor shall be exercised by the acting group supervisor.**]**

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Textual Amendments

F3 Substituted 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).

Article 261

Parent undertakings outside the Community: equivalence

1 In the event of equivalent supervision referred to in Article 260, Member States shall rely on the equivalent group supervision exercised by the third-country supervisory authorities, in accordance with paragraph 2.

2 Articles 247 to 258 shall apply*mutatis mutandis* to the cooperation with third-country supervisory authorities.

[F8Article 262

Parent undertakings registered in a third country: absence of equivalence

[F3 1 In the absence of equivalent supervision referred to in Article 260, or where a Member State does not apply Article 261 in the event of temporary equivalence in accordance with Article 260(7), that Member State shall apply either of the following to insurance and reinsurance undertakings:

a Articles 218 to 235, and Articles 244 to 258, *mutatis mutandis*;

b one of the methods set out in paragraph 2.**]**

The general principles and methods set out in Articles 218 to 258 shall apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking.

For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I as regards the own funds eligible for the Solvency Capital Requirement, and to either of the following:

a a Solvency Capital Requirement determined in accordance with the principles of Article 226 where it is an insurance holding company or mixed financial holding company;

b a Solvency Capital Requirement determined in accordance with the principles of Article 227, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

2 Member States shall allow their supervisory authorities to apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings in a group. Those methods shall be agreed by the group supervisor, after consulting the other supervisory authorities concerned.

The supervisory authorities may in particular require the establishment of an insurance holding company which has its head office in the Union, or a mixed financial holding

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company which has its head office in the Union and apply this Title to the insurance and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.

The methods chosen shall allow the objectives of the group supervision as defined in this Title to be achieved and shall be notified to the other supervisory authorities concerned and the Commission.**]**

Textual Amendments

F3 Substituted 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).

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

Article 263

Parent undertakings outside the Community: levels

[[F8]Where the parent undertaking referred to in Article 260 is itself a subsidiary of an insurance holding company or a mixed financial holding company which has its head office in a third country or of a third-country insurance or reinsurance undertaking, Member States shall apply the verification provided for in Article 260 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

Supervisory authorities may, however, in the absence of equivalent supervision referred to in Article 260, carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.**]**

In such a case, the supervisory authority referred to in the second subparagraph of Article 260(1) shall explain its decision to the group.

Article 262 shall apply *mutatis mutandis*.

Textual Amendments

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

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Article 264

Cooperation with third-country supervisory authorities

1 The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising group supervision over:

a insurance or reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 213 which have their head office situated in a third country; and

b third-country insurance undertakings or third-country reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 213 which have their head office in the Community.

2 The agreements referred to in paragraph 1 shall, in particular, seek to ensure that:

a the supervisory authorities of the Member States are able to obtain the information necessary for the supervision at the level of the group of insurance and reinsurance undertakings which have their head office in the Community and which have subsidiaries or hold participations in undertakings outside the Community; and

b the supervisory authorities of third countries are able to obtain the information necessary for the supervision at the level of the group of third-country insurance and reinsurance undertakings which have their head office in their territories and which have subsidiaries or hold participations in undertakings in one or more Member States.

3 Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Insurance and Occupational Pensions Committee, examine the outcome of the negotiations referred to in paragraph 1.

CHAPTER V

Mixed-activity insurance holding companies

Article 265

Intra-group transactions

1 Member States shall ensure that, where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company, the supervisory authorities responsible for the supervision of those insurance or reinsurance undertakings exercise general supervision over transactions between those insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.

2 Articles 245, 249 to 255 and 258 shall apply *mutatis mutandis*.

Article 266

Cooperation with third countries

As concerns cooperation with third countries, Article 264 shall apply *mutatis mutandis*.

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TITLE IV

REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

CHAPTER I

Scope and definitions

Article 267

Scope of this Title

This Title shall apply to reorganisation measures and winding-up proceedings concerning the following:

(a) insurance undertakings;

(b) branches situated in the territory of the Community of third-country insurance undertakings.

Article 268

Definitions

1 For the purpose of this Title the following definitions shall apply:

a ‘competent authorities’ means the administrative or judicial authorities of the Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;

b ‘branch’ means a permanent presence of an insurance undertaking in the territory of a Member State other than the home Member State which pursues insurance activities;

c ‘reorganisation measures’ means measures involving any intervention by the competent authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

d ‘winding-up proceedings’ means collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the competent authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;

e ‘administrator’ means a person or body appointed by the competent authorities for the purpose of administering reorganisation measures;

f ‘liquidator’ means a person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking for the purpose of administering winding-up proceedings;

g ‘insurance claim’ means an amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance

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contract or from any operation provided for in Article 2(3)(b) and (c) in direct insurance business, including an amount set aside for those persons, when some elements of the debt are not yet known.

The premium owed by an insurance undertaking as a result of the non-conclusion or cancellation of an insurance contract or operation referred to in point (g) of the first subparagraph in accordance with the law applicable to such a contract or operation before the opening of the winding-up proceedings shall also be considered an insurance claim.

2 For the purpose of applying this Title to reorganisation measures and winding-up proceedings concerning a branch situated in a Member State of a third-country insurance undertaking the following definitions shall apply:

a 'home Member State' means the Member State in which the branch was granted authorisation in accordance with Articles 145 to 149;

b 'supervisory authorities' means the supervisory authorities of the home Member State;

c 'competent authorities' means the competent authorities of the home Member State.

CHAPTER II

Reorganisation measures

Article 269

Adoption of reorganisation measures applicable law

1 Only the competent authorities of the home Member State shall be entitled to decide on the reorganisation measures with respect to an insurance undertaking, including its branches.

2 The reorganisation measures shall not preclude the opening of winding-up proceedings by the home Member State.

3 The reorganisation measures shall be governed by the laws, regulations and procedures applicable in the home Member State, unless otherwise provided in Articles 285 to 292.

4 Reorganisation measures taken in accordance with the legislation of the home Member State shall be fully effective throughout the Community without any further formalities, including against third parties in other Member States, even where the legislation of those other Member States does not provide for such reorganisation measures or alternatively makes their implementation subject to conditions which are not fulfilled.

5 The reorganisation measures shall be effective throughout the Community once they become effective in the home Member State.

Article 270

Information to the supervisory authorities

The competent authorities of the home Member State shall inform as a matter or urgency the supervisory authorities of that Member State of their decision on any reorganisation measure, where possible before the adoption of such a measure and failing that immediately thereafter.

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The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to adopt reorganisation measures including the possible practical effects of such measures.

Article 271

Publication of decisions on reorganisation measures

1 Where an appeal is possible in the home Member State against a reorganisation measure, the competent authorities of the home Member State, the administrator or any person entitled to do so in the home Member State shall make public the decision on a reorganisation measure in accordance with the publication procedures provided for in the home Member State and, furthermore, publish in the *Official Journal of the European Union* at the earliest opportunity an extract from the document establishing the reorganisation measure.

The supervisory authorities of the other Member States which have been informed of the decision on a reorganisation measure pursuant to Article 270 may ensure the publication of such decision within their territory in the manner they consider appropriate.

2 The publications provided for in paragraph 1 shall specify the competent authority of the home Member State, the applicable law as provided in Article 269(3) and the administrator appointed, if any. They shall be made in the official language or in one of the official languages of the Member State in which the information is published.

3 The reorganisation measures shall apply regardless of the provisions concerning publication set out in paragraphs 1 and 2 and shall be fully effective as against creditors, unless the competent authorities of the home Member State or the law of that Member State provide otherwise.

4 Where reorganisation measures affect exclusively the rights of shareholders, members or employees of an insurance undertaking, considered in those capacities, paragraphs 1, 2 and 3 shall not apply unless the law applicable to the reorganisation measures provides otherwise.

The competent authorities shall determine the manner in which the parties referred to in the first subparagraph are to be informed in accordance with the applicable law.

Article 272

Information to known creditors right to lodge claims

1 Where the law of the home Member State requires a claim to be lodged in order for it to be recognised or provides for compulsory notification of a reorganisation measure to creditors whose habitual residence, domicile or head office is situated in that Member State, the competent authorities of the home Member State or the administrator shall also inform known creditors whose habitual residence, domicile or head office is situated in another Member State, in accordance with Article 281 and Article 283(1).

2 Where the law of the home Member State provides for the right of creditors whose habitual residence, domicile or head office is situated in that Member State to lodge claims or to submit observations concerning their claims, creditors whose habitual residence, domicile or head office is situated in another Member State shall have the same right in accordance with Article 282 and Article 283(2).

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CHAPTER III

Winding-up proceedings

Article 273

Opening of winding-up proceedings information to the supervisory authorities

1 Only the competent authorities of the home Member State shall be entitled to take a decision concerning the opening of winding-up proceedings with regard to an insurance undertaking, including its branches in other Member States. This decision may be taken in the absence, or following the adoption, of reorganisation measures.

2 A decision concerning the opening of winding-up proceedings of an insurance undertaking, including its branches in other Member States, adopted in accordance with the legislation of the home Member State shall be recognised without further formality throughout the Community and shall be effective there as soon as the decision is effective in the Member State in which the proceedings are opened.

3 The competent authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of that Member State of the decision to open winding-up proceedings, where possible before the proceedings are opened and failing that immediately thereafter.

The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to open winding-up proceedings including the possible practical effects of such proceedings.

Article 274

Applicable law

1 The decision to open winding-up proceedings with regard to an insurance undertaking, the winding-up proceedings and their effects shall be governed by the law applicable in the home Member State unless otherwise provided in Articles 285 to 292.

2 The law of the home Member State shall determine at least the following:

- a the assets which form part of the estate and the treatment of assets acquired by, or devolving to, the insurance undertaking after the opening of the winding-up proceedings;
- b the respective powers of the insurance undertaking and the liquidator;
- c the conditions under which set-off may be invoked;
- d the effects of the winding-up proceedings on current contracts to which the insurance undertaking is party;
- e the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending referred to in Article 292;
- f the claims which are to be lodged against the estate of the insurance undertaking and the treatment of claims arising after the opening of winding-up proceedings;
- g the rules governing the lodging, verification and admission of claims;
- h the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right in rem or through a set-off;

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i the conditions for and the effects of closure of winding-up proceedings, in particular by composition;

j rights of the creditors after the closure of winding-up proceedings;

k the party who is to bear the cost and expenses incurred in the winding-up proceedings; and

l the rules relating to the nullity, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 275

Treatment of insurance claims

1 Member States shall ensure that insurance claims take precedence over other claims against the insurance undertaking in one or both of the following ways:

a with regard to assets representing the technical provisions, insurance claims shall take absolute precedence over any other claim on the insurance undertaking; or

b with regard to the whole of the assets of the insurance undertaking, insurance claims shall take precedence over any other claim on the insurance undertaking with the only possible exception of the following:

(i) claims by employees arising from employment contracts and employment relationships;

(ii) claims by public bodies on taxes;

(iii) claims by social security systems;

(iv) claims on assets subject to rights in rem.

2 Without prejudice to paragraph 1, Member States may provide that the whole or part of the expenses arising from the winding-up procedure, as determined by their national law, shall take precedence over insurance claims.

3 Member States which have chosen the option provided for in paragraph 1(a) shall require insurance undertakings to establish and keep up to date a special register in accordance with Article 276.

Article 276

Special register

1 Every insurance undertaking shall keep at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with the law of the home Member State.

2 Where an insurance undertaking carries on both life and non-life insurance activities, it shall keep at its head office separate registers for each type of business.

However, where a Member State authorises insurance undertakings to cover life and the risks listed in classes 1 and 2 of Part A of Annex I, it may provide that those insurance undertakings must keep a single register for the whole of their activities.

3 The total value of the assets entered, valued in accordance with the law applicable in the home Member State, shall at no time be less than the value of the technical provisions.

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4 Where an asset entered in the register is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact shall be recorded in the register and the amount not available shall not be included in the total value referred to in paragraph 3.

5 The treatment of an asset in the case of the winding-up of the insurance undertaking with respect to the option provided for in Article 275(1)(a) shall be determined by the legislation of the home Member State, except where Articles 286, 287 or 288 apply to that asset where:

a the asset used to cover technical provisions is subject to a right in rem in favour of a creditor or a third party, without meeting the conditions set out in paragraph 4;

b such an asset is subject to a reservation of title in favour of a creditor or of a third party; or

c a creditor has a right to demand the set-off of his claim against the claim of the insurance undertaking.

6 Once winding-up proceedings have been opened, the composition of the assets entered in the register in accordance with paragraphs 1 to 5 shall not be changed and no alteration other than the correction of purely clerical errors shall be made in the registers, except with the authorisation of the competent authority.

However, the liquidators shall add to those assets the yield therefrom and the value of the pure premiums received in respect of the class of insurance concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.

7 Where the product of the realisation of assets is less than their estimated value in the registers, the liquidators shall justify this to the supervisory authorities of the home Member States.

Article 277

Subrogation to a guarantee scheme

The home Member State may provide that, where the rights of insurance creditors have been subrogated to a guarantee scheme established in that Member State, claims by that scheme shall not benefit from the provisions of Article 275(1).

Article 278

Representation of preferential claims by assets

Member States which choose the option set out in Article 275(1)(b) shall require every insurance undertaking to ensure that the claims which may take precedence over insurance claims pursuant to Article 275(1)(b) and which are registered in the insurance undertaking's accounts are represented, at any moment and independently of a possible winding-up, by assets.

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Article 279

Withdrawal of the authorisation

1 Where the opening of winding-up proceedings is decided in respect of an insurance undertaking, the authorisation of that undertaking shall be withdrawn in accordance with the procedure laid down in Article 144, except to the extent necessary for the purposes of paragraph 2.

2 The withdrawal of authorisation pursuant to paragraph 1 shall not prevent the liquidator or any other person appointed by the competent authorities from pursuing some of the activities of the insurance undertaking in so far as that is necessary or appropriate for the purposes of winding-up.

The home Member State may provide that such activities shall be pursued with the consent and under the supervision of the supervisory authorities of that Member State.

Article 280

Publication of decisions on winding-up proceedings

1 The competent authority, the liquidator or any person appointed for that purpose by the competent authority shall publish the decision to open winding-up proceedings in accordance with the publication procedures provided for in the home Member State and also publish an extract from the winding-up decision in the *Official Journal of the European Union*.

The supervisory authorities of all other Member States which have been informed of the decision to open winding-up proceedings in accordance with Article 273(3) may ensure the publication of such decision within their territories in the manner they consider appropriate.

2 The publication referred to in paragraph 1 shall specify the competent authority of the home Member State, the applicable law and the liquidator appointed. It shall be in the official language or in one of the official languages of the Member State in which the information is published.

Article 281

Information to known creditors

1 When winding-up proceedings are opened, the competent authorities of the home Member State, the liquidator or any person appointed for that purpose by the competent authorities shall without delay individually inform by written notice each known creditor whose habitual residence, domicile or head office is situated in another Member State.

2 The notice referred to in paragraph 1 shall cover time-limits, the sanctions laid down with regard to those time-limits, the body or authority empowered to accept the lodging of claims or observations relating to claims and any other measures.

The notice shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims.

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In the case of insurance claims, the notice shall further indicate the general effects of the winding-up proceedings on the insurance contracts, in particular, the date on which the insurance contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

Article 282

Right to lodge claims

1 Any creditor, including public authorities of Member States, whose habitual residence, domicile or head office is situated in a Member State other than the home Member State shall have the right to lodge claims or to submit written observations relating to claims.

2 The claims of all creditors referred to in paragraph 1 shall be treated in the same way and given the same ranking as claims of an equivalent nature which may be lodged by creditors whose habitual residence, domicile or head office is situated in the home Member State. Competent authorities shall therefore operate without discrimination at Community level.

3 Except in cases where the law of the home Member State otherwise allows, a creditor shall send to the competent authority copies of any supporting documents and shall indicate the following:

a the nature and the amount of the claim;

b the date on which the claim arose;

c whether he alleges preference, security in rem or reservation of title in respect of the claim;

d where appropriate, what assets are covered by his security.

The precedence granted to insurance claims by Article 275 need not be indicated.

Article 283

Languages and form

1 The information in the notice referred to in Article 281(1) shall be provided in the official language or one of the official languages of the home Member State.

For that purpose a form shall be used bearing either of the following headings in all the official languages of the European Union:

a ‘Invitation to lodge a claim; time-limits to be observed’; or

b where the law of the home Member State provides for the submission of observations relating to claims, ‘Invitation to submit observations relating to a claim; time-limits to be observed’.

However, where a known creditor is the holder of an insurance claim, the information in the notice referred to in Article 281(1) shall be provided in the official language or one of the official languages of the Member State in which the habitual residence, domicile or head office of the creditor is situated.

2 Creditors whose habitual residence, domicile or head office is situated in a Member State other than the home Member State may lodge their claims or submit observations relating to claims in the official language or one of the official languages of that other Member State.

However, in that case, the lodging of their claims or the submission of observations on their claims, as appropriate, shall bear the heading ‘Lodgement of claim’ or ‘Submission

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of observations relating to claims', as appropriate, in the official language or in one of the official languages of the home Member State.

Article 284

Regular information to the creditors

1 Liquidators shall, in an appropriate manner, keep creditors regularly informed on the progress of the winding-up.

2 The supervisory authorities of the Member States may request information on developments in the winding-up procedure from the supervisory authorities of the home Member State.

CHAPTER IV

Common provisions

Article 285

Effects on certain contracts and rights

By way of derogation from Articles 269 and 274, the effects of the opening of reorganisation measures or of winding-up proceedings shall be governed as follows:

(a) in regard to employment contracts and employment relationships, exclusively by the law of the Member State applicable to the employment contract or employment relationship;

(b) in regard to contracts conferring the right to make use of or acquire immovable property, exclusively by the law of the Member State where the immovable property is situated; and

(c) in regard to rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register, exclusively by the law of the Member State under the authority of which the register is kept.

Article 286

Rights in rem of third parties

1 The opening of reorganisation measures or winding-up proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – which belong to the insurance undertaking and which are situated within the territory of another Member State at the time of the opening of such measures or proceedings.

2 The rights referred to in paragraph 1 shall include at least:

a the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

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b the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

c the right to demand the assets from or to require restitution by anyone having possession or use of them contrary to the wishes of the party so entitled;

d a right to the beneficial use of assets.

3 The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered to be a right in rem.

4 Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 274(2)(l).

Article 287

Reservation of title

1 The opening of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the rights of a seller which are based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within the territory of a Member State other than that in which such measures or proceedings were opened.

2 The opening, after delivery of the asset, of reorganisation measures or winding-up proceedings against an insurance undertaking which is selling an asset shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such measures or proceedings the asset sold is situated within the territory of a Member State other than that in which such measures or proceedings were opened.

3 Paragraphs 1 and 2 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 274(2)(l).

Article 288

Set-off

1 The opening of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking, where such a set-off is permitted by the law applicable to the claim of the insurance undertaking.

2 Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 274(2)(l).

Article 289

Regulated markets

1 Without prejudice to Article 286 the effects of a reorganisation measure or the opening of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law applicable to that market.

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2 Paragraph 1 shall not preclude actions for nullity, voidability, or unenforceability referred to in Article 274(2)(l) which may be taken to set aside payments or transactions under the law applicable to that market.

Article 290

Detrimental acts

Article 274(2)(l) shall not apply where a person who has benefited from a legal act which is detrimental to all the creditors provides proof of that act being subject to the law of a Member State other than the home Member State, and proof that that law does not allow any means of challenging that act in the relevant case.

Article 291

Protection of third-party purchasers

The following law shall be applicable where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, an insurance undertaking disposes, for consideration, of any of the following:

(a) in regard to immovable assets, the law of the Member State where the immovable property is situated;

(b) in regard to ships or aircraft subject to registration in a public register, the law of the Member State under the authority of which the register is kept;

(c) in regard to transferable or other securities, the existence or transfer of which presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State, the law of the Member State under the authority of which the register, account or system is kept.

Article 292

Lawsuits pending

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

Article 293

Administrators and liquidators

1 The appointment of the administrator or the liquidator shall be evidenced by a certified copy of the original decision of appointment or by any other certificate issued by the competent authorities of the home Member State.

The Member State in which the administrator or liquidator wishes to act may require a translation into the official language or one of the official languages of that Member State. No formal authentication of that translation or other similar formality shall be required.

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2 Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State.

Persons to assist or represent administrators and liquidators may be appointed, in accordance with the law of the home Member State, in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in that State.

3 In exercising their powers according to the law of the home Member State, administrators or liquidators shall comply with the law of the Member States within which they wish to take action, in particular with regard to procedures for the realisation of assets and the informing of employees.

Those powers shall not include the use of force or the right to rule on legal proceedings or disputes.

Article 294

Registration in a public register

1 The administrator, liquidator or any other authority or person duly empowered in the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in any relevant public register kept in the other Member States.

However, where a Member State provides for mandatory registration, the authority or person referred to in the first subparagraph shall take all the measures necessary to ensure such registration.

2 The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Article 295

Professional secrecy

All persons required to receive or divulge information in connection with the procedures laid down in Articles 270, 273 and 296 shall be bound by the provisions on professional secrecy, as laid down in Articles 64 to 69, with the exception of any judicial authorities to which existing national provisions apply.

Article 296

Treatment of branches of third-country insurance undertakings

Where a third-country insurance undertaking has branches established in more than one Member State, each branch shall be treated independently with regard to the application of this Title.

The competent authorities and the supervisory authorities of those Member States shall endeavour to coordinate their actions.

Any administrators or liquidators shall likewise endeavour to coordinate their actions.

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TITLE V

OTHER PROVISIONS

Article 297

Right to apply to the courts

Member States shall ensure that decisions taken in respect of an insurance or a reinsurance undertaking under laws, regulations and administrative provisions implementing this Directive are subject to the right to apply to the courts.

Article 298

Cooperation between the Member States and the Commission

1 The Member States shall cooperate with each other for the purpose of facilitating the supervision of insurance and reinsurance within the Community and the application of this Directive.

2 The Commission and the supervisory authorities of the Member States shall collaborate closely with each other for the purpose of facilitating the supervision of insurance and reinsurance within the Community and of examining any difficulties which may arise in the application of this Directive.

3 Member States shall inform the Commission of any major difficulties to which the application of this Directive gives rise.

The Commission and the supervisory authorities of the Member States concerned shall examine those difficulties as quickly as possible in order to find an appropriate solution.

Article 299

Euro

Where this Directive makes reference to the *euro*, the exchange value in national currencies to be used with effect from 31 December of each year shall be the value which applies on the last day of the preceding October for which exchange values for the *euro* are available in all Community currencies.

Article 300

Revision of amounts expressed in euro

[[F3]The amounts expressed in euro in this Directive shall be revised every five years, by increasing the base amount in euro by the percentage change in the Harmonised Indices of Consumer Prices of all Member States as published by the Commission (Eurostat) starting from 31 December 2015 until the date of revision and rounded up to a multiple of EUR 100 000.**]**

If the percentage change since the previous revision is less than 5 %, the amounts will not be revised.

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The Commission shall publish the revised amounts in the *Official Journal of the European Union*.

The revised amounts shall be implemented by Member States within 12 months of the publication in the *Official Journal of the European Union*.

Textual Amendments

F3 Substituted 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).

[F3 Article 301

Committee procedure

1 The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC[17]. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3 Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 4 thereof, shall apply.

Textual Amendments

F3 Substituted 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).

Article 301a

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The delegation of power referred to in Articles 17, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 258, 260 and 308b shall be conferred on the Commission for a period of four years from 23 May 2014.

The Commission shall draw up a report in respect of the delegated power by six months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

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3 The delegation of power referred to in Articles 17, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 258, 260 and 308b may be revoked at any time by the European Parliament or by the Council.

A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to Articles 17, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 258, 260 or 308b shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

Textual Amendments

F3 Substituted 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).

Article 301b

Sunrise provision for regulatory technical standards

1 Until 24 May 2016, the Commission shall, when adopting for a first time the regulatory technical standards provided for in Articles 50, 58, 75, 86, 92, 97, 111, 135, 143, 244, 245, 248 and 249 follow the procedure laid down in Article 301a. Any amendments to such delegated acts or, after the transitional period has expired, any new regulatory technical standards shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

2 The delegation of power referred to in paragraph 1 may be revoked at any time by the European Parliament or by the Council in accordance with Article 12 of Regulation (EU) No 1094/2010.

3 By 24 May 2016, EIOPA may submit draft regulatory technical standards to the Commission to adjust to technical developments on the financial markets the delegated acts provided for in Articles 17, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 258, 260 and 308b.

Those draft regulatory technical standards shall be limited to the technical aspects of the delegated acts referred to in the first subparagraph, in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

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Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.**]**

Textual Amendments

F3 Substituted 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).

Article 302

Notifications submitted prior to entry into force of the laws, regulations and administrative provisions necessary to comply with Articles 57 to 63

The assessment procedure applied to proposed acquisitions for which notifications referred to in Article 57 have been submitted to the competent authorities prior to the entry into force of the laws, regulations and administrative provisions necessary to comply with Articles 57 to 63, shall be carried out in accordance with the national law of Member States in force at the time of notification.

[F10 Article 303

[F10 Amendments to Directive 2003/41/EC]

. . . . . .

Textual Amendments

F10 Deleted by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) (Text with EEA relevance).

Article 304

Duration-based equity risk sub-module

1 Member States may authorise life insurance undertakings providing:

a occupational retirement provision business in accordance with Article 4 of Directive 2003/41/EC, or

b retirement benefits paid by reference to reaching, or the expectation of reaching, retirement where the premiums paid for those benefits have a tax deduction which is authorised to policy holders in accordance with the national legislation of the Member State that has authorised the undertaking;

where

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(i) all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertakings, without any possibility of transfer;

(ii) the activities of the undertaking related to points (a) and (b), in relation to which the approach referred to in this paragraph is applied, are pursued only in the Member State where the undertaking has been authorised; and

(iii) the average duration of the liabilities corresponding to the business held by the undertaking exceeds an average of 12 years;

to apply an equity risk sub-module of the Solvency Capital Requirement, which is calibrated using a Value-at-Risk measure, over a time period, which is consistent with the typical holding period of equity investments for the undertaking concerned, with a confidence level providing the policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101, where the approach provided for in this Article is used only in respect of those assets and liabilities referred in point (i). In the calculation of the Solvency Capital Requirement those assets and liabilities shall be fully considered for the purpose of assessing the diversification effects, without prejudice to the need to safeguard the interests of policy holders and beneficiaries in other Member States.

Subject to the approval of the supervisory authorities, the approach set out in the first subparagraph shall be used only where the solvency and liquidity position as well as the strategies, processes and reporting procedures of the undertaking concerned with respect to asset–liability management are such as to ensure, on an ongoing basis, that it is able to hold equity investments for a period which is consistent with the typical holding period of equity investments for the undertaking concerned. The undertaking shall be able to demonstrate to the supervisory authority that that condition is verified with the level of confidence necessary to provide policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101.

Insurance and reinsurance undertakings shall not revert to applying the approach set out in Article 105, except in duly justified circumstances and subject to the approval of the supervisory authorities.

[[F3]2 The Commission shall submit to the European Parliament and to the Council, by 31 December 2020, a report on the application of the approach set out in paragraph 1 and the supervisory authorities' practices adopted pursuant to paragraph 1, accompanied, where appropriate, by adequate proposals. That report shall address, in particular, cross-border effects of the use of that approach with a view to preventing regulatory arbitrage by insurance and reinsurance undertakings.**]**

Textual Amendments

F3 Substituted 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).

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TITLE VI

TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I

Transitional provisions

Section 1

Insurance

Article 305

Derogations and abolition of restrictive measures

1 Member States may exempt non-life insurance undertakings which on 31 January 1975 did not comply with the requirements of Articles 16 and 17 of Directive 73/239/EEC whose annual premium or contribution income on 31 July 1978 fell short of six times the amount of the minimum guarantee fund required under Article 17(2) of Directive 73/239/EEC from the requirement to establish such minimum guarantee fund before the end of the financial year in respect of which the premium or contribution income is as much as six times such minimum guarantee fund. After considering the results of the examination provided for under Article 298(2), the Council shall unanimously decide, on a proposal from the Commission, when that exemption is to be abolished by Member States.

2 Non-life insurance undertakings set up in the United Kingdom by Royal Charter or by private Act or by special public Act may continue to pursue their business in the legal form in which they were constituted on 31 July 1973 for an unlimited period.

Life insurance undertakings set up in the United Kingdom by Royal Charter or by private Act or by special Public Act may pursue their activity in the legal form in which they were constituted on 15 March 1979 for an unlimited period.

The United Kingdom shall draw up a list of the undertakings referred to in the first and second subparagraphs and communicate it to the other Member States and the Commission.

3 The societies registered in the United Kingdom under the Friendly Societies Acts may continue the activities of life insurance and savings operations which, in accordance with their objects, they were pursuing as of 15 March 1979.

4 At the request of non-life insurance undertakings which comply with the requirements laid down in Title I, Chapter VI, Sections 2, 4 and 5, Member States shall cease to apply restrictive measures such as those relating to mortgages, deposits and securities.

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Article 306

Rights acquired by existing branches and insurance undertakings

1 Branches which started business, in accordance with the provisions in force in the Member State where that branch is situated, before 1 July 1994 shall be presumed to have been subject to the procedure laid down in Articles 145 and 146.

2 Articles 147 and 148 shall not affect rights acquired by insurance undertakings carrying on business under the freedom to provide services before 1 July 1994.

Section 2

Reinsurance

Article 307

Transitional period for Articles 57(3) and 60(6) of Directive 2005/68/EC

A Member State may postpone the application of the provisions of Article 57(3) of Directive 2005/68/EC amending Article 15(3) of Directive 73/239/EEC and of the provision of Article 60(6) of Directive 2005/68/EC until 10 December 2008.

Article 308

Right acquired by existing reinsurance undertakings

1 Reinsurance undertakings subject to this Directive which were authorised or entitled to conduct reinsurance business in accordance with the provisions of the Member States in which they have their head offices before 10 December 2005 shall be deemed to be authorised in accordance with Article 14.

However, they shall be obliged to comply with the provisions of this Directive concerning the pursuit of the business of reinsurance and with the requirements set out in points (b), and (d) to (g) of Article 18(1), Articles 19, 20 and 24 and Title I Chapter VI, Sections 2, 3 and 4.

2 Member States may allow reinsurance undertakings referred to in paragraph 1 which on 10 December 2005 did not comply with Article 18(1)(b), Articles 19 and 20 and Title I Chapter VI, Sections 2, 3 and 4 until 10 December 2008 in order to comply with such requirements.

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[F2Section 3

Insurance and reinsurance

Article 308a

Phasing-in

1 From 1 April 2015, Member States shall ensure that the supervisory authorities have the power to decide on the approval of:

a ancillary own funds in accordance with Article 90;

b the classification of own funds items referred to in the third paragraph of Article 95;

c undertaking specific parameters in accordance with Article 104(7);

d a full or partial internal model in accordance with Articles 112 and 113;

e special purpose vehicles to be established in their territory in accordance with Articles 211;

f ancillary own funds of an intermediate insurance holding company in accordance with Article 226(2);

g a group internal model in accordance with Article 230, Article 231 and Article 233(5);

h the use of the duration based equity risk sub-module in accordance with Article 304;

i the use of the matching adjustment to the relevant risk-free interest rate term structure in accordance with Articles 77b and 77c;

j where Member States so require, the use of the volatility adjustment to the relevant risk-free interest rate term structure in accordance with Article 77d;

k the use of the transitional measure on the risk-free interest rates in accordance with Article 308c;

l the use of the transitional measure on technical provisions in accordance with Article 308d.

2 From 1 April 2015, Member States shall ensure that the supervisory authorities have the power to:

a determine the level and scope of group supervision in accordance with Title III, Chapter I, Sections 2 and 3;

b identify the group supervisor in accordance with Article 247;

c establish a college of supervisors in accordance with Article 248.

3 From 1 July 2015, Member States shall ensure that the supervisory authorities have the power to:

a decide to deduct any participation in accordance with the second subparagraph of Article 228;

b determine the choice of method to calculate group solvency in accordance with Article 220;

c make the determination on equivalence, where appropriate, in accordance with Articles 227 and 260;

d permit insurance and reinsurance undertakings to be subject to Articles 238 and 239, in accordance with Article 236;

e make the determinations referred to in Articles 262 and 263;

f determine, where appropriate, the application of transitional measures in accordance with Article 308b.

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4 Member States shall oblige the supervisory authorities concerned to consider applications submitted by insurance and reinsurance undertakings for approval or permission in accordance with paragraphs 2 and 3. The decisions taken by the supervisory authorities on applications for approval or permission shall not become applicable before 1 January 2016.

Article 308b

Transitional measures

1 Without prejudice to Article 12, insurance or reinsurance undertakings which, by 1 January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to Titles I, II and III of this Directive until the dates set out in paragraph 2 where either:

a the undertaking has satisfied the supervisory authority that it will terminate its activity before 1 January 2019; or

b the undertaking is subject to reorganisation measures set out in Title IV, Chapter II and an administrator has been appointed.

2 Insurance or reinsurance undertakings falling under:

a paragraph 1(a) shall be subject to Titles I, II and III of this Directive from 1 January 2019 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity;

b paragraph 1(b) shall be subject to Titles I, II and III of this Directive from 1 January 2021 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity.

3 Insurance and reinsurance undertakings shall be subject to the transitional measures in paragraphs 1 and 2 only if the following conditions are met:

a the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conduct new insurance or reinsurance contracts;

b the undertaking shall provide its supervisory authority with an annual report setting out what progress has been made in terminating its activity;

c the undertaking has notified its supervisory authority that it applies the transitional measures.

Paragraphs 1 and 2 shall not prevent any undertaking from operating in accordance with Titles I, II and III of this Directive.

4 Member States shall draw up a list of the insurance and reinsurance undertakings concerned and communicate that list to all the other Member States.

5 Member States shall ensure that, for a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on an annual or less frequent basis shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

6 For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to disclose the information referred to in Article 51 shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1

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January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

7 For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on a quarterly basis shall decrease by one week each financial year, starting from no later than eight weeks related to any quarter ending on or after 1 January 2016 but before 1 January 2017, to five weeks related to any quarter ending on or after 1 January 2019 but before 1 January 2020.

8 Member States shall ensure that paragraphs 5, 6 and 7 of this Article shall apply *mutatis mutandis* to participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies at the level of the group pursuant to Articles 254 and 256, whereby the deadlines referred to in paragraphs 5, 6 and 7 shall be extended by six weeks respectively.

9 Notwithstanding Article 94, basic own-fund items shall be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items:

a were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;

b on 31 December 2015 could be used to meet the available solvency margin up to 50 % of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC;

c would not otherwise be classified in Tier 1 or Tier 2 in accordance with Article 94.

10 Notwithstanding Article 94, basic own-fund items shall be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items:

a were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;

b on 31 December 2015 could be used to meet the available solvency margin up to 25 % of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC.

F11 11 . . . . . .

12 Notwithstanding Article 100, Article 101(3) and Article 104, the following shall apply:

a until 31 December 2017 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be the same in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their domestic currency;

b in 2018 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 80 % in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;

c in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 50 % in relation to exposures to Member States' central governments or

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central banks denominated and funded in the domestic currency of any other Member State;

d from 1 January 2020 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall not be reduced in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State.

13 Notwithstanding Article 100, Article 101(3) and Article 104, the standard parameters to be used for equities that the undertaking purchased on or before 1 January 2016, when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 304 shall be calculated as the weighted averages of:

a the standard parameter to be used when calculating the equity risk sub-module in accordance with Article 304; and

b the standard parameter to be used when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 304.

The weight for the parameter expressed in point (b) of the first subparagraph shall increase at least linearly at the end of each year from 0 % during the year starting on 1 January 2016 to 100 % on 1 January 2023.

The Commission shall adopt delegated acts in accordance with Article 301a further specifying the criteria to be met, including the equities that may be subject to the transitional period.

In order to ensure uniform conditions of application of that transitional period, EIOPA shall develop draft implementing technical standards on the procedures for the application of this paragraph.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

14 Notwithstanding Article 138(3) and without prejudice to paragraph 4 of that Article, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 16a of Directive 73/239/EEC, Article 28 of Directive 2002/83/EC or Article 37, 38 or 39 of Directive 2005/68/EC respectively as applicable in the law of the Member State on the day before those Directives are repealed pursuant to Article 310 of this Directive but do not comply with the Solvency Capital Requirement in the first year of application of this Directive, the supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017.

The insurance or reinsurance undertaking concerned shall, every three months, submit a progress report to its supervisory authority setting out the measures taken and the progress made to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

The extension referred to in the first subparagraph shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-

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establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

[[F1]15 Where, on the entry into force of this Directive, home Member States applied provisions referred to in Article 4 of Directive (EU) 2016/2341, those home Member States may continue to apply the laws, regulations and administrative provisions that had been adopted by them with a view to complying with Articles 1 to 19, Articles 27 to 30, Articles 32 to 35 and Articles 37 to 67 of Directive 2002/83/EC as in force on 31 December 2015 for a transitional period expiring on 31 December 2022.

Where a home Member State continues to apply those laws, regulations and administrative provisions, insurance undertakings in that home Member State shall calculate their solvency capital requirement as the sum of the following:

a a notional solvency capital requirement with respect to their insurance activity, calculated without the occupational retirement provision business under Article 4 of Directive (EU) 2016/2341;

b the solvency margin with respect to the occupational retirement provision business, calculated in accordance with the laws, regulations and administrative provisions that have been adopted to comply with Article 28 of Directive 2002/83/EC.

By 31 December 2017, the Commission shall submit a report to the European Parliament and to the Council, on whether the period referred to in the first subparagraph should be extended, taking account of changes to Union or national law resulting from this Directive.**]**

16 Member States may allow the ultimate parent insurance or reinsurance undertaking, during a period until 31 March 2022, to apply for the approval of an internal group model applicable to a part of a group where both the undertaking and the ultimate parent undertaking are located in the same Member State and if this part forms a distinct part having a significantly different risk profile from the rest of the group.

17 Notwithstanding Articles 218(2) and (3), the transitional provisions as referred to in paragraph 8 to 12 and 15 of this Article and Articles 308c, 308d and 308e shall apply *mutatis mutandis* at the level of the group.

Notwithstanding Article 218(2), (3) and (4), the transitional provisions as referred to in paragraph 14 of this Article shall apply *mutatis mutandis* at the level of the group and where the participating insurance or reinsurance undertakings or the insurance and reinsurance undertakings in a group comply with the Adjusted Solvency referred to in Article 9 of Directive 98/78/EC but do not comply with the group Solvency Capital Requirement.

The Commission shall adopt delegated acts in accordance with Article 301a setting out the changes in the group solvency where the transitional provisions referred to in paragraph 13 of this Article are applicable and which relate to:

a the elimination of double use of eligible own funds and of the intra-group creation of capital set out in Articles 222 and 223;

b the valuation of assets and liabilities set out in Article 224;

c the application of the calculation methods to related insurance and reinsurance undertakings set out in Article 225;

d the application of the calculation methods to intermediate insurance holding companies set out in Article 226;

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e the methods for calculating group solvency set out in Articles 230 and 233;

f the calculation of the group Solvency Capital Requirement set out in Articles 231;

g the setting of a capital add-on set out in Article 232;

h the principles in calculating group solvency of an insurance holding company set out in Article 235.

Textual Amendments

F1 Substituted by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) (Text with EEA relevance).

F11 Deleted by Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

Article 308c

Transitional measure on the risk-free interest rates

1 Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations.

2 For each currency the adjustment shall be calculated as a portion of the difference between:

a the interest rate as determined by the insurance or reinsurance undertaking in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of Directive 2002/83/EC at the last date of the application of that Directive;

b the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of admissible insurance and reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of admissible insurance and reinsurance obligations where the time value of money is taken into account using the relevant risk-free interest rate term structure referred to in Article 77(2).

Where Member States have adopted laws, regulations and administrative provisions pursuant to Article 20(1)B(a)(ii) of Directive 2002/83/EC, the interest rate referred to in point (a) of the first subparagraph of this paragraph shall be determined using the methods used by the insurance or reinsurance undertaking at the last date of the application of Directive 2002/83/EC.

The portion referred to in the first subparagraph shall decrease linearly at the end of each year from 100 % during the year starting from 1 January 2016 to 0 % on 1 January 2032.

Where insurance and reinsurance undertakings apply the volatility adjustment referred to in Article 77d, the relevant risk-free interest rate term structure referred to in point (b) shall be the adjusted relevant risk-free interest rate term structure set out in Article 77d.

3 The admissible insurance and reinsurance obligations shall comprise only insurance or reinsurance obligations that meet the following requirements:

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a the contracts that give rise to the insurance and reinsurance obligations were concluded before the first date of the application of this Directive, excluding contract renewals on or after that date;

b until the last date of the application of Directive 2002/83/EC, technical provisions for the insurance and reinsurance obligations were determined in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of that Directive at the last date of the application thereof;

c Article 77b is not applied to the insurance and reinsurance obligations.

4 Insurance and reinsurance undertakings applying paragraph 1 shall:

a not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in Article 77d;

b not apply Article 308d;

c as part of their report on their solvency and financial condition referred to in Article 51, publicly disclose that they apply the transitional risk-free interest rate term structure, and the quantification of the impact of not applying this transitional measure on their financial position.

Article 308d

Transitional measure on technical provisions

1 Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional deduction to technical provisions. That deduction may be applied at the level of homogeneous risk groups referred to in Article 80.

2 The transitional deduction shall correspond to a portion of the difference between the following two amounts:

a the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with Article 76 at the first date of the application of this Directive;

b the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 15 of Directive 73/239/EEC, Article 20 of Directive 2002/83/EC and Article 32 of Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of this Directive.

The maximum portion deductible shall decrease linearly at the end of each year from 100 % during the year starting from 1 January 2016 to 0 % on 1 January 2032.

Where insurance and reinsurance undertakings apply at the first date of the application of this Directive the volatility adjustment referred to in the Article 77d, the amount referred to in point (a) shall be calculated with the volatility adjustment at that date.

3 Subject to prior approval by or on the initiative of the supervisory authority, the amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in paragraph 2(a) and (b) may be recalculated every 24 months, or more frequently where the risk profile of the undertaking has materially changed.

4 The deduction referred to in paragraph 2 may be limited by the supervisory authority if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the laws, regulations

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and administrative provisions which are adopted pursuant to Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of this Directive.

5 Insurance and reinsurance undertakings applying paragraph 1 shall:

a not apply Article 308c;

b when they would not comply with the Solvency Capital Requirement without application of the transitional deduction, submit annually a report to their supervisory authority setting out measures taken and the progress made to re-establish at the end of the transitional period set out in paragraph 2 a level of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement;

c as part of their report on their solvency and financial condition referred to in Article 51, publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.

Article 308e

Phasing-in plan on the transitional measures on risk-free interest rates and on technical provisions

Insurance and reinsurance undertakings that apply the transitional measures set out in Articles 308c or 308d shall inform the supervisory authority as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

Within two months from observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the insurance or reinsurance undertaking concerned shall submit to the supervisory authority a phasing-in plan setting out the planned measures to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement at the end of the transitional period. The insurance or reinsurance undertaking concerned may update the phasing-in plan during the transitional period.

The insurance and reinsurance undertakings concerned shall submit annually a report to their supervisory authority setting out the measures taken and the progress made to ensure compliance with the Solvency Capital Requirement at the end of the transitional period. Supervisory authorities shall revoke the approval for the application of the transitional measure where that progress report shows that compliance with the Solvency Capital Requirement at the end of the transitional period is unrealistic.**]**

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CHAPTER II

Final provisions

Article 309

Transposition

[[F3]1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 4, 10, 13, 14, 18, 23, 26 to 32, 34 to 49, 51 to 55, 67, 68, 71, 72, 74 to 85, 87 to 91, 93 to 96, 98, 100 to 110, 112, 113, 115 to 126, 128, 129, 131 to 134, 136 to 142, 144, 146, 148, 162 to 167, 172, 173, 178, 185, 190, 192, 210 to 233, 235 to 240, 243 to 258, 260 to 263, 265, 266, 303 and 304, and Annexes III and IV by 31 March 2015. They shall forthwith communicate to the Commission the text of those measures.**]**

[[F12]The laws, regulations and administrative provisions referred to in the first subparagraph shall apply from **[**[F13]1 January 2016**]**.**]**

When they are adopted by Member States, those measures shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

[[F2]Notwithstanding the second subparagraph, Member States shall apply the laws, regulations and administrative provisions necessary to comply with Article 308a from 1 April 2015.**]**

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Textual Amendments

F2 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).

F3 Substituted 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).

F12 Inserted by Directive 2012/23/EU of the European Parliament and of the Council of 12 September 2012 amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (Text with EEA relevance).

F13 Substituted by Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013 amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (Solvency I) (Text with EEA relevance).

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Article 310

Repeal

Directives 64/225/EEC, 73/239/EEC, 73/240/EEC, 76/580/EEC, 78/473/EEC, 84/641/EEC, 87/344/EEC, 88/357/EEC, 92/49/EEC, 98/78/EC, 2001/17/EC, 2002/83/EC and 2005/68/EC, as amended by the acts listed in Part A of Annex VI, are repealed with effect from **[**F13 1 January 2016**]**, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Part B of Annex VI.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VII.

Textual Amendments

F13 Substituted by Directive 2013/58/EU of the European Parliament and of the Council of 11 December 2013 amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives (Solvency I) (Text with EEA relevance).

[F2 *Article 310a*

Staff and resources of EIOPA

EIOPA shall asses the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Directive and shall submit a report to the European Parliament, the Council and the Commission in relation thereto.**]**

Textual Amendments

F2 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).

[F3 *Article 311*

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 308a shall apply from 1 April 2015.

Articles 1, 2, 3, 5 to 9, 11, 12, 15, 16, 17, 19 to 22, 24, 25, 33, 57 to 66, 69, 70, 73, 145, 147, 149 to 161, 168 to 171, 174 to 177, 179 to 184, 186 to 189, 191, 193 to 209, 267 to 300, 302, 305 to 308, 308b and Annexes I and II, V, VI and VII shall apply from 1 January 2016.

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The Commission may adopt delegated acts and regulatory and implementing technical standards prior to the date referred to in the third paragraph.**]**

Textual Amendments

F3 Substituted 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).

Article 312

Addressees

This Directive is addressed to the Member States.

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(1) [F1Directive (EU) 2016/2341 of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37)]

(2) OJ L 222, 14.8.1978, p. 11.

(3) [F2Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).]

(4) [F2Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).]

(5) OJ L 390, 31.12.2004, p. 38.

(6) [F2Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48.]

(7) OJ L 375, 31.12.1985, p. 3.

(8) OJ L 309, 25.11.2005, p. 15.

(9) [F4Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).]

(10) [F3Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).]

(11) OJ L 126, 12.5.1984, p. 20.

(12) [F3[F7Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).]]

(13) OJ L 78, 26.3.1977, p. 17.

(14) [F8OJ L 331, 15.12.2010, p. 12.]

(15) [F8OJ L 331, 15.12.2010, p. 48.]

(16) [F8OJ L 331, 15.12.2010, p. 84.]

(17) [F3Commission Decision 2004/9/EC of 5 November 2003 establishing the European Insurance and Occupational Pensions Committee (OJ L 3, 7.1.2004, p. 34).]

Textual Amendments

F1 Substituted by Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (recast) (Text with EEA relevance).

F2 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).

F3 Substituted 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

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

F4 Inserted by Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (Text with EEA relevance).

F7 Substituted by Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

F8 Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).