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.

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.

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

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

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.

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.

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;

(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) 'reinsurance' means either 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; or

(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;

(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;

(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:

(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[(1)], of EUR 12,8 million;

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

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;

(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;

(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.

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.

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:

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.

3 The Commission may adopt implementing measures relating to the extension of the list of forms set out in Annex III.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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;

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.

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;

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[(2)], 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 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.

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

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.

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.

4 The Commission shall ensure that implementing measures take into account the principle of proportionality, thus ensuring the proportionate application of this Directive, in particular to small insurance undertakings.

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 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.

4 The Commission shall adopt implementing measures relating to paragraph 2 specifying the key aspects on which aggregate statistical data are to be disclosed, and the format, structure, contents list and publication date of the disclosures.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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

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. That 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.

6 The Commission shall adopt implementing measures specifying the information referred to in paragraphs 1 to 4, with a view to ensuring to the appropriate extent convergence of supervisory reporting.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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;

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;

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; or

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.

2 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.

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).

6 The Commission shall adopt implementing measures laying down further specifications for the circumstances under which a capital add-on may be imposed and the methodologies for the calculation thereof.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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.

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.

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.

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.

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.

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;

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.

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.

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.

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.

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 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.

Article 50

Implementing measures

1 The Commission shall adopt implementing measures 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 and 46 to 48;

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

d the conditions under which outsourcing, in particular to service providers located in third countries, may be performed.

2 Where necessary to ensure appropriate convergence of the assessment referred to in Article 45(1)(a), the Commission may adopt implementing measures to further specify the elements of that assessment.

3 Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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.

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.

However, 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 point (e)(ii) of paragraph 1 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 October 2017.

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.

Article 52

Information for and reports by CEIOPS

1 Member States shall require the supervisory authorities to provide the following information to CEIOPS 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 as follows:

(i) for all insurance and reinsurance undertakings;

(ii) for life insurance undertakings;

(iii) for non-life insurance undertakings;

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

(v) for reinsurance undertakings;

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

2 CEIOPS 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) all 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), the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.

3 CEIOPS 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.

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.

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.

Article 56

Solvency and financial condition report: implementing measures

The Commission shall adopt implementing measures further specifying the information which must be disclosed and the means by which this is to be achieved.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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)[3], 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.

8 The Commission shall adopt implementing measures further specifying the adjustments of the criteria set out in Article 59(1), in order to take account of future developments and to ensure the uniform application of Articles 57 to 63.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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[(4)] 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.

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.

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.

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.

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 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.

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;

(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;

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;

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.

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.

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 32 may only be disclosed with the express consent of the supervisory authority from which the information originated or of the supervisory authority of the Member State in which the on-site verification was carried out.

Article 70

Transmission of information to central banks and monetary authorities

Without prejudice to this Section, a supervisory authority may transmit information intended for the performance of their tasks to the following:

(1) central banks and other bodies with a similar function in their capacity as monetary authorities;

(2) where appropriate, other public authorities responsible for overseeing payment systems.

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..

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.

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 the supervisory authorities participate in the activities of CEIOPS pursuant to Decision 2009/79/EC and take duly into account its guidelines and recommendations referred to in paragraph 3 of this Article.

3 CEIOPS shall, where necessary, provide for non-legally binding guidelines and recommendations concerning the implementation of the provisions of this Directive and its implementing measures in order to enhance the convergence of supervisory practices. In addition, CEIOPS shall report regularly and at least every two years to the European Parliament, the Council and the Commission on the progress of the supervisory convergence in the Community.

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[(5)], 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 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;

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.

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 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.

2 The Commission shall adopt implementing measures to set out the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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.

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).

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 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.

Article 86

Implementing measures

The Commission shall adopt implementing measures laying down the following:

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

(b) 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;

(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;

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

(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;

(g) 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;

(h) 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.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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

Implementing measures

1 The Commission shall adopt implementing measures specifying the following:

a the criteria for granting supervisory approval in accordance with Article 90;

b 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.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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.

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).

Article 97

Implementing measures

1 The Commission shall adopt implementing measures laying down the following:

a 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;

b 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 point (a).

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

2 The Commission shall regularly review and, where appropriate, update the list referred to in paragraph 1(a) in the light of market developments.

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.

Article 99

Implementing measures

The Commission shall adopt implementing measures laying down:

(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 only be used to cover losses arising from a particular segment of liabilities or from particular risks (ring-fenced funds).

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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;

(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.

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).

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.

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

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).

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).

Article 111

Implementing measures

1 In order to ensure that the same treatment is applied to all insurance and reinsurance undertakings calculating the Solvency Capital Requirement on the basis of the standard formula, or to take account of market developments, the Commission shall adopt implementing measures providing for the following:

a a standard formula in accordance with the provisions of 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 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, if necessary, those set out in Annex IV, and the procedures for the updating of 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;

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 paragraph 3 of Article 107;

h the methods and adjustments to be used to reflect the reduced scope for risk diversification of insurance and reinsurance undertakings related 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;

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.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

2 The Commission may adopt implementing measures laying down quantitative limits and asset eligibility criteria in order to address risks which are not adequately covered by a sub-module. Such implementing measures 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. Those measures shall be reviewed by the Commission in the light of developments in the standard formula and financial markets.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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.

Article 114

Implementing measures

The Commission shall adopt implementing measures setting out the following:

(1) the procedure to be followed for the approval of an internal model;

(2) the adaptations to be made to the standards set out in Articles 120 to 125 in order to take account of the limited scope of the application of the partial internal model.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

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.

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.

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

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.

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.

Article 127

Implementing measures

The Commission shall, in order to ensure a harmonised approach to the use of internal models throughout the Community and to enhance the better assessment of the risk profile and management of the business of insurance and reinsurance undertakings, adopt implementing measures with respect to Articles 120 to 126.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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;

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) EUR 2 200 000 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 1 are covered, in which case it shall be no less than EUR 3 200 000,

(ii) EUR 3 200 000 for life insurance undertakings, including captive insurance undertakings,

(iii) EUR 3 200 000 for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be no less than EUR 1 000 000,

(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.

Member States shall allow their supervisory authorities, for a period ending no later than 31 October 2014, 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.

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.

5 The Commission shall submit to the European Parliament and the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC[(6)], by 31 October 2017, 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.

Article 130

Implementing measures

The Commission shall adopt implementing measures specifying the calculation of the Minimum Capital Requirement, referred to in Articles 128 and 129.

Those measures, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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 31 October 2012 but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertakings concerned shall comply with Article 128 by 31 October 2013.

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.

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.

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.

Article 135

Implementing measures

1 In order to ensure the uniform application of this Directive, the Commission may adopt implementing measures specifying qualitative requirements in the following areas:

a the identification, measurement, monitoring, managing and reporting of risks arising from investments in relation to the first subparagraph of Article 132(2);

b the identification, measurement monitoring, managing and reporting of specific risks arising from investment in derivative instruments and assets referred to in the second subparagraph of Article 132(4).

2 In order to ensure cross-sectoral consistency and to remove misalignment between the interests of firms that 'repackage' loans into tradable securities and other financial instruments (originators) and the interests of insurance or reinsurance undertakings that invest in such securities or instruments, the Commission shall adopt implementing measures laying down:

a the requirements that need to be met by the originator in order for an insurance or reinsurance undertaking to be allowed to invest in such securities or instruments issued after 1 January 2011, including requirements that ensure that the originator retains a net economic interest of no less than 5 %;

b qualitative requirements that must be met by insurance or reinsurance undertakings that invest in such securities or instruments.

3 Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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.

4 In the event of an exceptional fall in financial markets, the supervisory authority may extend the period set out in the second subparagraph of paragraph 3 by an appropriate period of time taking into account all relevant factors.

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.

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.

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.

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.

Article 143

Implementing measures

The Commission shall adopt implementing measures specifying the factors to be taken into account for the purpose of the application of Article 138(4) including the maximum appropriate period of time, expressed in total number of months, which shall be the same for all insurance and reinsurance undertakings as referred to in the first subparagraph of Article 138(4).

Where it is necessary to enhance convergence, the Commission may adopt implementing measures laying down further specifications with respect to the recovery plan referred to in Article 138(2), the finance scheme referred to in Article 139(2) and with respect to Article 141, taking due care to avoid pro-cyclical effects.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

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 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.

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.

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.

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 145 shall be subject to the procedure provided for in Articles 147 and 148.

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 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.

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.

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.

9 Member States shall inform the Commission of the number and types of cases which led to refusals under Articles 146 and 148 in which measures have been taken under paragraph 4 of this Article.

On the basis of that information the Commission shall inform the European Insurance and Occupational Pensions Committee every two years.

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.

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.

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.

Section 4

Statistical information

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 group of classes as set out in Annex V;

(b) for life insurance, by each of classes I to IX, as set out in Annex II.

As regards class 10 in Part A of Annex I, not including 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 forward the information referred to in the first and second subparagraphs within a reasonable time and in aggregate form to the supervisory authorities of each of the Member States concerned upon their request.

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;

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;

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.

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;

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.

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

Article 172

Equivalence

1 The Commission shall adopt implementing measures specifying the criteria to assess whether the solvency regime of a third country applied to reinsurance activities of undertakings with their head office in that third country is equivalent to that laid down in Title I.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

2 The Commission may, in accordance with the regulatory procedure referred to in Article 301(2) and taking into account the criteria adopted in accordance with paragraph 1, decide whether the solvency regime of a third country applied to reinsurance activities of undertakings with their head office in that third country is equivalent to that laid down in Title I.

Those decisions shall be regularly reviewed.

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.

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;

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

Article 176

Information from Member States to the Commission

The supervisory authorities of the Member States shall inform the Commission 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 laws 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 Community 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 and the supervisory authorities of the other Member States.

Article 177

Third-country treatment of Community insurance and reinsurance undertakings

1 Member States shall inform the Commission 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.

(**1**) OJ L 222, 14.8.1978, p. 11.

(**2**) OJ L 390, 31.12.2004, p. 38.

(**3**) OJ L 375, 31.12.1985, p. 3.

(**4**) OJ L 309, 25.11.2005, p. 15.

(**5**) OJ L 126, 12.5.1984, p. 20.

(**6**) OJ L 3, 7.1.2004, p. 34.