

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 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⁽¹⁾, 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.

- (1) OJ L 390, 31.12.2004, p. 38.