

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 IV

Conditions governing business

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.

[^{F1}Where insurance or reinsurance undertakings apply the matching adjustment referred to in Article 77b or the volatility adjustment referred to in Article 77d, they shall set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.]

[^{F12a} As regards asset-liability management, insurance and reinsurance undertakings shall regularly assess:

- a the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in Article 77a;
- b where the matching adjustment referred to in Article 77b is applied:
 - (i) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in Article 77c(1)(b), and the possible effect of a forced sale of assets on their eligible own funds;

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- (ii) the sensitivity of their technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets;
- (iii) the impact of a reduction of the matching adjustment to zero;
- c where the volatility adjustment referred to in Article 77d is applied:
 - (i) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on their eligible own funds;
 - (ii) the impact of a reduction of the volatility adjustment to zero.

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

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

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

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

[^{F14a} In order to avoid overreliance on external credit assessment institutions when they use external credit rating assessment in the calculation of technical provisions and the Solvency Capital Requirement, insurance and reinsurance undertakings shall assess the appropriateness of those external credit assessments as part of their risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.

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

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

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

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

- a to design and implement the internal model;
- b to test and validate the internal model;

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- c to document the internal model and any subsequent changes made to it;
- d to analyse the performance of the internal model and to produce summary reports thereof;
- e to inform the administrative, management or supervisory body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses.

Textual Amendments

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

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.

[^{F1}2a Where the insurance or reinsurance undertaking applies the matching adjustment referred to in Article 77b, the volatility adjustment referred to in Article 77d or the transitional measures referred to in Article 308c and 308d, they shall perform the assessment of compliance with the capital requirements referred to in paragraph 1(b) with and without taking into account those adjustments and transitional measures.]

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

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

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

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

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

Textual Amendments

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

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.

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[^{F2}Article 50

Delegated acts and regulatory technical standards

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

- a the elements of the systems referred to in Articles 41, 44, 46 and 47, and in particular the areas to be covered by the asset–liability management and investment policy, as referred to in Article 44(2), of insurance and reinsurance undertakings;
- b the functions referred to in Articles 44, 46, 47 and 48.

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

- a the requirements set out in Article 42 and the functions subject thereto;
- b the conditions for outsourcing, in particular to service providers located in third countries.

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

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

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

Textual Amendments

- F2** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)