

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 VI

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

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) [F<sup>1</sup>EUR 2 500 000 for non-life insurance undertakings, including captive insurance undertakings, save in the case where all or some of the risks included in one of the classes 10 to 15 listed in Part A of Annex I are covered, in which case it shall be no less than EUR 3 700 000;

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- (ii) EUR 3 700 000 for life insurance undertakings, including captive insurance undertakings;
- (iii) EUR 3 600 000 for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be not less than EUR 1 200 000;]
- (iv) the sum of the amounts set out in points (i) and (ii) for insurance undertakings as referred to in Article 73(5).

2 Subject to paragraph 3, the Minimum Capital Requirement shall be calculated as a linear function of a set or sub-set of the following variables: the undertaking's technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses. The variables used shall be measured net of reinsurance.

3 Without prejudice to paragraph 1(d), the Minimum Capital Requirement shall neither fall below 25 % nor exceed 45 % of the undertaking's Solvency Capital Requirement, calculated in accordance with Chapter VI, Section 4, Subsections 2 or 3, and including any capital add-on imposed in accordance with Article 37.

[<sup>F1</sup>Member States shall allow their supervisory authorities, for a period ending no later than 31 December 2017, to require an insurance or reinsurance undertaking to apply the percentages referred to in the first subparagraph exclusively to the undertaking's Solvency Capital Requirement calculated in accordance with Chapter VI, Section 4, Subsection 2.]

4 Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to supervisory authorities.

[<sup>F2</sup>For the purposes of calculating the limits referred to in paragraph 3, undertakings shall not be required to calculate the Solvency Capital Requirement on a quarterly basis.]

Where either of the limits referred to in paragraph 3 determines an undertaking's Minimum Capital Requirement, the undertaking shall provide to the supervisory authority information allowing a proper understanding of the reasons therefor.

[<sup>F15</sup> The Commission shall submit to the European Parliament and the Council by 31 December 2020 a report on Member States' rules and supervisory authorities' practices adopted pursuant to paragraphs 1 to 4.]

That report shall address, in particular, the use and level of the cap and the floor set out in paragraph 3 as well as any problems faced by supervisory authorities and by undertakings in the application of this Article.

#### **Textual Amendments**

- F1** 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 \(European Securities and Markets Authority\).](#)
- F2** Inserted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority](#)

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

### *[<sup>F1</sup>Article 130*

#### **Delegated acts**

The Commission shall adopt delegated acts in accordance with Article 301a specifying the calculation of the Minimum Capital Requirement, referred to in Articles 128 and 129.]

#### **Textual Amendments**

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

### *Article 131*

#### **Transitional arrangements regarding compliance with the Minimum Capital Requirement**

By way of derogation from Articles 139 and 144, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 28 of Directive 2002/83/EC, Article 16a of Directive 73/239/EEC or Article 37, 38 or 39 of Directive 2005/68/EC respectively on [<sup>F1</sup>31 December 2015] but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertakings concerned shall comply with Article 128 by [<sup>F1</sup>31 December 2016].

Where the undertaking concerned fails to comply with Article 128 within the period set out in the first paragraph, the authorisation of the undertaking shall be withdrawn, subject to the applicable processes provided for in the national legislation.

#### **Textual Amendments**

- F1** 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).