

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 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

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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.

[^{F14} In the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, as declared by EIOPA, and where appropriate after consulting the ESRB, the supervisory authority may extend, for affected undertakings, the period set out in the second subparagraph of paragraph 3 by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.

Without prejudice to the powers of EIOPA under Article 18 of Regulation (EU) No 1094/2010, for the purposes of this paragraph EIOPA shall, following a request by the supervisory authority concerned, declare the existence of exceptional adverse situations. The supervisory authority concerned may make a request if insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in paragraph 3. Exceptional adverse situations exist where the financial situation of insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions:

- a a fall in financial markets which is unforeseen, sharp and steep;
- b a persistent low interest rate environment;
- c a high-impact catastrophic event.

EIOPA shall, in cooperation with the supervisory authority concerned, assess on a regular basis whether the conditions referred to in the second subparagraph still apply. EIOPA shall, in cooperation with the supervisory authority concerned, declare when an exceptional adverse situation has ceased to exist.

The insurance or reinsurance undertaking concerned shall, every three months, submit a progress report to its supervisory authority setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

The extension referred to in the first subparagraph shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.]

5 In exceptional circumstances, where the supervisory authority is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. That supervisory authority shall inform the supervisory authorities of the host Member States of any measures it has taken. Those authorities shall, at the request of the supervisory authority of the home Member State, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.

Textual Amendments

- 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 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.

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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.

^{F1}Article 143

Delegated acts and regulatory technical standards concerning Article 138(4)

1 The Commission shall adopt delegated acts in accordance with Article 301a supplementing the types of exceptional adverse situations and specifying the factors and criteria to be taken into account by EIOPA in declaring the existence of exceptional adverse situations and by supervisory authorities in determining the extension to recovery period in accordance with Article 138(4).

2 In order to ensure consistent harmonisation in relation to Article 138(2), Article 139(2) and Article 141, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the recovery plan referred to in Article 138(2), and the finance scheme referred to in Article 139(2) and with respect to Article 141, taking due care to avoid pro-cyclical effects.

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

Textual Amendments

- 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 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.