

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 VIII

Right of establishment and freedom to provide services

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.