

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 II

SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE

CHAPTER I

Applicable law and conditions of direct insurance contracts

Section 1

Applicable law

Article 178

Applicable Law

Any Member State not subject to the application of Regulation (EC) No 593/2008 shall apply the provisions of that Regulation in order to determine the law applicable to insurance contracts falling within the scope of Article 7 of that Regulation.

Section 2

Compulsory insurance

Article 179

Related obligations

1 Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this Article.

2 Where a Member State imposes an obligation to take out insurance, an insurance contract shall not satisfy that obligation unless it complies with the specific provisions relating to that insurance laid down by that Member State.

3 Where a Member State imposes compulsory insurance and the insurance undertaking is required to notify the supervisory authorities of any cessation of cover, such cessation may be invoked against injured third parties only in the circumstances laid down by that Member State.

4 Each Member State shall communicate to the Commission the risks against which insurance is compulsory under its legislation, stating the following:

- a the specific legal provisions relating to that insurance;

- b the particulars which must be given in the certificate which a non-life insurance undertaking must issue to an insured person where that Member State requires proof that the obligation to take out insurance has been complied with.

A Member State may require that the particulars referred to in point (b) of the first subparagraph include a declaration by the insurance undertaking to the effect that the contract complies with the specific provisions relating to that insurance.

The Commission shall publish the particulars referred to in point (b) of the first subparagraph in the *Official Journal of the European Union*.

Section 3

General good

Article 180

General good

Neither the Member State in which a risk is situated nor the Member State of the commitment shall prevent a policy holder from concluding a contract with an insurance undertaking authorised under the conditions of Article 14 as long as that conclusion of contract does not conflict with legal provisions protecting the general good in the Member State in which the risk is situated or in the Member State of the commitment.

Section 4

Conditions of insurance contracts and scales of premiums

Article 181

Non-life insurance

1 Member States shall not require the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policy holders.

Member States may require non-systematic notification of those policy conditions and other documents only for the purpose of verifying compliance with national provisions concerning insurance contracts. Those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

2 A Member State which makes insurance compulsory may require that insurance undertakings communicate to its supervisory authority the general and special conditions of such insurance before circulating them.

3 Member States shall not retain or introduce an obligation of prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Article 182

Life insurance

Member States shall not require the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions or forms and other printed documents which a life insurance undertaking intends to use in its dealings with policy holders.

However, the home Member State may, for the sole purpose of verifying compliance with national provisions concerning actuarial principles, require systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions. Those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

Section 5

Information for policy holders

Subsection 1

Non-life insurance

Article 183

General Information for policy holders

1 Before a non-life insurance contract is concluded the non-life insurance undertaking shall inform the policy holder of the following:

- a the law applicable to the contract, where the parties do not have a free choice;
- b the fact that the parties are free to choose the law applicable and the law the insurer proposes to choose.

The insurance undertaking shall also inform the policy holder of the arrangements for handling complaints of policy holders concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the right of the policy holder to take legal proceedings.

2 The obligations referred to in paragraph 1 shall apply only where the policy holder is a natural person.

3 The detailed rules for implementing paragraphs 1 and 2 shall be laid down by the Member State in which the risk is situated.

Article 184

Additional information in the case of non-life insurance offered under the right of establishment or the freedom to provide services

1 Where non-life insurance is offered under the right of establishment or the freedom to provide services, the policy holder shall, before any commitment is entered into, be informed of the Member State in which the head office or, where appropriate, the branch with which the contract is to be concluded is situated.

Any documents issued to the policy holder shall convey the information referred to in the first subparagraph.

The obligations imposed in the first and second subparagraphs shall not apply to large risks.

2 The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policy holder, shall state the address of the head office or, where appropriate, of the branch of the non-life insurance undertaking which grants the cover.

The Member States may require that the name and address of the representative of the non-life insurance undertaking referred to in Article 148(2)(a) also appear in the documents referred to in the first subparagraph of this paragraph.

Subsection 2

Life insurance

Article 185

Information for policy holders

1 Before the life insurance contract is concluded, at least the information set out in paragraphs 2 to 4 shall be communicated to the policy holder.

2 The following information about the life insurance undertaking shall be communicated:

- a the name of the undertaking and its legal form;
- b the name of the Member State in which the head office and, where appropriate, the branch concluding the contract is situated;
- c the address of the head office and, where appropriate, of the branch concluding the contract;
- d a concrete reference to the report on the solvency and financial condition as laid down in Article 51, allowing the policy holder easy access to this information.

3 The following information relating to the commitment shall be communicated:

- a the definition of each benefit and each option;
- b the term of the contract;
- c the means of terminating the contract;
- d the means of payment of premiums and duration of payments;

Status: This is the original version (as it was originally adopted).

- e the means of calculation and distribution of bonuses;
- f an indication of surrender and paid-up values and the extent to which they are guaranteed;
- g information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate;
- h for unit-linked policies, the definition of the units to which the benefits are linked;
- i an indication of the nature of the underlying assets for unit-linked policies;
- j arrangements for application of the cooling-off period;
- k general information on the tax arrangements applicable to the type of policy;
- l the arrangements for handling complaints concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings;
- m the law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the life insurance undertaking proposes to choose.

4 In addition, specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder.

5 The policy holder shall be kept informed throughout the term of the contract of any change concerning the following information:

- a the policy conditions, both general and special;
- b the name of the life insurance undertaking, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract;
- c all the information listed in points (d) to (j) of paragraph 3 in the event of a change in the policy conditions or amendment of the law applicable to the contract;
- d annually, information on the state of bonuses.

Where, in connection with an offer for or conclusion of a life insurance contract, the insurer provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurer shall provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The insurer shall inform the policy holder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policy holder shall not derive any contractual claims from the specimen calculation.

In the case of insurances with profit participation, the insurer shall inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation. Furthermore, where the insurer has provided figures about the potential future development of the profit participation, the insurer shall inform the policy holder of differences between the actual development and the initial data.

6 The information referred to in paragraphs 2 to 5 shall be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

However, such information may be in another language if the policy holder so requests and the law of the Member State so permits or the policy holder is free to choose the law applicable.

7 The Member State of the commitment may require life insurance undertakings to furnish information in addition to that listed in paragraphs 2 to 5 only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.

8 The detailed rules for implementing paragraphs 1 to 7 shall be laid down by the Member State of the commitment.

Article 186

Cancellation period

1 Member States shall provide for policy holders who conclude individual life insurance contracts to have a period of between 14 and 30 days from the time when they were informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policy holders shall have the effect of releasing them from any future obligation arising from the contract.

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract, notably as regards the arrangements for informing the policy holder that the contract has been concluded.

- 2 The Member States may opt not to apply paragraph 1 in the following cases:
- a where a contract has a duration of six months or less;
 - b where, because of the status of the policy holder or the circumstances in which the contract is concluded, the policy holder does not need special protection.

Where Member States make use of the option set out in the first subparagraph they shall specify that fact in their law.

CHAPTER II

Provisions specific to non-life insurance

Section 1

General provisions

Article 187

Policy Conditions

General and special policy conditions shall not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

Article 188

Abolition of monopolies

Member States shall ensure that monopolies in respect of the taking-up of the business of certain classes of insurance, granted to bodies established within their territories and referred to in Article 8, are abolished.

Article 189

Participation in national guarantee schemes

Host Member States may require non-life insurance undertakings to join and participate, on the same terms as non-life insurance undertakings authorised in their territories, in any scheme designed to guarantee the payment of insurance claims to insured persons and injured third parties.

Section 2

Community co-insurance

Article 190

Community co-insurance operations

1 This Section shall apply to Community co-insurance operations which shall be those co-insurance operations which relate to one or more risks classified under classes 3 to 16 of Part A of Annex I and which fulfil the following conditions:

- a the risk is a large risk;
- b the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;
- c the risk is situated within the Community;
- d for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;
- e at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance undertaking;
- f the leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

2 Articles 147 to 152 shall apply only to the leading insurance undertaking.

3 Co-insurance operations which do not satisfy the conditions set out in paragraph 1 shall remain subject to the provisions of this Directive except those of this Section.

Article 191

Participation in Community co-insurance

The right of insurance undertakings to participate in Community co-insurance shall not be made subject to any provisions other than those of this Section.

Article 192

Technical provisions

The amount of the technical provisions shall be determined by the different co-insurers according to the rules fixed by their home Member State or, in the absence of such rules, according to customary practice in that State.

However, the technical provisions shall be at least equal to those determined by the leading insurer according to the rules of its home Member State.

Article 193

Statistical data

Home Member States shall ensure that co-insurers keep statistical data showing the extent of Community co-insurance operations in which they participate and the Member States concerned.

Article 194

Treatment of co-insurance contracts in winding-up proceedings

In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under the other insurance contracts of that undertaking without distinction as to the nationality of the insured and of the beneficiaries.

Article 195

Exchange of information between supervisory authorities

For the purposes of the implementation of this Section the supervisory authorities of the Member States shall, in the framework of the cooperation referred to in Title I, Chapter IV, Section 5, provide each other with all necessary information.

Article 196

Cooperation on implementation

The Commission and the supervisory authorities of the Member States shall cooperate closely for the purposes of examining any difficulties which might arise in implementing this Section.

In the course of *that* cooperation they shall examine in particular any practices which might indicate that the leading insurance undertaking does not assume the role of the leader in co-insurance practice or that the risks clearly do not require the participation of two or more insurers for their coverage.

Section 3

Assistance

Article 197

Activities similar to tourist assistance

Member States may make provision *for* assistance to persons who get into difficulties in circumstances other than those referred to in Article 2(2) subject to this Directive.

Where a Member State makes such provision, it shall treat such activity as if it were classified under class 18 in Part A of Annex I.

The second paragraph shall in no way affect the possibilities for classification laid down in Annex I for activities which obviously come under other classes.

Section 4

Legal expenses insurance

Article 198

Scope of this Section

1 This Section shall apply to legal expenses insurance referred to in class 17 in Part A of Annex I whereby an insurance undertaking promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following:

- a securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings;
- b defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

2 This Section shall not apply to any of the following:

- a legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels;
- b the activity pursued by an insurance undertaking providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings where that activity is at the same time pursued in the own interest of that insurance undertaking under such cover;
- c where a Member State so decides, the activity of legal expenses insurance undertaken by an assistance insurer which complies with the following conditions:
 - (i) the activity is pursued in a Member State other than that in which the insured person is habitually resident;
 - (ii) the activity forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence.

For the purposes of point (c) of the first subparagraph, the contract shall clearly state that the cover concerned is limited to the circumstances referred to in that point and is ancillary to the assistance.

Article 199

Separate contracts

Legal expenses cover shall be the subject of a contract separate from that drawn up for the other classes of insurance or shall be dealt with in a separate section of a single policy in which the nature of the legal expenses cover and, should the Member State so request, the amount of the relevant premium are specified.

Article 200

Management of claims

1 The home Member State shall ensure that insurance undertakings adopt, in accordance with the option chosen by the Member State, or at their own choice, where the Member State so agrees, at least one of the methods for the management of claims set out in paragraphs 2, 3 and 4.

Whichever solution is adopted, the interest of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner under this Section.

2 Insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity in another undertaking having financial, commercial or administrative links with the first insurance undertaking and pursuing one or more of the other classes of insurance set out in Annex I.

Composite insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity for another class transacted by them.

3 The insurance undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality. That undertaking shall be mentioned in the separate contract or separate section referred to in Article 199.

Where the undertaking having separate legal personality has links to an insurance undertaking which carries on one or more of the classes of insurance referred to in Part A of Annex I, members of the staff of the undertaking having separate legal personality who are concerned with the management of claims or with legal advice connected with such management shall not pursue the same or a similar activity in the other insurance undertaking at the same time. Member States may impose the same requirements on the members of the administrative, management or supervisory body.

4 The contract shall provide that the insured persons may instruct a lawyer of their choice or, to the extent that national law so permits, any other appropriately qualified person, from the moment that those insured persons have a claim under that contract.

Article 201

Free choice of lawyer

- 1 Any contract of legal expenses insurance shall expressly provide that:
 - a where recourse is had to a lawyer or other person appropriately qualified according to national law in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings, that insured person shall be free to choose such lawyer or other person;
 - b the insured persons shall be free to choose a lawyer or, where they so prefer and to the extent that national law so permits, any other appropriately qualified person, to serve their interests whenever a conflict of interests arises.
- 2 For the purposes of this Section ‘lawyer’ means any person entitled to pursue his professional activities under one of the denominations laid down in Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services⁽¹⁾.

Article 202

Exception to the free choice of lawyer

- 1 Member States may provide for exemption from Article 201(1) for legal expenses insurance if all the following conditions are met:
 - a the insurance is limited to cases arising from the use of road vehicles in the territory of the Member State concerned;
 - b the insurance is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;
 - c neither the legal expenses insurance undertaking nor the assistance insurer carries out any class of liability insurance;
 - d measures are taken so that the legal counsel and representation of each of the parties to a dispute is effected by wholly independent lawyers where those parties are insured for legal expenses by the same insurance undertaking.
- 2 An exemption granted pursuant to paragraph 1 shall not affect the application of Article 200.

Article 203

Arbitration

Member States shall, for the settlement of any dispute between the legal expenses insurance undertaking and the insured and without prejudice to any right of appeal to a judicial body which might be provided for by national law, provide for arbitration or other procedures offering comparable guarantees of objectivity.

The insurance contract shall provide for the right of the insured person to have recourse to such procedures.

*Article 204***Conflict of interest**

Whenever a conflict of interests arises or there is disagreement over the settlement of the dispute, the legal expenses insurer or, where appropriate, the claims settlement office shall inform the person insured of the right referred to in Article 201(1) and of the possibility of having recourse to the procedure referred to in Article 203.

*Article 205***Abolition of specialisation of legal expenses insurance**

Member States shall abolish all provisions which prohibit an insurance undertaking from pursuing within their territory legal expenses insurance and other classes of insurance at the same time.

Section 5

Health insurance*Article 206***Health insurance as an alternative to social security**

1 Member States in which contracts covering the risks under class 2 in Part A of Annex I may serve as a partial or complete alternative to health cover provided by the statutory social security system may require that:

- a those contracts comply with the specific legal provisions adopted by that Member State to protect the general good in that class of insurance;
- b the general and special conditions of that insurance be communicated to the supervisory authorities of that Member State before use.

2 Member States may require that the health insurance system referred to in paragraph 1 be operated on a technical basis similar to that of life insurance where all the following conditions are fulfilled:

- a the premiums paid are calculated on the basis of sickness tables and other statistical data relevant to the Member State in which the risk is situated in accordance with the mathematical methods used in insurance;
- b a reserve is set up for increasing age;
- c the insurer may cancel the contract only within a fixed period determined by the Member State in which the risk is situated;
- d the contract provides that premiums may be increased or payments reduced, even for current contracts;
- e the contract provides that the policy holders may change their existing contract into a new contract complying with paragraph 1, offered by the same insurance undertaking or the same branch and taking account of their acquired rights.

In the case referred to in point (e) of the first subparagraph, account shall be taken of the reserve for increasing age and a new medical examination may be required only for increased cover.

The supervisory authorities of the Member State concerned shall publish the sickness tables and other relevant statistical data referred to in point (a) of the first subparagraph and transmit them to the supervisory authorities of the home Member State.

The premiums must be sufficient, on reasonable actuarial assumptions, for insurance undertakings to be able to meet all their commitments having regard to all aspects of their financial situation. The home Member State shall require the technical basis for the calculation of premiums to be communicated to its supervisory authorities before the product is circulated.

The third and fourth subparagraphs shall also apply where existing contracts are modified.

Section 6

Insurance against accidents at work

Article 207

Compulsory insurance against accidents at work

Member States may require that any insurance undertaking offering, at its own risk, compulsory insurance against accidents at work within their territories comply with the specific provisions of their national law concerning such insurance, except for the provisions concerning financial supervision, which shall be the exclusive responsibility of the home Member State.

CHAPTER III

Provisions specific to life insurance

Article 208

Prohibition on compulsory ceding of part of underwriting

Member States shall not require life insurance undertakings to cede part of their underwriting of activities listed in Article 2(3) to an organisation or organisations designated by national law.

Article 209

Premiums for new business

Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable life insurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

For that purpose, all aspects of the financial situation of a life insurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in a way that it may jeopardise the solvency of the undertaking concerned in the long term.

CHAPTER IV

Rules specific to reinsurance

Article 210

Finite reinsurance

1 Member States shall ensure that insurance and reinsurance undertakings which conclude finite reinsurance contracts or pursue finite reinsurance activities are able to properly identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.

2 In order to ensure that a harmonised approach is adopted with respect to finite reinsurance activities, the Commission may adopt implementing measures specifying the provisions of paragraph 1 with respect to the monitoring, management and control of risks arising from finite reinsurance activities.

Those measures, designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

3 For the purposes of paragraphs 1 and 2 finite reinsurance means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:

- a explicit and material consideration of the time value of money;
- b contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

Article 211

Special purpose vehicles

1 Member States shall allow the establishment within their territory of special purpose vehicles, subject to prior supervisory approval.

2 In order to ensure a harmonised approach with respect to special purpose vehicles, the Commission shall adopt implementing measures laying down the following:

- a the scope of authorisation;
- b mandatory conditions to be included in all contracts issued;
- c fit and proper requirements as referred to in Article 42 of the persons running the special purpose vehicle;
- d fit and proper requirements for shareholders or members having a qualifying holding in the special purpose vehicle;

- e sound administrative and accounting procedures, adequate internal control mechanisms and risk-management requirements;
- f accounting, prudential and statistical information requirements;
- g solvency requirements.

Those measures, designed to amend non-essential elements of this Directive, *inter alia*, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

3 Special purpose vehicles authorised prior to 31 October 2012 shall be subject to the law of the Member State having authorised the special purpose vehicle. However, any new activity commenced by such a special purpose vehicle after that date shall be subject to paragraphs 1 and 2.

(1) [OJ L 78, 26.3.1977, p. 17.](#)