

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;

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- 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.

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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.

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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;

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- 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.

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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.