

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 VI

**TRANSITIONAL AND FINAL PROVISIONS**

CHAPTER I

**Transitional provisions**

Section 1

**Insurance**

*Article 305*

**Derogations and abolition of restrictive measures**

1 Member States may exempt non-life insurance undertakings which on 31 January 1975 did not comply with the requirements of Articles 16 and 17 of Directive 73/239/EEC whose annual premium or contribution income on 31 July 1978 fell short of six times the amount of the minimum guarantee fund required under Article 17(2) of Directive 73/239/EEC from the requirement to establish such minimum guarantee fund before the end of the financial year in respect of which the premium or contribution income is as much as six times such minimum guarantee fund. After considering the results of the examination provided for under Article 298(2), the Council shall unanimously decide, on a proposal from the Commission, when that exemption is to be abolished by Member States.

2 Non-life insurance undertakings set up in the United Kingdom by Royal Charter or by private Act or by special public Act may continue to pursue their business in the legal form in which they were constituted on 31 July 1973 for an unlimited period.

Life insurance undertakings set up in the United Kingdom by Royal Charter or by private Act or by special Public Act may pursue their activity in the legal form in which they were constituted on 15 March 1979 for an unlimited period.

The United Kingdom shall draw up a list of the undertakings referred to in the first and second subparagraphs and communicate it to the other Member States and the Commission.

3 The societies registered in the United Kingdom under the Friendly Societies Acts may continue the activities of life insurance and savings operations which, in accordance with their objects, they were pursuing as of 15 March 1979.

4 At the request of non-life insurance undertakings which comply with the requirements laid down in Title I, Chapter VI, Sections 2, 4 and 5, Member States shall cease to apply restrictive measures such as those relating to mortgages, deposits and securities.

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### *Article 306*

#### **Rights acquired by existing branches and insurance undertakings**

1 Branches which started business, in accordance with the provisions in force in the Member State where that branch is situated, before 1 July 1994 shall be presumed to have been subject to the procedure laid down in Articles 145 and 146.

2 Articles 147 and 148 shall not affect rights acquired by insurance undertakings carrying on business under the freedom to provide services before 1 July 1994.

### Section 2

#### **Reinsurance**

### *Article 307*

#### **Transitional period for Articles 57(3) and 60(6) of Directive 2005/68/EC**

A Member State may postpone the application of the provisions of Article 57(3) of Directive 2005/68/EC amending Article 15(3) of Directive 73/239/EEC and of the provision of Article 60(6) of Directive 2005/68/EC until 10 December 2008.

### *Article 308*

#### **Right acquired by existing reinsurance undertakings**

1 Reinsurance undertakings subject to this Directive which were authorised or entitled to conduct reinsurance business in accordance with the provisions of the Member States in which they have their head offices before 10 December 2005 shall be deemed to be authorised in accordance with Article 14.

However, they shall be obliged to comply with the provisions of this Directive concerning the pursuit of the business of reinsurance and with the requirements set out in points (b), and (d) to (g) of Article 18(1), Articles 19, 20 and 24 and Title I Chapter VI, Sections 2, 3 and 4.

2 Member States may allow reinsurance undertakings referred to in paragraph 1 which on 10 December 2005 did not comply with Article 18(1)(b), Articles 19 and 20 and Title I Chapter VI, Sections 2, 3 and 4 until 10 December 2008 in order to comply with such requirements.

## CHAPTER II

### Final provisions

#### Article 309

#### Transposition

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 4, 10, 13, 14, 18, 23, 26-32, 34-49, 51-55, 67, 68, 71, 72, 74-85, 87-91, 93-96, 98, 100-110, 112, 113, 115-126, 128, 129, 131-134, 136-142, 144, 146, 148, 162-167, 172, 173, 178, 185, 190, 192, 210-233, 235-240, 243-258, 260-263, 265, 266, 303 and 304 and Annexes III and IV by [<sup>F1</sup>30 June 2013].

[<sup>F2</sup>The laws, regulations and administrative provisions referred to in the first subparagraph shall apply from 1 January 2014.]

When they are adopted by Member States, those measures shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2 Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Textual Amendments

- F1** Substituted by [Directive 2012/23/EU of the European Parliament and of the Council of 12 September 2012 amending Directive 2009/138/EC \(Solvency II\) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives \(Text with EEA relevance\)](#).
- F2** Inserted by [Directive 2012/23/EU of the European Parliament and of the Council of 12 September 2012 amending Directive 2009/138/EC \(Solvency II\) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives \(Text with EEA relevance\)](#).

#### Article 310

#### Repeal

Directives 64/225/EEC, 73/239/EEC, 73/240/EEC, 76/580/EEC, 78/473/EEC, 84/641/EEC, 87/344/EEC, 88/357/EEC, 92/49/EEC, 98/78/EC, 2001/17/EC, 2002/83/EC and 2005/68/EC, as amended by the acts listed in Part A of Annex VI, are repealed with effect from [<sup>F1</sup>1 January 2014], without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Part B of Annex VI.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VII.

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*Article 311***Entry into force**

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Articles 1-3, 5-9, 11, 12, 15-17, 19-22, 24, 25, 33, 56-66, 69, 70, 73, 143, 145, 147, 149-161, 168-171, 174-177, 179-184, 186-189, 191, 193-209, 267-300, 302, 305-308 and Annexes I and II, V, VI and VII shall apply from [<sup>F1</sup>1 January 2014].

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*Article 312***Addressees**

This Directive is addressed to the Member States.