

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.

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[^{F1}Section 3

Insurance and reinsurance

Article 308a

Phasing-in

1 From 1 April 2015, Member States shall ensure that the supervisory authorities have the power to decide on the approval of:

- a ancillary own funds in accordance with Article 90;
- b the classification of own funds items referred to in the third paragraph of Article 95;
- c undertaking specific parameters in accordance with Article 104(7);
- d a full or partial internal model in accordance with Articles 112 and 113;
- e special purpose vehicles to be established in their territory in accordance with Articles 211;
- f ancillary own funds of an intermediate insurance holding company in accordance with Article 226(2);
- g a group internal model in accordance with Article 230, Article 231 and Article 233(5);
- h the use of the duration based equity risk sub-module in accordance with Article 304;
- i the use of the matching adjustment to the relevant risk-free interest rate term structure in accordance with Articles 77b and 77c;
- j where Member States so require, the use of the volatility adjustment to the relevant risk-free interest rate term structure in accordance with Article 77d;
- k the use of the transitional measure on the risk-free interest rates in accordance with Article 308c;
- l the use of the transitional measure on technical provisions in accordance with Article 308d.

2 From 1 April 2015, Member States shall ensure that the supervisory authorities have the power to:

- a determine the level and scope of group supervision in accordance with Title III, Chapter I, Sections 2 and 3;
- b identify the group supervisor in accordance with Article 247;
- c establish a college of supervisors in accordance with Article 248.

3 From 1 July 2015, Member States shall ensure that the supervisory authorities have the power to:

- a decide to deduct any participation in accordance with the second subparagraph of Article 228;
- b determine the choice of method to calculate group solvency in accordance with Article 220;
- c make the determination on equivalence, where appropriate, in accordance with Articles 227 and 260;
- d permit insurance and reinsurance undertakings to be subject to Articles 238 and 239, in accordance with Article 236;
- e make the determinations referred to in Articles 262 and 263;
- f determine, where appropriate, the application of transitional measures in accordance with Article 308b.

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4 Member States shall oblige the supervisory authorities concerned to consider applications submitted by insurance and reinsurance undertakings for approval or permission in accordance with paragraphs 2 and 3. The decisions taken by the supervisory authorities on applications for approval or permission shall not become applicable before 1 January 2016.

Article 308b

Transitional measures

1 Without prejudice to Article 12, insurance or reinsurance undertakings which, by 1 January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to Titles I, II and III of this Directive until the dates set out in paragraph 2 where either:

- a the undertaking has satisfied the supervisory authority that it will terminate its activity before 1 January 2019; or
- b the undertaking is subject to reorganisation measures set out in Title IV, Chapter II and an administrator has been appointed.

2 Insurance or reinsurance undertakings falling under:

- a paragraph 1(a) shall be subject to Titles I, II and III of this Directive from 1 January 2019 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity;
- b paragraph 1(b) shall be subject to Titles I, II and III of this Directive from 1 January 2021 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity.

3 Insurance and reinsurance undertakings shall be subject to the transitional measures in paragraphs 1 and 2 only if the following conditions are met:

- a the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conduct new insurance or reinsurance contracts;
- b the undertaking shall provide its supervisory authority with an annual report setting out what progress has been made in terminating its activity;
- c the undertaking has notified its supervisory authority that it applies the transitional measures.

Paragraphs 1 and 2 shall not prevent any undertaking from operating in accordance with Titles I, II and III of this Directive.

4 Member States shall draw up a list of the insurance and reinsurance undertakings concerned and communicate that list to all the other Member States.

5 Member States shall ensure that, for a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on an annual or less frequent basis shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

6 For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to disclose the information referred to in Article 51 shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1

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January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

7 For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on a quarterly basis shall decrease by one week each financial year, starting from no later than eight weeks related to any quarter ending on or after 1 January 2016 but before 1 January 2017, to five weeks related to any quarter ending on or after 1 January 2019 but before 1 January 2020.

8 Member States shall ensure that paragraphs 5, 6 and 7 of this Article shall apply *mutatis mutandis* to participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies at the level of the group pursuant to Articles 254 and 256, whereby the deadlines referred to in paragraphs 5, 6 and 7 shall be extended by six weeks respectively.

9 Notwithstanding Article 94, basic own-fund items shall be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items:

- a were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;
- b on 31 December 2015 could be used to meet the available solvency margin up to 50 % of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC;
- c would not otherwise be classified in Tier 1 or Tier 2 in accordance with Article 94.

10 Notwithstanding Article 94, basic own-fund items shall be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items:

- a were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;
- b on 31 December 2015 could be used to meet the available solvency margin up to 25 % of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC.

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12 Notwithstanding Article 100, Article 101(3) and Article 104, the following shall apply:

- a until 31 December 2017 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be the same in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their domestic currency;
- b in 2018 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 80 % in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;
- c in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 50 % in relation to exposures to Member States' central governments or

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central banks denominated and funded in the domestic currency of any other Member State;

- d from 1 January 2020 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall not be reduced in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State.

13 Notwithstanding Article 100, Article 101(3) and Article 104, the standard parameters to be used for equities that the undertaking purchased on or before 1 January 2016, when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 304 shall be calculated as the weighted averages of:

- a the standard parameter to be used when calculating the equity risk sub-module in accordance with Article 304; and
- b the standard parameter to be used when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 304.

The weight for the parameter expressed in point (b) of the first subparagraph shall increase at least linearly at the end of each year from 0 % during the year starting on 1 January 2016 to 100 % on 1 January 2023.

The Commission shall adopt delegated acts in accordance with Article 301a further specifying the criteria to be met, including the equities that may be subject to the transitional period.

In order to ensure uniform conditions of application of that transitional period, EIOPA shall develop draft implementing technical standards on the procedures for the application of this paragraph.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

14 Notwithstanding Article 138(3) and without prejudice to paragraph 4 of that Article, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 16a of Directive 73/239/EEC, Article 28 of Directive 2002/83/EC or Article 37, 38 or 39 of Directive 2005/68/EC respectively as applicable in the law of the Member State on the day before those Directives are repealed pursuant to Article 310 of this Directive but do not comply with the Solvency Capital Requirement in the first year of application of this Directive, the supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017.

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 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.

[^{F3}15 Where, on the entry into force of this Directive, home Member States applied provisions referred to in Article 4 of Directive (EU) 2016/2341, those home Member States may continue to apply the laws, regulations and administrative provisions that had been adopted by them with a view to complying with Articles 1 to 19, Articles 27 to 30, Articles 32 to 35 and Articles 37 to 67 of Directive 2002/83/EC as in force on 31 December 2015 for a transitional period expiring on 31 December 2022.

Where a home Member State continues to apply those laws, regulations and administrative provisions, insurance undertakings in that home Member State shall calculate their solvency capital requirement as the sum of the following:

- a a notional solvency capital requirement with respect to their insurance activity, calculated without the occupational retirement provision business under Article 4 of Directive (EU) 2016/2341;
- b the solvency margin with respect to the occupational retirement provision business, calculated in accordance with the laws, regulations and administrative provisions that have been adopted to comply with Article 28 of Directive 2002/83/EC.

By 31 December 2017, the Commission shall submit a report to the European Parliament and to the Council, on whether the period referred to in the first subparagraph should be extended, taking account of changes to Union or national law resulting from this Directive.]

16 Member States may allow the ultimate parent insurance or reinsurance undertaking, during a period until 31 March 2022, to apply for the approval of an internal group model applicable to a part of a group where both the undertaking and the ultimate parent undertaking are located in the same Member State and if this part forms a distinct part having a significantly different risk profile from the rest of the group.

17 Notwithstanding Articles 218(2) and (3), the transitional provisions as referred to in paragraph 8 to 12 and 15 of this Article and Articles 308c, 308d and 308e shall apply *mutatis mutandis* at the level of the group.

Notwithstanding Article 218(2), (3) and (4), the transitional provisions as referred to in paragraph 14 of this Article shall apply *mutatis mutandis* at the level of the group and where the participating insurance or reinsurance undertakings or the insurance and reinsurance undertakings in a group comply with the Adjusted Solvency referred to in Article 9 of Directive 98/78/EC but do not comply with the group Solvency Capital Requirement.

The Commission shall adopt delegated acts in accordance with Article 301a setting out the changes in the group solvency where the transitional provisions referred to in paragraph 13 of this Article are applicable and which relate to:

- a the elimination of double use of eligible own funds and of the intra-group creation of capital set out in Articles 222 and 223;
- b the valuation of assets and liabilities set out in Article 224;
- c the application of the calculation methods to related insurance and reinsurance undertakings set out in Article 225;
- d the application of the calculation methods to intermediate insurance holding companies set out in Article 226;

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- e the methods for calculating group solvency set out in Articles 230 and 233;
- f the calculation of the group Solvency Capital Requirement set out in Articles 231;
- g the setting of a capital add-on set out in Article 232;
- h the principles in calculating group solvency of an insurance holding company set out in Article 235.

Textual Amendments

- F2** Deleted by [Regulation \(EU\) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations \(EC\) No 1060/2009 and \(EU\) No 648/2012.](#)
- F3** Substituted by [Directive \(EU\) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision \(IORPs\) \(recast\) \(Text with EEA relevance\).](#)

Article 308c

Transitional measure on the risk-free interest rates

1 Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations.

2 For each currency the adjustment shall be calculated as a portion of the difference between:

- a the interest rate as determined by the insurance or reinsurance undertaking in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of Directive 2002/83/EC at the last date of the application of that Directive;
- b the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of admissible insurance and reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of admissible insurance and reinsurance obligations where the time value of money is taken into account using the relevant risk-free interest rate term structure referred to in Article 77(2).

Where Member States have adopted laws, regulations and administrative provisions pursuant to Article 20(1)B(a)(ii) of Directive 2002/83/EC, the interest rate referred to in point (a) of the first subparagraph of this paragraph shall be determined using the methods used by the insurance or reinsurance undertaking at the last date of the application of Directive 2002/83/EC.

The portion referred to in the first subparagraph shall decrease linearly at the end of each year from 100 % during the year starting from 1 January 2016 to 0 % on 1 January 2032.

Where insurance and reinsurance undertakings apply the volatility adjustment referred to in Article 77d, the relevant risk-free interest rate term structure referred to in point (b) shall be the adjusted relevant risk-free interest rate term structure set out in Article 77d.

3 The admissible insurance and reinsurance obligations shall comprise only insurance or reinsurance obligations that meet the following requirements:

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- a the contracts that give rise to the insurance and reinsurance obligations were concluded before the first date of the application of this Directive, excluding contract renewals on or after that date;
 - b until the last date of the application of Directive 2002/83/EC, technical provisions for the insurance and reinsurance obligations were determined in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of that Directive at the last date of the application thereof;
 - c Article 77b is not applied to the insurance and reinsurance obligations.
- 4 Insurance and reinsurance undertakings applying paragraph 1 shall:
- a not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in Article 77d;
 - b not apply Article 308d;
 - c as part of their report on their solvency and financial condition referred to in Article 51, publicly disclose that they apply the transitional risk-free interest rate term structure, and the quantification of the impact of not applying this transitional measure on their financial position.

Article 308d

Transitional measure on technical provisions

- 1 Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional deduction to technical provisions. That deduction may be applied at the level of homogeneous risk groups referred to in Article 80.
- 2 The transitional deduction shall correspond to a portion of the difference between the following two amounts:
- a the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with Article 76 at the first date of the application of this Directive;
 - b the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 15 of Directive 73/239/EEC, Article 20 of Directive 2002/83/EC and Article 32 of Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of this Directive.

The maximum portion deductible shall decrease linearly at the end of each year from 100 % during the year starting from 1 January 2016 to 0 % on 1 January 2032.

Where insurance and reinsurance undertakings apply at the first date of the application of this Directive the volatility adjustment referred to in the Article 77d, the amount referred to in point (a) shall be calculated with the volatility adjustment at that date.

3 Subject to prior approval by or on the initiative of the supervisory authority, the amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in paragraph 2(a) and (b) may be recalculated every 24 months, or more frequently where the risk profile of the undertaking has materially changed.

4 The deduction referred to in paragraph 2 may be limited by the supervisory authority if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the laws, regulations

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and administrative provisions which are adopted pursuant to Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of this Directive.

- 5 Insurance and reinsurance undertakings applying paragraph 1 shall:
- a not apply Article 308c;
 - b when they would not comply with the Solvency Capital Requirement without application of the transitional deduction, submit annually a report to their supervisory authority setting out measures taken and the progress made to re-establish at the end of the transitional period set out in paragraph 2 a level of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement;
 - c as part of their report on their solvency and financial condition referred to in Article 51, publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.

Article 308e

Phasing-in plan on the transitional measures on risk-free interest rates and on technical provisions

Insurance and reinsurance undertakings that apply the transitional measures set out in Articles 308c or 308d shall inform the supervisory authority as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

Within two months from observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the insurance or reinsurance undertaking concerned shall submit to the supervisory authority a phasing-in plan setting out the planned measures to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement at the end of the transitional period. The insurance or reinsurance undertaking concerned may update the phasing-in plan during the transitional period.

The insurance and reinsurance undertakings concerned shall submit annually a report to their supervisory authority setting out the measures taken and the progress made to ensure compliance with the Solvency Capital Requirement at the end of the transitional period. Supervisory authorities shall revoke the approval for the application of the transitional measure where that progress report shows that compliance with the Solvency Capital Requirement at the end of the transitional period is unrealistic.]

Textual Amendments

- F1** Inserted 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 \(European Securities and Markets Authority\).](#)