Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) 2015/35

of 10 October 2014

supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

(Text with EEA relevance)

THE EUROPEAN COMMISSION

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/138/EC and in particular Article 31(4), Article 35(9), Article 37(6), Article 37(7), Article 50(1)(a), Article 50(1)(b), Article 50(2)(a), Article 50(2)(b), Article 50(3), Article 56, Article 75(2), Article 75(3), Article 86(1)(a) to (i), Article 86(2)(a), Article 86(2)(b), Article 92(1), Article 92(1a), Article 97(1), Article 97(2), Article 99(a), Article 99(b), Article 109a(5), Article 111(1)(a) to (f), Article 111(1)(g) to (q), Article 114(1)(a), Article 114(1)(b), Article 126, Article 127, Article 130, Article 135(2)(a), Article 135(2)(b), Article 135(2)(c), Article 135(3), Article 143(1), Article 172(1), Article 211(2), Article 216(7), Article 217(3), Article 227(3), Article 234, Article 241(a), Article 241(b), Article 241(c), Article 244(4), Article 244(5), Article 245(4), Article 245(5), Article 248(7), Article 248(8), Article 249(3), Article 256(4), Article 260(2) and Article 308b(13) thereof,

Whereas:

(1) In applying the requirements set out in this Regulation, account should be taken to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking. The burden and the complexity imposed on insurance undertakings should be proportionate to their risk profile. In applying the requirements set out in this Regulation, information should be considered as material if that information could influence the decision-making or judgement of the intended users of that information.

(2) In order to reduce overreliance on external ratings, insurance and reinsurance undertakings should aim at having their own credit assessment on all their exposures. However, in view of the proportionality principle, insurance and reinsurance undertakings should only be required to have own credit assessments on their larger or more complex exposures.

(3) Supervisory authorities should ensure that insurance and reinsurance undertakings take appropriate steps to develop internal models that cover credit risk where their exposures are material in absolute terms and where they have at the same time a large number

of material counterparties. For this purpose, supervisory authorities should have a harmonised approach to the definitions of exposures that are material in absolute terms and large number of material counterparties.

(4) In order to avoid the risk of biased estimations of the credit risk by insurance and reinsurance undertakings that do not use an approved internal model to calculate the credit risk in their Solvency Capital Requirement, their own credit assessments should not result in lower capital requirements than the ones derived from external ratings.

(5) In order to avoid overreliance on ratings when the exposures are to another insurance or reinsurance undertaking, the use of ratings for the purposes of calculating the capital requirement in accordance with the standard formula could be replaced by a reference to the solvency position of the counterparty (solvency ratio approach). Such an approach would necessitate a calibration based on Solvency Capital Requirements and eligible amounts of own funds to cover these Solvency Capital Requirements as determined when Solvency II is in place. The solvency ratio approach should be limited to insurance and reinsurance undertakings that are not rated.

(6) In order to ensure that valuation standards for supervisory purposes are compatible with international accounting developments, insurance and reinsurance undertakings should use market consistent valuation methods prescribed in international accounting standards adopted by the Commission in accordance with Regulation (EC) No 1606/2002, unless the undertaking is required to use a specific valuation method in relation to an asset or liability or is permitted to use methods based on the valuation method it uses for preparing its financial statements.

(7) Insurance and reinsurance undertakings' valuation of the assets and liabilities using the market consistent valuation methods prescribed in international accounting standards adopted by the Commission in accordance with Regulation (EC) No 1606/2002, should follow a valuation hierarchy with quoted market prices in active markets for the same assets or liabilities being the default valuation method in order to ensure that assets and liabilities are valued at the amount for which they could be exchanged in the case of assets or transferred or settled in the case of liabilities between knowledgeable and willing parties in an arm's length transaction. This approach should be applied by undertakings regardless of whether international or other valuation methods follow a different valuation hierarchy.

(8) Insurance and reinsurance undertakings should recognise and value deferred tax assets and liabilities in relation to all items that are recognised for solvency purposes or in the tax balance sheet in order to ensure that all amounts which could give rise to future tax cash flows are captured.

(9) The valuation of insurance and reinsurance obligations should include obligations relating to existing insurance and reinsurance business. Obligations relating to future business should not be included in the valuation. Where insurance and reinsurance contracts include policyholder options to establish, renew, extend, increase or resume the insurance or reinsurance cover or undertaking options to terminate the contract or amend premiums or benefits, a contract boundary should be defined to specify whether the additional cover arising from those options is regarded as existing or future business.

(10) In order to determine the transfer value of insurance and reinsurance obligations, the valuation of the obligations should take into account future cash flows relating to contract renewal options, regardless of their profitability, unless the renewal option means that the insurance or reinsurance undertaking would from an economic perspective have the same rights over the setting of the premiums or benefits of the renewed contract as those which exist for a new contract.

(11) In order to ensure that the analysis of the financial position of the insurance or reinsurance undertaking is not distorted, the technical provisions of a portfolio of insurance and reinsurance obligations may be negative. The calculation of technical provisions should not be subject to a floor of zero.

(12) The transfer value of an insurance or reinsurance obligation may be lower than the surrender values of the underlying contracts. The calculation of technical provisions should not be subject to surrender value floors.

(13) In order to arrive at technical provisions that correspond to the transfer value of insurance and reinsurance obligations the calculation of the best estimate should take account of future developments, such as demographic, legal, medical, technological, social, environmental and economic developments, that will impact the cash in- and out-flows required to settle the obligations.

(14) In order to arrive at a best estimate that corresponds to the probability-weighted average of future cash flows as referred to in Article 77(2) of Directive 2009/138/EC, the cash flows projection used in the calculation of the best estimate should take account of all uncertainties in the cash flows.

(15) The choice of the method to calculate the best estimate should be proportionate to the nature, scale and complexity of the risks supported by the insurance or reinsurance undertaking. The range of methods to calculate the best estimate includes simulation, deterministic and analytical techniques. For certain life insurance contracts, in particular where they give rise to discretionary benefits depending on investment returns or where they include financial guarantees and contractual options, simulation methods may lead to a more appropriate calculation of the best estimate.

(16) Where insurance and reinsurance contracts include financial guarantees and options, the present value of cash flows arising from those contracts may depend both on the expected outcome of future events and developments and on how the actual outcome in certain scenarios could deviate from the expected outcome. The methods used to calculate the best estimate should take such dependencies into account.

(17) The definition of future discretionary benefits should capture the benefits of insurance and reinsurance contracts that are paid in addition to guaranteed benefits and that result from profit participation by the policy holder. It should not capture index-linked or unit-linked benefits.

(18) The calculation of the risk margin should be based on the assumption that the whole portfolio of insurance and reinsurance obligations is transferred to another insurance or

reinsurance undertaking. In particular, the calculation should take the diversification of the whole portfolio into account.

(19) The calculation of the risk margin should be based on a projection of the Solvency Capital Requirement that takes the risk mitigation of reinsurance contracts and special purpose vehicles into account. Separate calculations of the risk margin gross and net of reinsurance contracts and special purpose vehicles should not be stipulated.

(20) The adjustment for credit risk to the basic risk-free interest rates should be derived from market rates that capture the credit risk reflected in the floating rate of interest rate swaps. For this purpose, in order to align the determination of the adjustment with standard market practice and under market conditions similar to those at the date of adoption of Directive 2014/51/EU, in particular for the euro, the market rates should correspond to interbank offered rates for a 3 month maturity.

(21) Under market conditions similar to those at the date of adoption of Directive 2014/51/EU, when determining the last maturity for which markets for bonds are not deep, liquid and transparent anymore in accordance with Article 77a of Directive 2009/138/EC, the market for bonds denominated in euro should not be regarded as deep and liquid where the cumulative volume of bonds with maturities larger than or equal to the last maturity is less than 6 percent of the volume of all bonds in that market.

(22) Where no reliable credit spread can be derived from the default statistics, as in the case of exposures to sovereign debt, the fundamental spread for the calculation of the matching adjustment and the volatility adjustment should be equal to the portion of the long term average of the spread over the risk free interest rate set out in Article 77c(2)(b) and (c) of Directive 2009/138/EC. As regards exposures to Member States' central government and central banks, the asset class should capture the difference between individual Member States.

(23) In order to ensure transparency in the determination of the relevant risk free interest rate, in accordance with recital 29 of Directive 2014/51/EU, the methodology, assumptions and identification of the data used by the European Insurance and Occupational Pensions Authority (EIOPA) to calculate the adjustment to swap rates for credit risk, the volatility adjustment and the fundamental spread for the matching adjustment, should be published by EIOPA as part of the technical information to be published by virtue of Article 77e(1) of Directive 2009/138/EC.

(24) The segmentation of insurance and reinsurance obligations into lines of business and homogeneous risk groups should reflect the nature of the risks underlying the obligation. The nature of the underlying risks may justify segmentation which differs from the allocation of insurance activities to life insurance activities and non-life insurance activities, from the classes of non-life insurance set out in Annex I of Directive 2009/138/EC and from the classes of life insurance set out in Annex II of Directive 2009/138/EC.

(25) The determination whether a method of calculating technical provisions is proportionate to the nature, scale and complexity of the risks should include an assessment of the

model error of the method. But this assessment should not require insurance and reinsurance undertakings to specify the precise amount of the model error.

(26) For the purposes of the application for supervisory approval to use the matching adjustment referred to in paragraph 1 of Article 77b of Directive 2009/138/EC, undertakings should be permitted to consider different eligible insurance products as one portfolio, provided that the conditions for approval are met on a continuous basis and there are no legal impediments to the business being organised and managed separately from the rest of the business of the undertaking in one portfolio.

(27) The approval of ancillary own funds to be included to meet an insurance or reinsurance undertaking's Solvency Capital Requirement should be based on an assessment of the relevant criteria by the supervisory authorities. However, the insurance or reinsurance undertaking seeking approval for an ancillary own fund item should demonstrate to the supervisory authorities that the criteria have been met and provide to the supervisory authorities all the information that the supervisory authorities may require in order to make such an assessment. The assessment of the application for approval of ancillary own funds by the supervisory authorities should be undertaken on a case-by-case basis.

(28) When considering an application for approval of ancillary own funds in accordance with Article 90 of Directive 2009/138/EC the supervisory authorities should consider the economic substance and the legal enforceability of the ancillary own funds item for which approval is being sought.

(29) Tier 1 own funds should be made up of own-fund items which are of a high quality and which fully absorb losses to enable an insurance or reinsurance undertaking to continue as a going concern.

(30) Where the economic effect of a transaction, or a group of connected transactions, is equivalent to the holding by an insurance or reinsurance undertaking of its own shares, the excess of assets over liabilities should be reduced to reflect the existence of an encumbrance on that part of own-funds.

(31) The assessment of whether an individual own-fund item is of sufficient duration should be based on the original maturity of that item. The average duration of an insurance or reinsurance undertaking's total own funds, taking into account the remaining maturity of all own-fund items, should not be significantly lower than the average duration of insurance or reinsurance undertaking's liabilities. Insurance and reinsurance undertakings should also assess whether the total amount of own funds is of a sufficient duration as part of their own risk and solvency assessment, taking into account both the original and remaining maturity of all own-fund items and of all insurance and reinsurance liabilities.

(32) The assessment of loss-absorbency in a winding-up in accordance with Article 93 of Directive 2009/138/EC should not be based on a comparison of the excess of assets over liabilities valued on a going-concern basis against the excess of assets over liabilities valued under the assumption that winding-up proceedings have been opened in relation to the insurance or reinsurance undertaking.

(33) Since the future premiums receivable on existing insurance and reinsurance contracts are included in the calculation of the technical provisions, the amount of the excess of assets over liabilities that is included in Tier 1 should not be adjusted to exclude the expected profits on those future premiums.

(34) Own-fund items with features that incentivise redemption, such as contractual increases in the dividend payable or increases in the coupon rate combined with a call option, should be limited to allow for restrictions on repayment or redemption in the event of a breach of the Solvency Capital Requirement and should only be classified as Tier 2 or Tier 3.

(35) Insurance and reinsurance undertakings should divide the excess of assets over liabilities into amounts that correspond to capital items in their financial statements and a reconciliation reserve. The reconciliation reserve may be positive or negative.

(36) The complete list of own-fund items should be set out for each tier, including Tier 3, so that it is clear for which items insurance and reinsurance undertakings should seek supervisory approval for classification.

(37) Ring-fenced funds are arrangements where an identified set of assets and liabilities are managed as though they were a separate undertaking, and should not include conventional index-linked, unit-linked or reinsurance business. The reduced transferability of the assets of a ring-fenced fund should be reflected in the calculation of the excess of assets over the liabilities of the insurance or reinsurance undertaking.

(38) Both life and non-life insurance and reinsurance activities can give rise to ring-fenced funds. Profit participation does not necessarily imply ring-fencing, and should not be taken as the defining characteristic of a ring-fenced fund.

(39) Ring-fenced funds should be limited to those arrangements that reduce the capacity of certain own fund items to absorb losses on a going concern basis. Arrangements that only affect loss absorbency in the case of winding-up should not be considered as ring-fenced funds.

(40) In order to avoid double counting of own-funds between the insurance and banking sectors at individual level, insurance and reinsurance undertakings should deduct from the amount of basic own funds any participations in financial and credit institutions in excess of 10 % of the Tier 1 own-fund items which are not subject to any limit. Participations in financial and credit institutions that in aggregate exceed the same threshold should be partially deducted on a proportional basis. The deduction is not necessary where the participations are strategic and method 1 set out in Annex I to Directive 2002/87/EC is applied to these undertakings for the group solvency calculation.

(41) The majority of the eligible amount of own funds to cover the Minimum Capital Requirement and Solvency Capital Requirement should be composed of Tier 1 own funds. In order to ensure that the application of the limits does not create potential pro-cyclical effects, the limits on the eligible amounts of Tier 2 and Tier 3 items should apply in such a way that a loss in Tier 1 own funds does not result in a loss of total

eligible own funds that is higher than that loss. Therefore, the limits should apply to the extent that the Solvency Capital Requirement and Minimum Capital Requirement are covered with own funds. Own-fund items in excess of the limits should not be counted as eligible own funds.

(42) When setting up lists of regional governments and local authorities, EIOPA should respect the requirement that there is no difference in risk between exposures to these and exposures to the central government in whose jurisdiction they are established because of the specific revenue raising powers of the former and that specific institutional arrangements exist, the effect of which is to reduce the risk of default. The effect of the implementing act adopted pursuant to Article 109a(2)(a) of Directive 2009/138/EC relating to these lists is that direct exposures to the regional governments and local authorities listed are treated as exposures to the central government of the jurisdiction in which they are established for the purposes of the calculation of the market risk module and the counterparty default risk module of the standard formula.

(43) In order to avoid giving the wrong incentives to restructure long-term contracts as short-term renewable contracts, the volume measure for non-life and SLT health premium risk used in the standard formula should be based on the economic substance of insurance and reinsurance contracts rather than on their legal form. The volume measure should, therefore, capture earned premiums that are within the contract boundary of existing contracts and on contracts that will be written in the next 12 months.

(44) As the expected profits included in future premiums of existing non-life insurance and reinsurance contracts are recognised in the eligible own funds of insurance and reinsurance undertakings, the non-life underwriting risk module should capture the lapse risk relating to non-life insurance and reinsurance contracts.

(45) In relation to premium risk, the calculation of the capital requirement for non-life and health premium and reserve risk should be based on the larger of the past and the expected future earned premiums to take account of the uncertainty around the future earned premiums. However, where an insurance or reinsurance undertaking can reliably ensure that the future earned premiums will not exceed the expected premiums, the calculation should be based on the expected earned premiums only.

(46) In order to reflect the average characteristics of life insurance obligations, the modelling of mass lapse risk in the Solvency Capital Requirement standard formula should be based on the assumption that the risk relating to the options that a ceding insurance or reinsurance undertaking of a reinsurance contract may exercise is not material for the accepting insurance or reinsurance undertaking.

(47) In order to reflect the different risk profile of health insurance that is pursued on a similar technical basis to that of life insurance (SLT health) and other health insurance business (NSLT health), the health underwriting risk module should include different sub-modules for these two types of insurance.

(48) In order to reflect the average characteristics of life insurance obligations, the modelling of the life and SLT health underwriting risk modules should be based on the assumption

that the risk relating to the dependence of insurance and reinsurance benefits on inflation is not material

(49) The scenario-based calculations of the non-life and health catastrophe risk sub-modules of the standard formula should be based on the specification of catastrophe losses that are gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles. Insurance and reinsurance undertakings should allow for the risk-mitigating effect of their specific reinsurance contracts and special purpose vehicles when they determine the change in basic own funds resulting from the scenario.

(50) In order to reflect the average characteristics of non-life insurance obligations, the modelling of the liability risk in the non-life catastrophe risk sub-module of the standard formula should be based on the assumption that the risk of an accumulation of a large number of similar claims which are covered by third party liability insurance obligations is not material.

(51) In order to reflect the average characteristics of non-life insurance obligations, the modelling of mass accident risk in the standard formula should be based on the assumption that the exposure of insurance and reinsurance undertakings to mass accident risk situated in third countries, other than specific European countries, is not material for the insurance and reinsurance undertakings and insurance groups subject to Directive 2009/138/EC. It should also be based on the assumption that the mass accident risk in relation to workers' compensation insurance is not material

(52) In order to reflect the average characteristics of non-life insurance obligations, the modelling of accident concentration risk in the standard formula should be based on the assumption that the accident concentration risk in relation to medical expense insurance and income protection insurance other than group contracts is not material.

(53) In order to reflect empirical evidence on natural catastrophes in the calibration of the standard formula, the modelling of natural catastrophe risk should be based on geographical divisions that are sufficiently homogeneous in relation to the risk that insurance and reinsurance undertakings are exposed to. The risk weights for those divisions should be specified in such a way that they capture the ratio of annual loss and sum insured for the relevant lines of business using a Value-at-Risk measure with a 99,5 % confidence level. The correlation coefficients between those geographical divisions should be selected in such a way that they reflect the dependency between the relevant risks in the geographical divisions, taking into account any non-linearity of the dependence.

(54) In order to capture the actual risk exposure of the undertaking in the calculation of the capital requirement for natural catastrophe risk in the standard formula, the sum insured should be determined in a manner that takes account of contractual limits for the compensation for catastrophe events.

(55) The market risk module of the standard formula should be based on the assumption that the sensitivity of assets and liabilities to changes in the volatility of market parameters is not material.

(56) The calibration of the interest rate risk at longer maturities should reflect that the ultimate forward rate towards which the risk-free interest rate term structure converges to is stable over time and only changes because of changes in long-term expectations.

(57) For the purposes of the calculation of the standard formula, insurance and reinsurance undertakings should identify which of their related undertakings are of a strategic nature. The calibration of the equity risk sub-module on the investments in related undertakings which are of strategic nature should reflect the likely reduction in the volatility of their value arising from their strategic nature and the influence exercised by the participating undertaking on those related undertakings.

(58) The duration-based equity risk sub-module should be based on the assumption that the typical holding period of equity investments referred to in Article 304 of Directive 2009/138/EC is consistent with the average duration of liabilities pursuant to Article 304 of Directive 2009/138/EC.

(59) In order to avoid the effects of pro-cyclicality, the time period for the symmetric adjustment mechanism to the equity risk sub-module should strike a balance between maintaining risk-sensitivity of the sub-module and reflecting the objective of the symmetric adjustment.

(60) When a matching adjustment is applied in the calculation of the best estimate of insurance or reinsurance obligations, the calculation of the Solvency Capital Requirement in the spread risk sub-module should capture the impact of changes in asset spreads on the matching adjustment and thus on the value of technical provisions.

(61) Considering that the risk-profile of property located in third countries is not materially different from that of property located in the Union, the property risk sub-module of the standard formula should treat these two types of exposures in the same way.

(62) Given that concentration risk is mostly driven by the lack of diversification in issuers to which insurance or reinsurance undertakings are exposed, the market risk concentrations sub-module of the standard formula should be based on the assumption that the geographical or sector concentration of the assets held by the insurance or reinsurance undertaking is not material.

(63) The counterparty default risk module of the standard formula should be based on the assumption that, for exposures that may be diversified and where the counterparty is likely to be rated (type 1 exposures), losses-given-default on counterparties which do not belong to the same group are independent and losses-given-default on counterparties which do belong to the same group are not independent.

(64) In order to ensure that the credit risk on all counterparties to which insurance or reinsurance undertakings are exposed is captured in the Solvency Capital Requirement calculated with the standard formula, all exposures which are neither captured in the spread risk sub-module nor in the counterparty default risk module as type 1 exposures should be captured in the counterparty default risk module as type 2 exposures.

(65) The counterparty default risk module of the standard formula should reflect the economic effect of collateral arrangements in case of default of the counterparty.

In particular, it should be considered whether the full ownership of the collateral is transferred or not. It should also be considered whether in case of insolvency of the counterparty, the determination of the insurance or reinsurance undertaking's proportional share of the counterparty's insolvency estate in excess of the collateral takes into account that the undertaking receives the collateral.

(66) Consistent with the approach set out in Article 104(1), (3) and (4) of Directive 2009/138/EC, the Basic Solvency Capital Requirement should include an additional risk module in order to address the specific risks arising from intangible assets, as recognised and valued for solvency purpose, that are not captured elsewhere in the Solvency Capital Requirement.

(67) The operational risk module of the standard formula captures the risk arising from inadequate or failed internal processes, personnel or systems, or from external events in a factor-based calculation. For this purpose, technical provisions, premiums earned during the previous twelve months, and expenses incurred during the previous twelve months are considered appropriate volume measures to capture this risk. The latter volume measure is relevant only for life insurance contracts where the risk is borne by the policyholder. In view of the fact that acquisition expenses are implemented heterogeneously in different insurance business models, these expenses should not be taken into account in the volume measure for the amount of expenses incurred during the previous 12 months. In order to ensure that the capital requirement for operational risk continues to meet the confidence level set out in Article 101 of Directive 2009/138/EC, the operational risk module should be re-examined as part of the Commission review of the methods, assumptions and standard parameters used when calculating the Solvency Capital Requirement with the standard formula, as referred to in recital (150). This review should in particular target life insurance contracts where the risk is borne by the policyholder.

(68) The calculation of the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes should ensure that there is no double counting of the risk mitigating effect provided by future discretionary benefits or deferred taxes.

(69) Future discretionary benefits are usually a feature associated with life and SLT health insurance contracts. Therefore, the adjustment for the loss-absorbing capacity of technical provisions should take into account the mitigating effect provided by future discretionary benefits in relation to life underwriting risk, SLT health underwriting risk, health catastrophe risk, market risk and counterparty default risk. In order to limit the complexity of the standard formula and the calculation burden for insurance and reinsurance undertakings the adjustment should not apply to the risks of non-life insurance and NSLT health insurance. As losses arising from inadequate or failed internal processes, personnel or systems, or from external events might not be effectively absorbed by future discretionary benefits, the adjustment should not apply to operational risk.

(70) The recognition of risk-mitigation techniques in the calculation of the Solvency Capital Requirement should reflect the economic substance of the technique used and should

be restricted to risk-mitigation techniques that effectively transfer the risk outside the insurance or reinsurance undertaking.

(71) The assessment of whether there has been an effective transfer of risk should consider all aspects of the risk-mitigation technique and the arrangements between the insurance and reinsurance undertaking and their counterparties. In the case of risk-mitigation provided by reinsurance, the fact that the probability of a significant variation in either the amount or timing of payments by the reinsurer is remote should not, of itself, mean that the reinsurer has not assumed risk.

(72) The scenario-based calculations of the Solvency Capital Requirement standard formula are based on the impact of instantaneous stresses and insurance and reinsurance undertakings should not take into account risk-mitigation techniques that rely on insurance or reinsurance undertakings taking future action, such as dynamic hedging strategies or future management actions, at the time that the stress occurs. Dynamic hedging strategies and future management actions should be distinguished from rolling hedge arrangements, where a risk-mitigation technique is currently in force and will be replaced at the time of its expiry with a similar arrangement regardless of the solvency position of the undertaking.

(73) In order to avoid the situation whereby the effectiveness of a risk mitigation technique is undermined by the existence of basis risk, in particular because of a currency mismatch, undertakings should reflect material basis risk in the calculation of the Solvency Capital Requirement. Where material basis risk is not reflected in the calculation of the Solvency Capital Requirement, the risk mitigation technique should not be recognised.

(74) The existence of profit participation arrangements, whereby profits are allocated to policy holders or beneficiaries should be appropriately reflected in the calculation of the Solvency Capital Requirement.

(75) Where the calculation of the capital requirement for a risk module or sub-module of the Basic Solvency Capital Requirement is based on the impact of bidirectional scenarios on basic own funds, as in interest rate risk, currency risk or lapse risk, the insurance or reinsurance undertaking should determine which scenario most negatively affects the basic own funds of the insurance or reinsurance undertaking as a whole. This determination should, where relevant, take into account the effects of profit participation and the distribution of future discretionary benefits at the level of the ring-fenced fund. The scenario determined in this way should be the relevant scenario to calculate the notional Solvency Capital Requirement for each ring-fenced fund.

(76) In order to be able to prepare for future revisions of correlation parameters on the basis of suitable empirical information, such as changes in mortality rates and lapse rates for life obligations and combined ratios or provision run-off ratios for non-life insurance obligations, EIOPA should receive appropriate data from supervisory authorities. Supervisory authorities should receive this data from insurance and reinsurance undertakings as part of the information which is to be reported to supervisors given that it will be necessary for the purposes of supervision and should not therefore result in additional burdens for undertakings.

(77) When providing an opinion on an update to correlation parameters, EIOPA should take into account whether the application of the updated correlation parameters by insurance and reinsurance undertakings would result in an overall Solvency Capital Requirement which complies with the principles in Article 101 of Directive 2009/138/EC, and whether dependencies between risks are non-linear or whether there is a lack of diversification under extreme scenarios, in which case EIOPA should consider alternative measures of dependence for the purposes of calibrating updates to the correlation parameters.

(78) It is likely that many aspects of internal models will change over time as knowledge about risk modelling improves, and supervisory authorities should accordingly have regard to current information and practice in making their assessment of the internal model to ensure that it keeps pace with recent developments.

(79) An internal model can only play an important role in the system of governance of an insurance or reinsurance undertaking where it is adapted to the business of the undertaking and understood by the persons who base decisions on its outputs. The use test for internal models should therefore ensure that approved internal models are appropriate to the business of the undertaking and are understood by the persons who effectively run the undertaking.

(80) Insurance and reinsurance undertakings calculating the Solvency Capital Requirement on the basis of an internal model should use the internal model in their risk-management system and in their decision-making processes in a way that creates incentives to improve the quality of the internal model itself.

(81) The requirement that the internal model is widely used in and plays an important role in their system of governance set out in Article 120 of Directive 2009/138/EC should not lead insurance and reinsurance undertakings to rely blindly on the output of the internal model. The undertakings should not make decisions based on the output of the internal model without challenging the appropriateness of the model. They should be aware of the limitations of the internal model and take them into account in their decisions.

(82) As no particular method for the calculation of the probability distribution forecast for internal models is prescribed in accordance with Article 121(4) of Directive 2009/138/EC and as internal models should be adapted to the specific business of the insurance and reinsurance undertaking, internal models may vary significantly in their methodology, the information, assumptions and data used for the internal model and in their validation processes. The statistical quality standards and the validation standards should therefore remain principle-based and include only specific minimum requirements. For the same reason, the documentation standards should not include a complete list of documents, but only a minimum list of documents that should exist for each internal model. Undertakings' documentation should contain any additional information that is necessary to comply with the documentation standards for internal models.

(83) In order to ensure that the internal model is up to date and reflects their risk profile in the best possible manner, insurance and reinsurance undertakings should be aware of

the relevant actuarial developments and the generally accepted market practice of risk modelling. However, this does not imply that insurance and reinsurance undertakings should always adapt their internal model to the generally accepted market practices. In many cases it might be necessary to depart from the generally accepted market practice in order to arrive at an appropriate internal model.

(84) Internal models are likely to be based on a large amount of data stemming from a variety of sources and of differing characteristics and quality. In order to ensure the appropriateness of the data used for the internal model, insurance and reinsurance undertakings should collect, process and apply data in a transparent and structured manner.

(85) Insurance and reinsurance undertakings should be free to decide the structure of the internal model that most appropriately reflects their risks. This should be done subject to approval by the supervisory authorities. In the case of partial internal models it might be more appropriate to calculate different components separately and integrate them directly into the standard formula without further aggregation in the internal model. In this case a probability distribution forecast should be calculated for each component.

(86) Any integration technique of a partial internal model into the standard formula to calculate the Solvency Capital Requirement is part of that internal model and should, together with the other components of the partial internal model, fulfil the relevant requirements of Directive 2009/138/EC.

(87) Insurance and reinsurance undertakings should calculate the linear Minimum Capital Requirement using a standard calculation regardless of whether the undertaking uses the standard formula or an internal model to calculate its Solvency Capital Requirement.

(88) For the purposes of calculating the cap and the floor of the Minimum Capital Requirement referred to in Article 129(3) of Directive 2009/138/EC insurance and reinsurance undertakings should not be required to calculate a Solvency Capital Requirement on a quarterly basis. Where the calculation of the Minimum Capital Requirement does not coincide with an annual calculation of the Solvency Capital Requirement, undertakings should use the last calculated Solvency Capital Requirement in accordance with Article 102 of Directive 2009/138/EC.

(89) In accordance with the prudent person principle set out in Article 132 of Directive 2009/138/EC and in order to ensure cross-sectoral consistency, the interests of undertakings that re-package loans into tradable securities and other financial instruments (originators, sponsors or original lenders) and the interests of the insurance and reinsurance undertakings investing in those securities or instruments should be aligned. In order to achieve this alignment, insurance and reinsurance undertakings should be allowed to invest in those securities or instruments only if the originator, sponsor or original lender retains a material net economic interest in the underlying assets. The requirement for the originator, the sponsor or the original lender to retain a material net economic interest in the underlying assets should apply also when there are multiple originators, sponsors or original lenders. To prevent any potential circumvention of the requirements, avoid misunderstandings and align the language with that used in Union legislation regulating the activities of credit instititutions, the

terms 'investment in securitisation positions' should be used instead of 'investment in tradable securities or other financial instruments based on repackaged loans'.

(90) Insurance and reinsurance undertakings investing in securitisation should have a comprehensive and thorough understanding of the investment and its underlying exposures. In order to achieve that understanding, undertakings should make their investment decision only after having conducted thorough due diligence, from which they should obtain adequate information and knowledge about the securitisation.

(91) In order to ensure that the risks arising from securitisation positions are appropriately reflected in the capital requirements of insurance and reinsurance undertakings, it is necessary to include rules providing for a risk-sensitive and prudentially sound treatment of such investments, depending on the nature and underwriting process of underlying exposures, and structural and transparency features. Securitisations that meet those requirements should be subject to a specific treatment in the spread risk sub-module, recognising their lower risk profile. Given that only the most senior tranches qualify for such a treatment, and taking into account the credit enhancement embedded in most senior tranches compared to the whole pool of underlying exposures, it is appropriate to cap the spread risk factors on such positions at the level of the spread risk factor that would be applicable to underlying exposures, namely at the level of the 3 % risk factor per year of duration applicable to unrated loans. This approach should be re-examined as part of the Commission review of the methods, assumptions and standard parameters used when calculating the Solvency Capital Requirement with the standard formula, as referred to in recital (150).

(92) In order to avoid any regulatory arbitrage, the rules on securitisation should apply on the basis of the principle of substance over form. To this end, a clear and encompassing definition of securitisation is needed that captures any transaction or scheme whereby the credit risk associated with an exposure or pool of exposures is tranched. An exposure that creates a direct payment obligation for a transaction or scheme used to finance or operate physical assets should not be considered an exposure to a securitisation, even if the transaction or scheme has payment obligations of different seniority.

(93) Good governance is the basis for effective and sound management of insurance and reinsurance undertakings as well as a key element of the regulatory framework. The system of governance of an insurance and reinsurance undertaking should be based on an appropriate and transparent allocation of oversight and management responsibilities to provide for an effective decision making, to prevent conflicts of interest and to ensure effective management of the undertaking.

(94) A basic principle of good governance is that no individual should have power over decision making without any form of control. Therefore, prior to implementing any significant decision concerning the undertaking, at least one other person should review that decision.

(95) In order to ensure the proper functioning of the risk management system, actions taken by insurance and reinsurance undertakings should include establishing, implementing, maintaining and monitoring practices and procedures appropriate to the undertaking's risk management policy, with regard to key areas of the undertakings' business.

(96) Insurance and reinsurance undertakings should have appropriate internal controls in place in order to ensure that all persons with operational and oversight responsibilities act in accordance with the undertaking's objectives and in compliance with applicable laws, regulations and administrative provisions.

(97) In order to ensure an economic valuation that is reliable, accurate and in compliance with Article 75 of Directive 2009/138/EC, it is important to establish and implement appropriate internal controls for the valuation of assets and liabilities of insurance and reinsurance undertakings, including an independent review and verification of the information, data and assumptions used.

(98) In order to ensure that the valuation of technical provision is carried out in compliance with Articles 76 to 85 of Directive 2009/138/EC, the system of governance of insurance and reinsurance undertakings should include a validation process of the calculation of technical provisions.

(99) In the context of the system of governance, in order to ensure independence, a person or organisational unit carrying out a function should be able to carry out the related duties objectively and free from influence and to report relevant findings directly to the administrative, management or supervisory body. In order to enable supervisory authorities to take timely remedial measures where necessary, insurance and reinsurance undertakings should, in a timely manner, notify the supervisory authority of information regarding all persons who effectively run the undertaking or are responsible for other key functions and other information needed to assess the fitness and propriety of these persons. However, acknowledging the need to avoid undue burdens on insurance or reinsurance undertakings or supervisors, the notification by insurance and reinsurance undertakings should not imply pre-approval by the supervisory authority. In the event that the supervisory authority concludes that a person does not comply with the fit and proper requirements set out in Directive 2009/138/EC, it should have the power to require the undertaking to replace that person.

(100) In order to assess the reputation of the persons who effectively run the undertaking or have other key functions, the past conduct of those persons should be examined to see whether they may not be able to effectively discharge their duties in accordance with the applicable rules, regulations and guidelines. Information regarding past conduct may be information that is sourced from criminal or financial records. A person's past business conduct could provide indications as to that person's integrity.

(101) In order to ensure that the outsourcing of functions or activities is done in an effective way and does not undermine the obligations that insurance and reinsurance undertakings have to comply with under Directive 2009/138/EC, it is necessary to provide for requirements on how to choose the service provider, on the written agreement to be concluded and on the ongoing verification that the insurance or reinsurance undertaking has to perform on the service provider.

(102) Remuneration policies and practices which provide incentives to take risks that exceed the approved risk tolerance limits of insurance and reinsurance undertakings can undermine the effective risk management of such undertakings. It is therefore necessary

to provide for requirements on remuneration for the purposes of the sound and prudent management of the business and in order to prevent remuneration arrangements which encourage excessive risk-taking.

(103) The specification of the circumstances in which capital add-ons may be imposed and the methodologies for their calculation should ensure that the use of capital add-ons is an effective and practicable supervisory tool for the protection of policy holders and beneficiaries through the calculation of a Solvency Capital Requirement which properly reflects the overall risk profile of the insurance or reinsurance undertaking. Capital add-on amounts have a numerically positive value. The specification should also take account of the need to develop consistent and common approaches for similar circumstances. To this end reference percentages and limits could be used as presumptions to assess deviations but should not detract from the main objective of setting add-ons appropriate to the insurance or reinsurance undertaking in question.

(104) For the purposes of the application of Article 138(4) of Directive 2009/138/EC, in deciding whether to declare the existence of an exceptional adverse situation affecting insurance and reinsurance undertakings representing a significant share of the market or affected lines of business, EIOPA should take into account all relevant factors at the level of the affected market or line of business, including those set out in this Regulation.

(105) For the purposes of the application of Article 138(4), in deciding whether to extend the recovery period and in determining the length of such an extension for a given insurance or reinsurance undertaking, subject to the maximum of seven years set out in Article 138(4), the supervisory authority should take into account all relevant factors which are specific to the undertaking, including those set out in this Regulation.

(106) Insurance and reinsurance undertakings are required by Directive 2009/138/EC to disclose publicly information on their solvency and financial condition. Detailed and harmonised requirements regulating the information which must be disclosed and the means by which this is to be achieved should be appropriate so as to ensure equivalent market conditions and the smooth operation of insurance and reinsurance markets throughout the Union, and to facilitate the effective integration of insurance and reinsurance markets throughout the Union.

(107) The application of the proportionality principle in the area of public disclosure should not result in insurance and reinsurance undertakings being required to disclose any information which would not be relevant to their business or not be material.

(108) Where references are made to equivalent information disclosed publicly under other legal or regulatory requirements, these should lead directly to the information itself and should not be a reference to a general document.

(109) Where supervisory authorities permit insurance and reinsurance undertakings, in accordance with Article 53(1) and (2) of Directive 2009/138/EC, not to disclose certain information, such permission should remain valid only for as long as the reason for non-disclosure continues to exist. When such a reason ceases to exist and only from that date onwards, insurance and reinsurance undertakings shall disclose the relevant information.

(110) Directive 2009/138/EC requires Member States to ensure that supervisory authorities have the power to require all information which is necessary for the purposes of supervision. An essential part of that information should be the information which must be submitted to the supervisory authorities on a regular basis.

(111) Detailed and harmonised requirements regulating the information which must be submitted on a regular basis and the means by which this is to be achieved should be adopted to ensure effective convergence in the supervisory review process carried out by the supervisory authorities.

(112) The information which insurance and reinsurance undertakings have to report regularly to the supervisory authorities comprises the solvency and financial condition report. In addition, they should submit the regular supervisory report which contains the information, additional to that included in the solvency and financial condition report, which is necessary for the purposes of supervision. For the benefit of both the insurance and reinsurance undertakings and the supervisory authorities, these two reports should follow the same structure.

(113) On the basis of a risk assessment of the insurance and reinsurance undertaking in accordance with Article 36 of Directive 2009/138/EC, supervisory authorities may require an annual submission of its regular supervisory report. When this is not the case and insurance and reinsurance undertakings submit their regular supervisory report only every 3 years, they should nevertheless inform annually the supervisory authorities of any major developments that have occurred since the last reporting period.

(114) Quantitative and qualitative information should be disclosed or submitted to the supervisory authority on a regular basis in the form of a narrative report and quantitative templates. Quantitative templates should specify in greater detail and supplement, where appropriate, the information provided in the narrative report. The report and templates should provide sufficient information, additional to the information already presented in the solvency and financial condition report, to the supervisory authorities to enable them to fulfil their responsibilities under Directive 2009/138/EC but should not result in unnecessary burden for the insurance and reinsurance undertakings. The scope of quantitative templates that have to be submitted on a quarterly basis should be narrower than the scope of quantitative templates to be submitted on an annual basis.

(115) The application of the proportionality principle in the area of supervisory reporting should not result in insurance and reinsurance undertakings or branches established within the Union being required to submit any information which would not be relevant to their business or not be material.

(116) Criteria and methods for the supervisory review process should be disclosed. These should cover the general means and measures supervisory authorities employ to review and evaluate compliance with the requirements set out in Article 36(2) of Directive 2009/138/EC and in particular to assess the adequacy of the risk management of insurance and reinsurance undertakings as well as their ability to withstand adverse events or changes.

(117) The disclosure of aggregate statistical data under Article 31(2)(c) of Directive 2009/138/EC is intended to provide general information on national insurance sectors as well as on important activities of the supervisory authorities themselves. Relevant information should cover data related to both quantitative and qualitative requirements, together with aggregate national data reported in comparable terms over time.

(118) In order to ensure comparability of supervisory disclosure, there should be a defined list of the key aspects of the application of the prudential framework on which aggregated data are to be disclosed by supervisory authorities as a minimum.

(119) The exposure of the special purpose vehicle should always be limited in order to ensure that the special purpose vehicle has assets that are equal to or exceed its aggregate maximum risk exposure.

(120) Where a special purpose vehicle assumes risks from more than one insurance or reinsurance undertaking, that special purpose vehicle should remain at all times protected from the winding up proceedings of any one of the other insurance or reinsurance undertakings which transfer risks to the special purpose vehicle.

(121) Assessments of fit and proper requirements for shareholders or members having a qualifying holding in the special purpose vehicle and for persons who effectively run the special purpose vehicle should, where relevant, take account of similar requirements applying to insurance and reinsurance undertakings.

(122) The transfer of risk from the insurance or reinsurance undertaking to the special purpose vehicle and from the special purpose vehicle to the providers of debt or financing should be free of any connected transactions which could undermine the effective transfer of risk, for example contractual rights of set-off or side agreements designed to reduce the potential or actual losses incurred as a result of the transfer of risk to the providers of debt or financing to the special purpose vehicle.

(123) In order to ensure that the inclusion of future payments does not undermine the effective transfer of risk from the insurance or reinsurance undertaking to the special purpose vehicle, it is important that the non-receipt of payments does not negatively affect the basic own funds of the insurance or reinsurance undertaking. In determining that there is no scenario in which this could occur, the undertaking should consider all scenarios contemplated in the contractual arrangements and any other scenarios, unless the likelihood that those other scenarios will occur is excessively remote.

(124) Article 220 of Directive 2009/138/EC requires the calculation of the solvency at the level of the group to be carried out in accordance with method 1 (accounting consolidation-based method), unless its exclusive application would not be appropriate. The group supervisor should, when assessing whether method 2 (deduction and aggregation method) should be used instead of — or in combination with — method 1, consider a number of harmonised relevant elements. One such element is whether the use of method 1 would be overly burdensome, and the nature, scale and complexity of the risks of the group are such that the use of method 2 would not materially affect the results of the group solvency calculation. In ascertaining, for these purposes, whether the use of method 2 would materially affect the results of the group solvency

calculation, method 2 should be compared with method 1 using the aggregated group eligible own funds and the aggregated group Solvency Capital Requirements calculated in accordance with Directive 2009/138/EC and not with solvency requirements laid down in an equivalent third country.

(125) In order to help ensure a level playing field in third countries, where a group includes related third country insurance or reinsurance undertakings, and where the Commission has adopted delegated acts pursuant to paragraphs 4 or 5 of Article 227 of Directive 2009/138/EC determining that the solvency regimes of those third countries are equivalent or provisionally equivalent, the group supervisor should give such a consideration priority when deciding on whether method 2 (deduction and aggregation) should be used instead of — or in combination with — method 1 (consolidation).

(126) Directive 2009/138/EC provides that, where supervisory authorities consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking cannot effectively be made available to cover the group Solvency Capital Requirement, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking. In this context, supervisory authorities should, when considering whether certain own funds of a related undertaking cannot effectively be made available for the group, base their decisions on whether there are any restrictions which affect either the fungibility of the corresponding own fund items (i.e. whether they are dedicated to absorb only certain losses) or their transferability (i.e. whether there are significant obstacles to moving own fund items from one entity to another). For the purposes of this assessment, supervisory authorities should pay particular attention to any minority interest in the eligible own funds covering the Solvency Capital Requirement of a subsidiary insurance or reinsurance undertaking, third-country insurance or reinsurance undertaking, insurance holding company or mixed financial holding company.

(127) In order to ensure that the policy holders and beneficiaries of insurance and reinsurance undertakings belonging to a group are adequately protected in the case of the winding-up of any undertakings included in the scope of group supervision, own-fund items which are issued by insurance holding companies and mixed financial holding companies in the group should not be considered to be free from encumbrances unless the claims relating to those own-fund items rank after the claims of all policy holders and beneficiaries of the insurance or reinsurance undertakings belonging to the group.

(128) Appropriate rules should be provided at the level of the group for the treatment of special purpose vehicles. In this context, special purpose vehicles as defined under Directive 2009/138/EC and which either comply with the requirements therein or are regulated by a third country supervisory authority and comply with equivalent requirements, should not be fully consolidated.

(129) The calculation of the best estimate of technical provisions at the level of the group in accordance with method 1 (accounting consolidation-based method) should be based on the assumption that the sum of the best estimate of the participating insurance or reinsurance undertakings and a proportional share of the best estimate for its related undertakings, each adjusted for intra-group transactions, is approximately the same as

the amount that would result from calculating the best estimate for the consolidated insurance and reinsurance obligations at the level of the group in accordance with Articles 75 to 86 of Directive 2009/138/EC. In particular, where best estimates of third-country insurance or reinsurance undertakings are used in that calculation, those best estimates should be assessed in accordance with those Articles.

(130) The calculation of the risk margin of technical provisions at the level of the group in accordance with method 1 (accounting consolidation-based method) should be based on the assumption that the transfer of the group's insurance and reinsurance obligations is carried out separately for each insurance and reinsurance undertaking of the group and that the risk margin does not allow for the diversification between the risks of those undertakings. In relation to undertakings referred to in Article 73(2) and (5) of Directive 2009/138/EC, the calculation should be based on the assumption that the transfer of the portfolio insurance obligations for life and non-life activities is carried out separately.

(131) Groups may apply for the use of two types of internal models to calculate their consolidated group Solvency Capital Requirement. Where an internal model is used only for the calculation of the consolidated group Solvency Capital Requirement, and is not used to calculate the Solvency Capital Requirement of a related insurance or reinsurance undertaking in the group, then Article 230 of Directive 2009/138/EC should apply. In this context, it is necessary to ensure that the approval of an internal model used to calculate only the consolidated group Solvency Capital Requirement is granted by the group supervisor in a manner consistent with the provisions set out in that Directive on the approval procedure of internal models used at individual level, including the implementing act referred to in Article 114(2) of that Directive. In order to foster cooperation within the college of supervisors, it is necessary to specify how the group supervisor should involve other supervisory authorities before making his decision on the application.

(132) Where a group applies for the use of the same internal model to calculate the consolidated group Solvency Capital Requirement as well as the Solvency Capital Requirement of a related insurance or reinsurance undertaking in the group, then Article 231 of Directive 2009/138/EC should apply. In this context, in order to ensure that the group supervisor and the other supervisory authorities concerned effectively cooperate and make an informed joint decision on whether to permit the use of that internal model, it is necessary to set out provisions on the documentation needed and on the procedure for the joint decision on the application.

(133) The approval of an internal model used only for the calculation of the consolidated group Solvency Capital Requirement granted on the basis of Article 230 of Directive 2009/138/EC should not influence any future permission under Article 231 of that Directive. In particular, any application for permission to calculate the consolidated group Solvency Capital Requirement together with the Solvency Capital Requirement of a related insurance or reinsurance undertaking in the group on the basis of an internal model already approved under Article 230 of Directive 2009/138/EC should follow the procedure laid down in Article 231 of that Directive.

(134) Groups should apply for permission to use a partial internal model for the calculation of the consolidated group Solvency Capital Requirement, when only some of the related undertakings are included in the scope of the group internal model, or in relation to the limited scope referred to in Article 112(2) of Directive 2009/138/EC, or in relation to a combination of any of them.

(135) In order for an internal model used only for the calculation of the consolidated group Solvency Capital Requirement to be widely used in and play an important role in the system of governance of the group, the output of that internal model should be used by insurance and reinsurance undertaking whose business is fully or partly in the scope of the internal model. In this context, these undertakings should not be required to meet the use test requirements as if they were using that internal model for the calculation of their Solvency Capital Requirement. The requirement to meet the use test for these undertakings should be limited to the output of that internal model and for the purposes of a consistent implementation of the risk management and internal control systems throughout the group.

(136) In assessing whether the conditions set out in Article 236 of Directive 2009/138/EC are satisfied, the group supervisor and the other supervisory authorities concerned should take into account a number of harmonised relevant criteria in order to ensure harmonised supervision of group solvency for groups with centralised risk management.

(137) In order to achieve an efficient cooperation in the supervision of insurance or reinsurance subsidiary undertakings in a group with a centralised risk management as provided for in Articles 237 to 243 of Directive 2009/138/EC, it is essential to harmonise the procedures to be followed by supervisory authorities in the supervision of such insurance and reinsurance subsidiary undertakings.

(138) In order to clearly determine when an emergency situation within the meaning of Article 239(2) of Directive 2009/138/EC has arisen, the supervisory authority having authorised the insurance or reinsurance subsidiary undertaking which financial condition is deteriorating should take into account a number of harmonised criteria.

(139) The college of supervisors should be a permanent platform for coordination among supervisory authorities, fostering a common understanding of the risk profile of the group and of its related undertakings and aiming at a more efficient and effective risk based supervision at both group and individual levels. In this context, in order to ensure a proper functioning of the college it is necessary to set out criteria for considering a branch to be significant for the purpose of the participation of supervisory authorities of significant branches in the college. It is also essential to harmonise the requirements applicable to the coordination of supervision of insurance and reinsurance groups, in order to foster the convergence of supervisory practices.

(140) Directive 2009/138/EC requires participating insurance and reinsurance undertakings or insurance holding companies or mixed financial holding companies to disclose publicly information on the solvency and financial condition of the group. That Directive also allows them to provide a single solvency and financial condition report comprising both that group information and the solvency and financial condition

information required in relation to any of their subsidiaries. That regime aims to ensure that interested stakeholders are properly informed about the solvency and financial condition of insurance and reinsurance groups, while at the same time reducing to the extent appropriate the related burden for such groups. In this context, it is necessary to harmonise the requirements applicable to public disclosure by insurance and reinsurance groups, regardless of whether such groups make use of the option to provide a single solvency and financial condition report.

(141) Detailed and harmonised requirements regulating the information which must be submitted on a regular basis by insurance and reinsurance groups should be adopted to ensure effective convergence in the supervisory review process of group supervisors. The requirements should also facilitate the exchange of information within colleges of supervisors, and should as far as possible aim to limit the related burden for such insurance and reinsurance groups.

(142) The assessment under Articles 172, 227 and 260 of Directive 2009/138/EC of whether a third country's solvency or prudential regime is equivalent to that laid down in Title I or Title III of that Directive should be an ongoing process and should be carried out with the objective of ensuring that the third country solvency or prudential regime demonstrates an equivalent level of policyholder and beneficiary protection as that provided under that Directive.

(143) The assessment under Articles 172, 227 and 260 of Directive 2009/138/EC of whether a third country's solvency or prudential regime is equivalent to that laid down in Title I or Title III of that Directive should be carried out on the basis of the criteria laid down in this Regulation, respectively, in Article 378 with regard to Article 172, in Article 379 with regard to Article 227, and in Article 380 with regard to Article 260.

(144) The determination as to whether the criteria to be taken into account when assessing third country equivalence have been met should be based on the substance of the legislation or other regulatory requirements in that third country's solvency or prudential regime, as well as how that legislation and those requirements are implemented and applied and the practices of the supervisory authorities in that third country. That determination should also take into account the extent to which the supervisory authorities in the third country apply the proportionality principle as set out in Directive 2009/138/EC.

(145) In order to ensure that the effects of a positive equivalence finding as set out in Articles 172(2) and 172(3) Directive 2009/138/EC and in Article 211 of this Regulation do not undermine the main objective of insurance and reinsurance regulation and supervision, namely the adequate protection of policy holders and beneficiaries, the criteria for assessing equivalence under Article 172 of that Directive should encapsulate the principles set out in Title I on the general rules on the taking-up and pursuit of reinsurance activities.

(146) In order to ensure that the taking into account of the Solvency Capital Requirement and eligible own funds laid down by a third country in the determination of group solvency where method 2 is used results in a group solvency determination equivalent to that which would result if the requirements under Directive 2009/138/EC had been used, the

criteria for assessing equivalence under Article 227 of that Directive should encapsulate the principles set out in Title I, Chapter VI on the rules relating to the valuation of assets and liabilities, technical provisions, own funds, solvency capital requirement, minimum capital requirement and investment rules.

(147) In order to ensure that the exemption of a group from group supervision at Union level does not undermine the fundamental role attributed to group supervision in Directive 2009/138/EC, the criteria for assessing equivalence under Article 260 of that Directive should encapsulate the principles set out in Title III on the supervision of insurance and reinsurance undertakings in a group.

(148) Supervisory authorities in Member States and supervisory authorities of third countries for which there has been a positive equivalence decision or for which a temporary or provisional equivalence regime applies should cooperate and exchange information in order to ensure that there is a clear mutual understanding of group risks and solvency.

(149) In order to ensure that information can be exchanged between supervisory authorities, supervisory authorities of third countries for which there has been a positive equivalence decision or for which a temporary or provisional equivalence regime applies should be bound by obligations of professional secrecy.

(150) In order to ensure that the standard formula continues to meet the requirements set out in paragraphs 2 and 3 of Article 101 of Directive 2009/138/EC on an ongoing basis, the Commission will review the methods, assumptions and standard parameters used when calculating the Solvency Capital Requirement with the standard formula, in particular the methods, assumptions and standard parameters used in the market risk module as set out in Title I Chapter V Section 6, including a review of the standard parameters for fixed-income securities and long-term infrastructure, the standard parameters for premium and reserve risk set out in Annex II, the standard parameters for mortality risk, as well as the subset of standard parameters that may be replaced by undertaking-specific parameters referred to in Article 218 and the standardised methods to calculate these parameters referred to in Article 220. This review should make use of the experience gained by insurance and insurance undertakings during the transitional period and the first years of application of these delegated acts, and be performed before December 2018.

(151) In order to enhance legal certainty about the supervisory regime during the phasing-in period provided for in Article 308a of Directive 2009/138/EC, which will start on 1 April 2015, it is important to ensure that this Regulation enters into force as soon as possible, on the day after that of its publication in the Official Journal of the European Union,

HAS ADOPTED THIS REGULATION: