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)

TITLE I

VALUATION AND RISK-BASED CAPTAL REQUIREMENTS (PILLAR I), ENHANCED GOVERNANCE (PILLAR II) AND INCREASED TRANPARENCY (PILLAR III)

CHAPTER X

CAPITAL ADD-ON

SECTION 1

Circumstances for imposing a capital add-on

Article 276

Assessment of a significant deviation as regards the SCR

For the purposes of Article 37(1)(a) and (b) of Directive 2009/138/EC, in concluding that the risk profile of an insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement as calculated using the standard formula or an internal model, supervisory authorities shall take into account all relevant factors including all of the following:

(a) the nature, type and size of the deviation;

(b) the likelihood and severity of any adverse impact on policyholders and beneficiaries;

(c) the level of sensitivity of the assumptions to which the deviation relates;

(d) the anticipated duration and volatility of the deviation over the duration of the deviation.

Article 277

Assessment of a significant deviation as regards the governance

For the purposes of Article 37(1)(c) of Directive 2009/138/EC, in concluding that the system of governance of an insurance or reinsurance undertaking deviates significantly from the standards laid down in Title I, Chapter IV, Section 2 of that Directive, supervisory authorities shall take into account all relevant factors including all of the following:

(a) the effect of the deviation from the governance standards as laid down in Title I, Chapter IV, Section 2 of Directive 2009/138/EC on the sound and prudent management of the business and whether the deviation arises from an inadequate implementation of a requirement relating to the system of governance or a failure to implement such a requirement;

(b) the likelihood and severity of any adverse impact on policyholders and beneficiaries;

(c) the different ways of organising an effective system of governance which is proportionate to the nature, scale and complexity of the risks inherent in the business of the undertaking;

(d) the probable financial loss the undertaking could incur as a consequence of the deviation;

(e) the anticipated duration of the deviation.

Article 278

Assessment of a significant deviation as regards adjustments to the relevant risk-free rate and transitional measures

1 For the purposes of Article 37 (1)(d) of Directive 2009/138/EC, in concluding that the risk profile of an insurance or reinsurance undertaking deviates significantly from the assumptions underlying the matching adjustment referred to in Article 77b of that Directive, the volatility adjustment referred to in Article 77d of that Directive or the transitional measures referred to in Article 308c and 308d of that Directive, supervisory authorities shall take into account all relevant factors including all of the following:

a the nature, type and size of the deviation;

b the likelihood and severity of any adverse impact on policyholders and beneficiaries;

c the level of sensitivity of the assumptions to which the deviation relates;

d the anticipated duration and volatility of the deviation over the duration of the deviation;

e the impact of the deviation on the Solvency Capital Requirement and own funds of the undertaking.

2 With respect to the matching adjustment and transitional measures and with respect to the volatility adjustment, where Member States require prior approval for this adjustment, where supervisory authorities have allowed an insurance or reinsurance undertaking to use one of these adjustments or transitional measures, they may impose a capital add-on pursuant to Article 37 paragraph (1)(d) of Directive 2009/138/EC only in circumstances where the deviation from the assumptions underlying the adjustments or transitional measures is of a temporary nature and does not justify revoking the supervisory approval for the use of the adjustment or the transitional measure.

Article 279

Add-ons in relation to deviations from Solvency Capital Requirement assumptions

1 Where the modified Solvency Capital Requirement as calculated under Article 282(a) exceeds the Solvency Capital Requirement as calculated under 282(b) by 10 percent or more, supervisory authorities shall conclude that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital

Requirement within the meaning of Article 37(1)(a) and (b) of Directive 2009/138/EC, unless they have strong evidence that this is not the case on the basis of the factors set out in article 276.

2 Where the modified Solvency Capital Requirement as calculated in Article 282(a) exceeds the Solvency Capital Requirement as calculated in 282(b) by 15 percent or more, supervisory authorities shall conclude that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement within the meaning of Article 37(1)(a) and (b) of Directive 2009/138/EC.

Article 280

Assessment of the requirement to use an internal model

1 For the purposes of Article 37(1)(a)(i) of Directive 2009/138/EC, the circumstances in which the requirement to use an internal model is inappropriate include those where the estimated financial and other resources required to develop the internal model are disproportionate to the size of the deviation of the risk profile of the undertaking from the assumptions underlying the Solvency Capital Requirement.

2 For the purposes of Article 37(1)(a)(i) of Directive 2009/138/EC, the requirement to use an internal model is ineffective where no internal model has been developed or where the developed internal model fails to meet the general conditions for the approval of full and partial internal models as set out in Title I, Chapter VI, Section 4, Subsections 1 and 3 of Directive 2009/138/EC.

Article 281

Appropriate timeframe for adapting the internal model

For the purposes of Article 37(1)(b) and (c) of Directive 2009/138/EC respectively, in concluding that the adaptation of the internal model to better reflect the given risk profile has failed or that the application of other measures is unlikely to improve deficiencies, supervisory authorities shall take account of all relevant factors in determining an appropriate timeframe, including the likelihood and severity of any adverse impact on policy holders and beneficiaries. That timeframe shall not exceed 6 months.

SECTION 2

Methodologies for calculating capital add-ons

Article 282

Calculation of add-ons in relation to deviations from SCR assumptions

For the purposes of imposing a capital add-on pursuant to Article 37(1)(a) or (b) of Directive 2009/138/EC, supervisory authorities shall calculate the capital add-on as the difference, at a given point in time, between the following:

(a) the Solvency Capital Requirement of the insurance or reinsurance undertaking, excluding any previous or simultaneous capital add-on, that would be calculated if the standard formula or internal model, as appropriate, were modified so as to reflect the actual risk profile of the insurance or reinsurance undertaking and to ensure compliance with Article 101(3) of Directive 2009/138/EC;

(b) the Solvency Capital Requirement of the insurance or reinsurance undertaking, excluding any previous or simultaneous capital add-on.

Article 283

Scope and approach of modifications as regards a deviation from SCR assumptions

1 In calculating the amount referred to in Article 282(a), supervisory authorities shall consider the aspects of the standard formula or the internal model which gave rise to the deviation of the risk profile assumed under the standard formula or the internal model from the actual risk profile of the undertaking including, where relevant, quantifiable risks not taken into account by the standard formula or the internal model, the structure of the formula or the model, aggregation methods, parameters, and assumptions.

2 For the purposes of paragraph 1, supervisory authorities shall modify the assumptions and parameters underlying the Solvency Capital Requirement as calculated using the standard formula or internal model in order for those assumptions or parameters to properly reflect the actual risk profile of the insurance or reinsurance undertaking and to ensure compliance with Article 101(3) of Directive 2009/138/EC.

3 Where the modifications referred to in paragraph 2 are insufficient or inappropriate to calculate the amount referred to in Article 282(a), alternative methodologies which go beyond modifying assumptions or parameters shall be used for the purposes of the calculation referred to in Article 282(a).

4 Any modification referred to in paragraph 2 or alternative methodology referred to in paragraph 3 shall use adequate, applicable and relevant actuarial and statistical techniques and shall be based on accurate, complete and appropriate data of the undertaking, or where these are not available, data which is directly relevant for the operations of that undertaking.

5 Where alternative methodologies referred to in paragraph 3 are insufficient or inappropriate, supervisory authorities may calculate the Solvency Capital Requirement for the purposes of Article 282(a) by comparing the Solvency Capital Requirements of undertakings with similar risk profiles.

6 For the purposes of paragraphs 4 and 5, supervisory authorities may use information relating to other insurance or reinsurance undertakings with similar risk profiles provided that the supervisory authorities ensure that the reasons for their decision to set a capital add-on are stated in accordance with Article 37(1) of Directive 2009/138/EC and that this statement will comply with the professional secrecy requirements in Article 64 of that Directive.

7 Supervisory authorities shall not set off aspects of the risk profile deviation, which indicate that a lower Solvency Capital Requirement would better reflect the insurance or reinsurance undertaking's actual risk profile, against the other aspects which indicate that a higher Solvency Capital Requirement is appropriate, unless the insurance or reinsurance undertaking satisfies all of the following requirements:

a a modification or a methodology exists which complies with the requirements set out in paragraph 4 to quantify the impact on the amount referred to in Article 282(a) of the aspects which indicate a lower Solvency Capital Requirement;

b it would be inappropriate to address the aspects which indicate a lower Solvency Capital Requirement by replacing standard parameters by parameters specific to the undertaking in accordance with Article 104(7) of Directive 2009/138/EC or by using an internal model in accordance with Article 112 of that Directive;

c the overall Solvency Capital Requirement that would result after setting off the risk profile deviations against each other complies with Article 101(3) of Directive 2009/138/EC.

Article 284

Calculation of add-ons in relation to adjustments to the relevant risk-free rate or transitional measures

For the purposes of imposing a capital add-on pursuant to Articles 37(1)(d) of Directive 2009/138/EC, supervisory authorities shall calculate the capital add-on as the sum, at a given point in time, of the following amounts:

(a) the negative of the amount of eligible own funds that would be calculated if the adjustment or transitional measure was modified in a manner that the assumptions underlying the adjustment or transitional measure would fit the actual assets, liabilities and risk profile of the insurance or reinsurance undertaking;

(b) the amount of the Solvency Capital Requirement, excluding any previous or simultaneous capital add-on, that would be calculated if the adjustment or transitional measure was modified in a manner that the assumptions underlying the adjustment or transitional measure would fit the actual assets, liabilities and risk profile of the insurance or reinsurance undertaking, and ensure compliance with Article 101(3) of Directive 2009/138/EC;

(c) the amount of eligible own funds;

(d) the negative of the amount of the Solvency Capital Requirement, excluding any previous or simultaneous capital add-on, of the insurance or reinsurance undertaking.

Article 285

Scope and approach of modifications as regards adjustments to the relevant risk-free rate and transitional measures

1 In calculating the amounts referred to in Article 284(a) and (b), supervisory authorities shall consider the features of the undertaking's assets, liabilities or risk profile which gave rise to the deviation from the assumptions underlying the adjustment or transitional measure.

2 For the purposes of paragraph 1, supervisory authorities shall modify the adjustment or transitional measure and the calculation of the Solvency Capital Requirement in a manner that the assumptions underlying the adjustment or transitional measure would fit the actual assets, liabilities and risk profile of the insurance or reinsurance undertaking, and ensure compliance with Article 101(3) of Directive 2009/138/EC;

3 Any modification referred to in paragraph 2 shall use adequate, applicable and relevant actuarial and statistical techniques and shall be based on accurate, complete and appropriate data of the undertaking, or where these are not available, data which is directly relevant for the operations of that undertaking.

Article 286

Calculation of add-ons in relation to deviations from governance standards

For the purposes of calculating a capital add-on as referred to in Article 37(1)(c) of Directive 2009/138/EC, supervisory authorities shall take into account all relevant factors including all of the following:

(a) where appropriate, the factors referred to in Article 277;

(b) where appropriate, capital add-ons set previously for comparable deviations of other insurance or reinsurance undertakings with similar risk profiles provided that supervisory authorities ensure that the reasons for their decision to set a capital add-on are stated in accordance with Article 37(1) of Directive 2009/138/EC and this statement complies with the professional secrecy requirements set out in Article 64 of that Directive.

Article 287

Apportionment of add-ons for undertakings which simultaneously pursue life and non-life insurance activities

1 When calculating a capital add-on in relation to an insurance undertaking to which Article 73(2) or (5) of Directive 2009/138/EC applies, supervisory authorities shall calculate a notional life capital add-on and a notional non-life capital add-on.

2 Where the causes of the relevant deviations can be objectively apportioned between the life insurance activity and the non-life insurance activity, supervisory authorities shall calculate the notional life capital add-on and the notional non-life capital add-on according to the same apportionment.

3 Where an apportionment in accordance with paragraph 2 is not possible, supervisory authorities shall calculate the notional life capital add-on and notional non-life capital add-on in the same way as the apportionment between the notional life Minimum Capital Requirement and the notional non-life Minimum Capital Requirement as referred to in Article 74(2) of Directive 2009/138/EC.