# Solvency II consolidated text

## January 9, 2024

## plus amendments by 2020 Review

| | Official Journal | No | page | date |
|---|---|---|---|---|
| ► M1 | Directive 2011/89/EU amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate | L 326 | 113 | 8.12.2011 |
| ► M2 | Directive 2012/23/EU amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application, and the date of repeal of certain Directives | L 249 | 1 | 14.9.2012 |
| ► M3 | Council Directive 2013/23/EU of 13 May 2013 adapting certain directives in the field of financial services, by reason of the accession of the Republic of Croatia | L 158 | 362 | 10.6.2013 |
| ► M4 | Directive 2013/58/EU amending Directive 2009/138/EC (Solvency II) as regards the date for its transposition and the date of its application | L 341 | 1 | 18.12.2013 |
| ► M5 | Directive 2014/51/EU amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 on the powers of EIOPA and ESMA | L 153 | 1 | 22.5.2014 |
| ► M6 | Directive (EU) 2016/2341 on the activities and supervision of institutions for occupational retirement provision (IORPs) | L 354 | 37 | 23.12.2016 |
| ► M7 | Regulation (EU) 2017/2402 on simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 | L 347 | 35 | 28.12.2017 |
| ► M8 | Directive (EU) 2018/843 amending Directive (EU) 2015/849 (money laundering and terrorist financing), and amending Directives 2009/138/EC (solvency II) and 2013/36/EU | L 156 | 43 | 19.6.2018 |
| ► M9 | Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC (Solvency II), Directive 2014/65/EU (MiFID II) and Directive (EU) 2015/849 (money-laundering and terrorist financing) | L 334 | 155 | 27.12.2019 |
| ► M10 | Notice regarding the adaptation in line with inflation of the amounts laid down in the 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) 2021/C 423/12 | C 423 | 25 | 19.10.2021 |
| ► M11 | DIRECTIVE (EU) 2023/2864 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 December 2023 (European single access point) | L | 1 | 20.12.2023 |
| Track changes | Directive […] amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks, group and cross-border supervision and amending Directives 2002/87/EC and 2013/34/EU | | | |

Corrected by:

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| ► C1 | Corrigendum (2009/138/EC) | L 219 | 66 | 25.7.2014 |

## TITLE I GENERAL RULES ON THE TAKING-UP AND PURSUIT OF DIRECT INSURANCE AND REINSURANCE ACTIVITIES

### CHAPTER I Subject matter, scope and definitions

#### Section 1 Subject matter and scope

**Article 1 Subject matter**

This Directive lays down rules concerning the following:

(1) the taking-up and pursuit, within the Community, of the self-employed activities of direct insurance and reinsurance;

(2) the supervision of insurance and reinsurance groups;

(3) the reorganisation and winding-up of direct insurance undertakings.

**Article 2 Scope**

1. This Directive shall apply to direct life and non-life insurance undertakings which are established in the territory of a Member State or which wish to become established there.
   It shall also apply to reinsurance undertakings which conduct only reinsurance activities and which are established in the territory of a Member State or which wish to become established there with the exception of Title IV.
2. In regard to non-life insurance, this Directive shall apply to activities of the classes set out in Part A of Annex I. For the purposes of the first subparagraph of paragraph 1, non-life insurance shall include the activity which consists of assistance provided for persons who get into difficulties while travelling, while away from their home or their habitual residence. It shall comprise an undertaking, against prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.
   The aid may comprise the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.
   The assistance activity shall not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.
3. In regard to life insurance, this Directive shall apply:
   (a) to the following life insurance activities where they are on a contractual basis:
      (i) life insurance which comprises assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance;
      (ii) annuities;
      (iii) supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness;
      (iv) types of permanent health insurance not subject to cancellation currently existing in Ireland ~~and the United Kingdom~~;
   (b) to the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the authorities responsible for the supervision of private insurance:
      (i) operations whereby associations of subscribers are set up with a view to capitalising their contributions jointly and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased (tontines);
      (ii) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;
      (iii) management of group pension funds, comprising the management of investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;
      (iv) the operations referred to in point (iii) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;
      (v) the operations carried out by life insurance undertakings such as those referred to in Chapter 1, Title 4 of Book IV of the French ‘Code des assurances’;

(c) to operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, in so far as they are effected or managed by life insurance undertakings at their own risk in accordance with the laws of a Member State.

**Section 2 Exclusions from scope**
**Subsection 1 General**

**Article 3 Statutory systems**
Without prejudice to Article 2(3)(c), this Directive shall not apply to insurance forming part of a statutory system of social security.

**Article 4 Exclusion from scope due to size**
1. Without prejudice to Article 3 and Articles 5 to 10, this Directive shall not apply to an insurance undertaking which fulfils all the following conditions:
   (a) the undertaking's annual gross written premium income does not exceed ~~►M10 EUR 5 400 000;~~ EUR 15 000 000;
   (b) the total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, does not exceed ~~►M10 EUR 26 600 000 ◄~~ ;EUR 50 000 000;
   (c) where the undertaking belongs to a group, the total of the technical provisions of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed ~~►M10 EUR 26 600 000 ◄~~ ;EUR 50 000 000;
   (d) the business of the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of Article 16(1);
   (e) the business of the undertaking does not include reinsurance operations exceeding ►M10 EUR 600 000 ◄ of its gross written premium income or ►M10 EUR 2 700 000 ◄ of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, or more than 10% of its gross written premium income or more than 10% of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.
2. If any of the amounts set out in paragraph 1 is exceeded for three consecutive years this Directive shall apply as from the fourth year.
3. By way of derogation from paragraph 1, this Directive shall apply to all undertakings seeking authorisation to pursue insurance and reinsurance activities of which the annual gross written premium income or technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles are expected to exceed any of the amounts set out in paragraph 1 within the following five years.
4. This Directive shall cease to apply to those insurance undertakings for which the supervisory authority has verified that all of the following conditions are met:
   (a) none of the thresholds set out in paragraph 1 has been exceeded for the three previous consecutive years; and
   (b) none of the thresholds set out in paragraph 1 is expected to be exceeded during the following five years.

   For as long as the insurance undertaking concerned pursues activities in accordance with Articles 145 to 149, paragraph 1 of this Article shall not apply.
5. Paragraphs 1 and 4 shall not prevent any undertaking from applying for authorisation or continuing to be authorised under this Directive.

**Subsection 2 Non-life**

**Article 5 Operations**
In regard to non-life insurance, this Directive shall not apply to the following operations:
(1) capital redemption operations, as defined by the law in each Member State;
(2) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;
(3) operations carried out by organisations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves; or

(4) export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.

**Article 6 Assistance**

1. This Directive shall not apply to an assistance activity which fulfils all the following conditions:
   (a) the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in the territory of the Member State of the undertaking providing cover~~;~~ or neighbouring countries;
   (b) the liability for the assistance is limited to the following operations:
      (i) an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment;
      (ii) the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means; and
      (iii) where provided for by the home Member State of the undertaking providing cover, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same State; and
   (c) the assistance is not carried out by an undertaking subject to this Directive.
2. In the cases referred to in ~~points (i) and (ii) of paragraph 1(b),~~ paragraph 1, (b)(i) and (b)(ii), the condition that the accident or breakdown must have happened in the territory of the Member State of the undertaking providing cover shall not apply where the beneficiary is a member of the body providing cover and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the country concerned on the basis of a reciprocal agreement, ~~or, in the case of Ireland and the United Kingdom, where the assistance operations are provided by a single body operating in both States.~~
~~3. This Directive shall not apply in the case of operations referred to in point (iii) of paragraph 1(b), where the accident or the breakdown has occurred in the territory of Ireland or, in the case of the United Kingdom, in the territory of Northern Ireland and the vehicle, possibly accompanied by the driver and passengers, is conveyed to their home, point of departure or original destination within either territory.~~
4. This Directive shall not apply to assistance operations carried out by the Automobile Club of the Grand Duchy of Luxembourg where the accident or the breakdown of a road vehicle has occurred outside the territory of the Grand Duchy of Luxembourg and the assistance consists in conveying the vehicle which has been involved in that accident or breakdown, possibly accompanied by the driver and passengers, to their home.

**Article 7 Mutual undertakings**

This Directive shall not apply to mutual undertakings which pursue non-life insurance activities and which have concluded with other mutual undertakings an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case the accepting undertaking shall be subject to the rules of this Directive.

**Article 8 Institutions**

This Directive shall not apply to the following institutions which pursue non-life insurance activities unless their statutes or the applicable law are amended as regards capacity:

(1) in Denmark, Falck Danmark;
(2) in Germany, the following semi-public institutions:
(a) Postbeamtenkrankenkasse,
(b) Krankenversorgung der Bundesbahnbeamten;
~~(3) in Ireland, the Voluntary Health Insurance Board;~~
(4) in Spain, the Consorcio de Compensación de Seguros.

**Subsection 3 Life**

**Article 9 Operations and activities**

In regard to life insurance, this Directive shall not apply to the following operations and activities:

(1) operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;
(2) operations carried out by organisations, other than undertakings referred to in Article 2, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions;
(3) the pension activities of pension insurance undertakings prescribed in the Employees Pension Act (TyEL) and other related Finnish legislation provided that:
    (a) pension insurance companies which already under Finnish law are obliged to have separate accounting and management systems for their pension activities, as from 1 January 1995, set up separate legal entities for pursuing those activities; and
    (b) the Finnish authorities allow, in a non-discriminatory manner, all nationals and companies of Member States to perform according to Finnish legislation the activities specified in Article 2 related to that exemption whether by means of ownership or participation in an existing insurance company or group or by means of creation or participation of new insurance companies or groups, including pension insurance companies.

**Article 10 Organisations, undertakings and institutions**
In regard to life insurance, this Directive shall not apply to the following organisations, undertakings and institutions:
(1) organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;
(2) the 'Versorgungsverband deutscher Wirtschaftsorganisationen' in Germany, unless its statutes are amended as regards the scope of its capacity;
(3) the 'Consorcio de Compensación de Seguros' in Spain, unless its statutes are amended as regards the scope of its activities or capacity.

**Subsection 4 Reinsurance**

**Article 11 Reinsurance**
In regard to reinsurance, this Directive shall not apply to the activity of reinsurance conducted or fully guaranteed by the government of a Member State when that government is acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

**Article 12 Reinsurance undertakings closing their activity**
1. Reinsurance undertakings which by 10 December 2007 ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to this Directive.
2. Member States shall draw up a list of the reinsurance undertakings concerned and communicate that list to all the other Member States.

**Section 3 Definitions**

**Article 13 Definitions**
For the purposes of this Directive, the following definitions shall apply:
(1) 'insurance undertaking' means a direct life or non-life insurance undertaking which has received authorisation in accordance with Article 14;
(2) 'captive insurance undertaking' means an insurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 212(1)(c) or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

(3) ‘third-country insurance undertaking’ means an undertaking which would require authorisation as an insurance undertaking in accordance with Article 14 if its head office were situated in the Community;

(4) ‘reinsurance undertaking’ means an undertaking which has received authorisation in accordance with Article 14 to pursue reinsurance activities;

(5) ‘captive reinsurance undertaking’ means a reinsurance undertaking, owned either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of Article 212(1)(c) or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which it is a member;

(6) ‘third-country reinsurance undertaking’ means an undertaking which would require authorisation as a reinsurance undertaking in accordance with Article 14 if its head office were situated in the Community;

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(7) ‘reinsurance’ means one of the following:

(a) the activity consisting in accepting risks ceded by an insurance undertaking or third-country insurance undertaking, or by another reinsurance undertaking or third-country reinsurance undertaking;

~~(b) in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's; or~~

(c) the provision of cover by a reinsurance undertaking to an institution that falls within the scope of Directive (EU) 2016/2341 of the European Parliament and of the Council[1] ;

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(8) ‘home Member State’ means any of the following:

(a) for non-life insurance, the Member State in which the head office of the insurance undertaking covering the risk is situated;

(b) for life insurance, the Member State in which the head office of the insurance undertaking covering the commitment is situated; or

(c) for reinsurance, the Member State in which the head office of the reinsurance undertaking is situated;

(9) ‘host Member State’ means the Member State, other than the home Member State, in which an insurance or a reinsurance undertaking has a branch or provides services; for life and non-life insurance, the Member State of the provisions of services means, respectively, the Member State of the commitment or the Member State in which the risk is situated, where that commitment or risk is covered by an insurance undertaking or a branch situated in another Member State;

(10) ‘supervisory authority’ means the national authority or the national authorities empowered by law or regulation to supervise insurance or reinsurance undertakings;

10a ‘small and non-complex undertaking’ means an insurance and reinsurance undertaking, including a captive insurance undertaking and a captive reinsurance undertaking, that meets the conditions set out in Article 29a and has been classified as such in accordance with Article 29b;

10b ‘audit firm’ means an audit firm within the meaning of Article 2, point (3), of Directive 2006/43/EC of the European Parliament and of the Council[2];

10c ‘statutory auditor’ means a statutory auditor within the meaning of Article 2, point (2) of Directive 2006/43/EC of the European Parliament and of the Council;

10d ‘small and non-complex group’ means a group that complies with the conditions laid down in Article 213a and has been classified as such by the group supervisor pursuant to paragraph 2 of that Article;

(11) ‘branch’ means an agency or a branch of an insurance or reinsurance undertaking which is located in the territory of a Member State other than the home Member State;

(12) ‘establishment’ of an undertaking means its head office or any of its branches;

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1 Directive (EU) 2016/2341 of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (IORPs) (OJ L 354, 23.12.2016, p. 37).

2 Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).

(13) 'Member State in which the risk is situated' means any of the following:
  (a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;
  (b) the Member State of registration, where the insurance relates to vehicles of any type;
  (c) the Member State where the policy holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;
  (d) in all cases not explicitly covered by points (a), (b) or (c), the Member State in which either of the following is situated:
    (i) the habitual residence of the policy holder; or
    (ii) if the policy holder is a legal person, that policy holder's establishment to which the contract relates;

(14) 'Member State of the commitment' means the Member State in which either of the following is situated:
  (a) the habitual residence of the policy holder;
  (b) if the policy holder is a legal person, that policy holder's establishment, to which the contract relates;

(15) 'parent undertaking' means a parent undertaking ~~within the meaning of Article 1 of Directive 83/349/EEC;~~as referred to in Article 22(1) and (2) of Directive 2013/34/EU of the European Parliament and of the Council[3], as well as an undertaking which supervisory authorities shall consider as parent undertaking in accordance with Article 212212(2) or Article 214(5) or (6) of this Directive;

(16) 'subsidiary undertaking' means any subsidiary undertaking ~~within the meaning of Article 1 of Directive 83/349/EEC, including subsidiaries thereof;~~as referred to in Article 22(1) and (2) of Directive 2013/34/EU, including subsidiaries thereof, as well as an undertaking which supervisory authorities are to consider as subsidiary undertaking in accordance with Article 212212(2) or Article 214(5) or (6) of this Directive;

(17) 'close links' means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship;

(18) 'control' means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 22(1) and (2) of Directive 2013/34/EU~~Article 1 of Directive 83/349/EEC~~, or a similar relationship between any natural or legal person and an undertaking;

(19) 'intra-group transaction' means any transaction by which an insurance or reinsurance undertaking, a third-country insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

(20) 'participation' means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(21) 'qualifying holding' means a direct or indirect holding in an undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking;

(22) 'regulated market' means either of the following:
  (a) in the case of a market situated in a Member State, a regulated market as defined in Article 4(1), point (21), of Directive 2014/65/EU of the European Parliament and of the Council[4]~~Article 4(1)(14) of Directive 2004/39/EC~~; or
  (b) in the case of a market situated in a third country, a financial market which fulfils the following conditions:

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[3] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

[4] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, (OJ L 173, 12.6.2014, p. 349).

(i) it is recognised by the home Member State of the insurance undertaking and fulfils requirements comparable to those laid down in Directive 2014/65/EU~~Directive 2004/39/EC~~; and

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets of the home Member State;

(23) 'national bureau' means a national insurers' bureau as defined in Article 1(3) of Directive 72/166/EEC;

(24) 'national guarantee fund' means the body referred to in Article 1(4) of Directive 84/5/EEC;

(25) 'financial undertaking' means any of the following entities:

(a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 4(1), points (1), (18) and (26), of Regulation (EU) No 575/2013 of the European Parliament and of the Council[5] ~~Article 4(1), (5) and (21) of Directive 2006/48/EC~~ respectively;

(b) an insurance undertaking, or a reinsurance undertaking or an insurance holding company within the meaning of Article 212(1)(f);

(c) an investment firm or a financial institution within the meaning of Article 4(1)(1) of Directive 2014/65/EU~~Directive 2004/39/EC~~; or

(d) a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC

(26) 'special purpose vehicle' means any undertaking, whether incorporated or not, other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking;

(27) 'large risks' means:

(a) risks classified under classes 4, 5, 6, 7, 11 and 12 in Part A of Annex I;

(b) risks classified under classes 14 and 15 in Part A of Annex I, where the policy holder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;

(c) risks classified under classes 3, 8, 9, 10, 13 and 16 in Part A of Annex I in so far as the policy holder exceeds the limits of at least two of the following criteria:

(i) a balance-sheet total of ►M10 EUR 6 600 000 ◄;

(ii) a net turnover, within the meaning of Article 2, point (5), of Directive 2013/34/EU, of EUR 13 600 000~~Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies ( 2 ), of ►M10 EUR 13 600 000 ◄~~;[6]

(iii) an average number of 250 employees during the financial year.

If the policy holder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 2013/34/EU~~Directive 83/349/EEC~~ are drawn up, the criteria set out in point (c) of the first subparagraph shall be applied on the basis of the consolidated accounts. Member States may add to the category referred to in point (c) of the first subparagraph the risks insured by professional associations, joint ventures or temporary groupings;

(28) 'outsourcing' means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself;

(29) 'function', within a system of governance, means an internal capacity to undertake practical tasks; a system of governance includes the risk-management function, the compliance function, the internal audit function and the actuarial function;

(30) 'underwriting risk' means the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions;

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5 Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, (OJ L 176, 27.6.2013, p. 338).

6 OJ L 222, 14.8.1978, p. 11.

(31) ‘market risk’ means the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

(32) ‘credit risk’ means the risk of loss or of adverse change in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

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(32a) ‘qualifying central counterparty’ means a central counterparty that has been either authorised in accordance with Article 14 of Regulation (EU) No 648/2012 of the European Parliament and of the Council[7] or recognised in accordance with Article 25 of that Regulation;

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(33) ‘operational risk’ means the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events;

(34) ‘liquidity risk’ means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;

(35) ‘concentration risk’ means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance and reinsurance undertakings;

(36) ‘risk-mitigation techniques’ means all techniques which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party;

(37) ‘diversification effects’ means the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;

(38) ‘probability distribution forecast’ means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;

(39) ‘risk measure’ means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;

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(40) ‘external credit assessment institution’ or ‘ECAI’ means a credit rating agency that is registered or certified in accordance with Regulation (EC) No 1060/2009 of the European Parliament and of the Council[8] or a central bank issuing credit ratings which are exempt from the application of that Regulation.

(41) ‘regulated undertaking’ means ‘regulated entity’ within the meaning of Article 2(4) of Directive 2002/87/EC or an institution for occupational retirement provision within the meaning of Article 6(1) of Directive (EU) 2016/2341;

41a ‘crypto-asset’ means a crypto-asset as defined in Article 3, point (5), of Regulation (EU) 2023/1114 of the European Parliament and of the Council[9];

41b ‘proportionality measure’ means any measure provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 45a(5), Article 51(6), Article 51a(1), Article 77(7) and Article 144a(4) and any measure provided for in the delegated acts adopted pursuant to this Directive explicitly applicable to small and non-complex undertakings in accordance with Article 29c;

41c 'sustainability risk' means an environmental, social or governance event or condition that, if it occurs, could cause an actual or potential negative impact on the value of the investment or on the value of the liability;

41d 'sustainability factors' means sustainability factors as defined in Article 2, point (24) of Regulation (EU) 2019/2088 of the European Parliament and of the Council;

41e 'sustainability preferences' means a customer's or potential customer's choice as to whether and, if so, to what extent, one or more of the following financial instruments should be integrated into his or her investment

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7 Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

8 Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies (OJ L 302, 17.11.2009, p. 1).

9 Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40).

(a) a financial instrument for which the customer or potential customer determines that a minimum proportion shall be invested in environmentally sustainable investments as defined in Article 2, point (1), of Regulation (EU) 2020/852 of the European Parliament and of the Council;

(b) a financial instrument for which the customer or potential customer determines that a minimum proportion shall be invested in sustainable investments as defined in Article 2, point (17), of Regulation (EU) 2019/2088;

(c) a financial instrument that considers principle adverse impact on sustainability factors where qualitative or quantitative elements demonstrate that consideration are determined by the customer or potential customers.

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## CHAPTER II Taking-up of business

### Article 14 Principle of authorisation

1. The taking-up of the business of direct insurance or reinsurance covered by this Directive shall be subject to prior authorisation.
2. The authorisation referred to in paragraph 1 shall be sought from the supervisory authorities of the home Member State by the following:
   (a) any undertaking which is establishing its head office within the territory of that Member State; or
   (b) any insurance undertaking which, having received an authorisation pursuant to paragraph 1, wishes to extend its business to an entire insurance class or to insurance classes other than those already authorised.

### Article 15 Scope of authorisation

1. An authorisation pursuant to Article 14 shall be valid for the entire Community. It shall permit insurance and reinsurance undertakings to pursue business there, that authorisation covering also the right of establishment and the freedom to provide services.
2. Subject to Article 14, authorisation shall be granted for a particular class of direct insurance as listed in Part A of Annex I or in Annex II. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class.
   The risks included in a class shall not be included in any other class except in the cases referred to in Article 16.
   Authorisation may be granted for two or more of the classes, where the national law of a Member State permits such classes to be pursued simultaneously.
3. In regard to non-life insurance, Member States may grant authorisation for the groups of classes listed in Part B of Annex I.
   The supervisory authorities may limit authorisation requested for one of the classes to the operations set out in the scheme of operations referred to in Article 23.
4. Undertakings subject to this Directive may engage in the assistance activity referred to in Article 6 only if they have received authorisation for class 18 in Part A of Annex I, without prejudice to Article 16(1). In that event this Directive shall apply to the operations in question.
5. In regard to reinsurance, authorisation shall be granted for non-life reinsurance activity, life reinsurance activity or all kinds of reinsurance activity.
   The application for authorisation shall be considered in the light of the scheme of operations to be submitted pursuant to Article 18(1)(c) and the fulfilment of the conditions laid down for authorisation by the Member State from which the authorisation is sought.

### Article 16 Ancillary risks

1. An insurance undertaking which has obtained an authorisation for a principal risk belonging to one class or a group of classes as set out in Annex I may also insure risks included in another class without the need to obtain authorisation in respect of such risks provided that the risks fulfil all the following conditions:
   (a) they are connected with the principal risk;
   (b) they concern the object which is covered against the principal risk; and
   (c) they are covered by the contract insuring the principal risk.
2. By way of derogation from paragraph 1, the risks included in classes 14, 15 and 17 in Part A of Annex I shall not be regarded as risks ancillary to other classes.

However, legal expenses insurance as set out in class 17 may be regarded as a risk ancillary to class 18, where the conditions laid down in paragraph 1 and either of the following conditions are fulfilled:

(a) the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence; or

(b) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels.

**Article 17 Legal form of the insurance or reinsurance undertaking**

1. The home Member State shall require every undertaking for which authorisation is sought under Article 14 to adopt one of the legal forms set out in Annex III.
2. Member States may set up undertakings of a form governed by public law, provided that such bodies have insurance or reinsurance operations as their object, under conditions equivalent to those under which undertakings governed by private law operate.

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3. The Commission may adopt delegated acts in accordance with Article 301a relating to the lists of forms set out in Annex III, excluding points 28 and 29 of each of Parts A, B and C.

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**Article 18 Conditions for authorisation**

1. The home Member State shall require every undertaking for which authorisation is sought:
   (a) in regard to insurance undertakings, to limit their objects to the business of insurance and operations arising directly therefrom, to the exclusion of all other commercial business;
   (b) in regard to reinsurance undertakings, to limit their objects to the business of reinsurance and related operations; that requirement may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2(8) of Directive 2002/87/EC;
   (c) to submit a scheme of operations in accordance with Article 23;
   (d) to hold the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement provided for in Article 129(1)(d);
   (e) to show evidence that it will be in a position to hold eligible own funds to cover the Solvency Capital Requirement, as provided for in Article 100, going forward;
   (f) to show evidence that it will be in a position to hold eligible basic own funds to cover the Minimum Capital Requirement, as provided for in Article 128, going forward;
   (g) to show evidence that it will be in a position to comply with the system of governance referred to in Chapter IV, Section 2;
   (h) in regard to non-life insurance, to communicate the name and address of all claims representatives appointed pursuant to Article 4 of Directive 2000/26/EC in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of Part A of Annex I to this Directive, other than carrier's liability
   (i) to indicate whether a request in another Member State for an authorisation to take up the business of direct insurance or reinsurance or to take up the business of another regulated undertaking or insurance distributor has been rejected or withdrawn, and the reasons for the rejection or withdrawal.
2. An insurance undertaking seeking authorisation to extend its business to other classes or to extend an authorisation covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article 23.
   It shall, in addition, be required to show proof that it possesses the eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement provided for in the first paragraph of Article 100 and Article 128.
3. Without prejudice to paragraph 2, an insurance undertaking pursuing life activities, and seeking authorisation to extend its business to the risks listed in classes 1 or 2 in Part A of Annex I as referred to in Article 73, shall demonstrate that it:

(a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in Article 129(1)(d);

(b) undertakes to cover the minimum financial obligations referred to in Article 74(3), going forward.

4. Without prejudice to paragraph 2, an insurance undertaking pursuing non-life activities for the risks listed in classes 1 or 2 in Part A of Annex I, and seeking authorisation to extend its business to life insurance risks as referred to in Article 73, shall demonstrate that it:
   (a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in Article 129(1)(d);
   (b) undertakes to cover the minimum financial obligations referred to in Article 74(3) going forward.

**Article 19 Close links**

Where close links exist between the insurance undertaking or reinsurance undertaking and other natural or legal persons, the supervisory authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The supervisory authorities shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the insurance or reinsurance undertaking has close links, or difficulties involved in the enforcement of those measures, prevent the effective exercise of their supervisory functions.

The supervisory authorities shall require insurance and reinsurance undertakings to provide them with the information they require to monitor compliance with the conditions referred to in the first paragraph on a continuous basis.

**Article 20 Head office of insurance undertakings and reinsurance undertakings**

Member States shall require that the head offices of insurance and reinsurance undertakings be situated in the same Member State as their registered offices.

**Article 21 Policy conditions and scales of premiums**

1. Member States shall not require the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases, used in particular for calculating scales of premiums and technical provisions, or of forms and other printed documents which an undertaking intends to use in its dealings with policy holders or ceding or retroceding undertakings.

   However, for life insurance and for the sole purpose of verifying compliance with national provisions concerning actuarial principles, the home Member State may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions. That requirement shall not constitute a prior condition for the authorisation of a life insurance undertaking.
2. Member States shall not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.
3. Member States may subject undertakings seeking or having obtained authorisation for class 18 in Part A of Annex I to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to such undertakings to meet their commitments arising out of that class.
4. Member States may maintain in force or introduce laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and communication of any other documents necessary for the normal exercise of supervision.

**Article 22 Economic requirements of the market**

Member States shall not require that any application for authorisation be considered in the light of the economic requirements of the market.

**Article 23 Scheme of operations**

1. The scheme of operations referred to in Article 18(1)(c) shall include particulars or evidence of the following:
   (a) the nature of the risks or commitments which the insurance or reinsurance undertaking concerned proposes to cover;
   (b) the kind of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;
   (c) the guiding principles as to reinsurance and to retrocession;
   (d) the basic own-fund items constituting the absolute floor of the Minimum Capital Requirement;

(e) estimates of the costs of setting up the administrative services and the organisation for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in Part A of Annex I, the resources at the disposal of the insurance undertaking for the provision of the assistance promised;

(f) the Member States, third countries and, where authorisations to take up and pursue the business of insurance or reinsurance is granted at the level of geographical areas within countries, relevant geographical areas of third countries, where the insurance or reinsurance undertaking concerned intends to operate.

2. In addition to the requirements set out in paragraph 1, for the first three financial years the scheme shall include the following:
   (a) a forecast balance sheet;
   (b) estimates of the future Solvency Capital Requirement, as provided for in Chapter VI, Section 4, Subsection 1, on the basis of the forecast balance sheet referred to in point (a), as well as the calculation method used to derive those estimates;
   (c) estimates of the future Minimum Capital Requirement, as provided for in Articles 128 and 129, on the basis of the forecast balance sheet referred to in point (a), as well as the calculation method used to derive those estimates;
   (d) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement;
   (e) in regard to non-life insurance and reinsurance, also the following:
      (i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
      (ii) estimates of premiums or contributions and claims;
   (f) in regard to life insurance, also a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

**Article 24 Shareholders and members with qualifying holdings**

1. The supervisory authorities of the home Member State shall not grant to an undertaking an authorisation to take up the business of insurance or reinsurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.
   Those authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an insurance or reinsurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.
2. For the purposes of paragraph 1, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issues whose securities are admitted to trading on a regulated market[10], as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.
   Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point (6) of Section A of Annex I to Directive 2014/65/EU~~Directive 2004/39/EC~~, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of the acquisition.

**Article 25 Refusal of authorisation**

Any decision to refuse an authorisation shall state full reasons and shall be notified to the undertaking concerned.

Each Member State shall make provision for a right to apply to the courts where an authorisation is refused.

Such provision shall also be made with regard to cases where the supervisory authorities have not dealt with an application for an authorisation within six months, or within eight months in cases of joint assessment pursuant to Article 26(4), of the date of its receipt.

10 OJ L 390, 31.12.2004, p. 38.

Each refusal of an authorisation, including the identification of the applicant undertaking and the reasons for refusal shall be notified to the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('EIOPA') established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[11]. EIOPA shall keep an updated database with such information and grant access to the database to supervisory authorities.

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**Article 25a Notification and publication of authorisations or withdrawals of authorisation**

Every authorisation or withdrawal of authorisation shall be notified to ~~the European Supervisory Authority (European Insurance and Occupational Pensions Authority) ('~~EIOPA~~') established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council~~ [12]. The name of each insurance or reinsurance undertaking to which authorisation has been granted shall be entered on a list. EIOPA shall publish and keep up to date that list on its website.

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**Article 26 Prior consultation of the authorities of other Member States**

1. The supervisory authorities of any other Member State concerned shall be consulted prior to the granting of an authorisation to:
   (a) a subsidiary of an insurance or reinsurance undertaking authorised in that Member State;
   (b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in that Member State; or
   (c) an undertaking controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in that Member State.
2. The authorities of a Member State involved which are responsible for the supervision of credit institutions or investment firms shall be consulted prior to the granting of an authorisation to an insurance or reinsurance undertaking which is:
   (a) a subsidiary of a credit institution or investment firm authorised in the Community;
   (b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or
   (c) an undertaking controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.
3. The relevant authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions involved in the management of another entity of the same group.
   They shall inform each other of any information regarding the suitability of shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions which is of relevance to the other competent authorities concerned for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.
4. Where several supervisory authorities need to be consulted pursuant to paragraph 1, any supervisory authority concerned may request, within one month of the date of receipt the supervisory authority of the home Member State of the undertaking seeking authorisation to jointly assess the application for authorisation. The supervisory authority of the home Member State of the undertaking that seeks authorisation shall consider the conclusions of the joint assessment when taking its final decision.

**CHAPTER III Supervisory authorities and general rules**

**Article 27 Main objective of supervision**

Member States shall ensure that the supervisory authorities are provided with the necessary means, and have the relevant expertise, capacity, and mandate to achieve the main objective of supervision, namely the protection of policy holders and beneficiaries.

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11 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

12 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48.

**Article 28 Financial stability and pro-cyclicality**

Without prejudice to the main objective of supervision as set out in Article 27, Member States shall ensure that, in the exercise of their general duties, supervisory authorities shall duly consider the potential impact of their decisions on the stability of the financial systems concerned in the European Union, in particular in emergency situations, taking into account the information available at the relevant time.

In times of exceptional movements in the financial markets, supervisory authorities shall take into account the potential pro-cyclical effects of their actions.

**Article 29 General principles of supervision**

1. Supervision shall be based on a prospective and risk-based approach. It shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.
2. Supervision of insurance and reinsurance undertakings shall comprise an appropriate combination of off-site activities and on-site inspections.
3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking. Member States shall ensure such application in particular with respect to those undertakings classified as small and non-complex undertakings.

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4. The delegated acts and the regulatory and implementing technical standards adopted by the Commission shall take into account the principle of proportionality, ~~thus~~ thereby ensuring the proportionate application of this Directive, in particular in relation to small and non-complex undertakings~~small insurance undertakings~~.

   The draft regulatory technical standards submitted by EIOPA in accordance with Article 10 to 14 of Regulation (EU) No 1094/2010, the draft implementing technical standards submitted in accordance with Article 15 of that Regulation, ~~thereof~~ and the guidelines and recommendations issued in accordance with Article 16 of that Regulation~~thereof~~, shall ensure ~~take into account the principle of proportionality, thus ensuring the proportionate application of this Directive, in particular in relation to small insurance undertakings~~ the proportionate application of this Directive, in particular in relation to small and non-complex undertakings, specifying~~.~~

   (a) the methodology to be used when classifying insurance and reinsurance undertakings as small and non-complex;[13] and

   ~~(a)~~(b) the conditions for granting or withdrawing supervisory approval for proportionality measures to be used by undertakings not classified as small and non-complex undertakings referred to in Article 29d.[14]

**29a Criteria for identifying small and non-complex undertakings**

1. Member States shall ensure that undertakings are classified as mall and non-complex undertakings, according to the process set out in Article 29b, where, for two consecutive financial years directly prior to such classification, the undertakings meet the following criteria:

   a For undertakings pursuing life activities and for insurance undertakings pursuing both life and non-life activities whose technical provisions related to the life activities represent 20% or more of the total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, and whose annual gross written premium income related to the non-life activities represents less than 40% of the total annual gross written premium all of the following criteria shall be met:

   (i) the interest rate risk submodule referred to in Article 105(5), point (a), is not higher than 5% of the technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76;

   (ii) annual gross written premium income from business underwritten in Member States other than the home Member State where the undertaking received its authorisation in accordance with Article 14 is lower than any of the two following thresholds:

   - EUR 20 000 000; or
   - 10% of its total annual gross written premium income;

[13] The four column trilogue document says (Line 160c: "Similar provision needed for groups in Article 213a."

[14] The four column trilogue document says (Line 160c: "Similar provision needed for groups in Article 213a."

(iii) technical provisions from life activities, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, are not higher than EUR 1 000 000 000;

(iv) the sum of the following is not higher than 20% of total investments:

- the gross market risk module referred to in Article 105(5);
- the part of the counterparty default risk module referred to in Article 105(6), that corresponds to exposures to securitisations, derivatives, receivables from intermediaries and other investment assets which are not covered in the spread risk sub-module;
- any capital requirement that is applicable to investments in intangible assets that are not covered by the market risk and the counterparty default risk modules;

(v) the reinsurance accepted by the undertaking does not exceed 50% of its total annual gross written premium income;

(va) the Solvency Capital Requirement is complied with.

(b) For undertakings pursuing non-life activities and for undertakings pursuing both life and non-life activities whose annual gross written premium income related to the non-life activities represent 40% or more of its total annual gross written premium income and whose technical provisions related to the life activities represent less than the 20% of its total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, all of the following criteria shall be met:

(i) the average combined ratio for non-life activities net of reinsurance of the last three years is less than 100%;

(ii) annual gross written premium income from business underwritten in Member States other than the home Member State where the undertaking received its authorisation in accordance with Article 14 is lower than any of the two following thresholds:

- EUR 20 000 000; or
- 10% of its total annual gross written premium income;

(iii) the annual gross written premium income from non-life activities is not higher than EUR 100 000 000;

(iv) the sum of the annual gross written premiums in classes 5 to 7, 11, 12, 14 and 15 of Section A of Annex I is not higher than 30% of total annual written premiums of non-life business;

(v) the sum of the following is not higher than 20% of total investments:

- the gross market risk module referred to in Article 105(5);
- the part of the counterparty default risk module referred to in Article 105(6), that corresponds to exposures to securitisations, derivatives, receivables from intermediaries and other investment assets which are not covered in the spread risk sub-module;
- any capital requirement that is applicable to in intangible assets that are not covered by the market risk and the counterparty default risk modules;

(vi) the reinsurance accepted by the undertaking does not exceed 50% of its total annual gross written premium income.

(via) the Solvency Capital Requirement is complied with.

(c) For undertakings pursuing both life and non-life activities whose technical provisions related to the life activities represent 20% or more of its total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, and whose annual gross written premium income related to the non-life activities represents 40% or more of its total annual gross written premium income, all of the following criteria shall be met:

(i) the interest rate risk submodule referred to in Article 105(5), point (a), is not higher than 5% of the technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76;

(ii) the average combined ratio for non-life activities net of reinsurance of the last three years is less than 100%;

(iii) technical provisions from life activities, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, are not higher than EUR 1 000 000 000;

(iv) the annual gross written premium income from non-life activities is not higher than EUR 100 000 000;

(v) annual gross written premium income from business underwritten in Member States other than the home Member State where the undertaking received its authorisation in accordance with Article 14 is not higher than 5lower than any of the two following thresholds:

- EUR 20 000 000; or
- 10% of its total annual gross written premium income;

(vi) the sum of the annual gross written premium in classes 5 to 7, 11, 12, 14 and 15 of Section A of Annex I is not higher than 30% of total annual written premiums of non-life business;

(vii) the sum of the following is not higher than 20% of total investments:

- the gross market risk module referred to in Article 105(5);
- the part of the counterparty default risk module referred to in Article 105(6), that corresponds to exposures to securitisations, derivatives, receivables from intermediaries and other investment assets which are not covered in the spread risk sub-module;
- any capital requirement that is applicable to investments in intangible assets that are not covered by the market risk and the counterparty default risk modules;

(viii) the reinsurance accepted by the undertaking does not exceed 50% of its total annual gross written premium income.

(viiia) the Solvency Capital Requirement is complied with.

The criteria laid down in points (a)(ii) and (v), points (b)(ii) and (vi), and points (c)(v) and (viii) of the first subparagraph shall not apply to captive insurance undertakings and captive reinsurance undertakings.

By way of derogation from paragraph 1, captive insurance undertakings and captive reinsurance undertakings shall also be classified as small and non-complex undertakings where they do not comply with the criteria laid down in paragraph 1 provided they comply with both of the following criteria:

(a) all insured persons and beneficiaries are any of the following:

- legal entities of the group of which the captive insurance undertaking or captive reinsurance undertaking is part,
- natural persons eligible to be covered under that group's insurance policies, provided that the business covering those natural persons remains below 5% of technical provisions;

(b) the insurance obligations and the insurance contracts underlying the reinsurance obligations of the captive insurance undertaking or captive reinsurance undertaking do not consist of any compulsory third-party liability insurance.

2. For undertakings which have obtained authorisation in accordance with Article 14 for less than two years, compliance with the criteria set out in paragraph 1 of this Article shall be assessed with reference to the last financial year prior to the classification, or where the authorisation has been obtained for less than one year, the scheme of operations referred to in Article 23.

3. The following undertakings shall never be classified as small and non-complex undertakings:

(a) undertakings that use an approved partial or full internal model to calculate the Solvency Capital Requirement, in accordance with the requirements for full and partial internal models set out in Chapter VI, Section 4, Subsection 3;

(b) undertakings that are parent undertakings of a financial conglomerate within the meaning of Article 2, point 14 of Directive 2002/87/EC or of an insurance group within the meaning of Article 212, to which group supervision applies in accordance with Article 213(2), point (a) or (b), unless the group is classified as a small and non-complex group;

(c) undertakings that are the parent undertaking of an undertaking referred to in Article 228(1) points (a) to (e);

(d) undertakings that manage group pension funds within the meaning of Article 2(3)b(iii) and Article 2(3)b(iv), where the value of the assets of the group pension funds exceeds EUR 1 000 000 000.

**Article 29b Process of classification for undertakings complying with the criteria**

1. Member States shall ensure that undertakings complying with the conditions set out in Article 29a(1) and (3)29a may notify the supervisory authority of such compliance with a view to be classified as small and non-complex undertakings.
2. The notification referred to in paragraph 1 shall be submitted by the undertaking to the supervisory authority of the Member State that granted the prior authorisation referred to in Article 14. That notification shall include all of the following:
   (a) evidence of the compliance with all criteria set out in Article 29a applicable to that undertaking;
   (b) a declaration that the undertaking does not plan any strategic change that would lead to non-compliance with any of the criteria set out in Article 29a within the next three years;
   (c) an identification of the proportionality measures the undertaking expects to implement, in particular if the best estimate simplification is intended to be used and whether the undertaking plans to use the simplified method to calculate technical provisions laid down in Article 77(7).
3. The supervisory authority may oppose the classification as small and non-complex undertaking within two months of receipt of the complete notification referred to in paragraph 1 on grounds related exclusively to any of the following:
   (a) non-compliance with the criteria foreseen under Article 29a;
   (b) non-compliance with the Solvency Capital Requirement, assessed without the use of any of the transitional measures referred to in [Article 77a(2),] Article 308c, Article 308d and, where relevant, [Article 111(1), second subparagraph];
   (c) the undertaking represents more than 5% of the life market or, where applicable, non-life market in accordance with Article 35a(1) subparagraph 2 of the home Member State of the undertaking ("market share").

3d. A decision of the supervisory authority to oppose the classification shall be done in writing and state the reasons of the supervisory authority's disagreement. Absent such decision, the undertaking shall be classified as small and non-complex undertaking as of the end of the two months opposition period or an earlier date where the supervisory authority has issued a decision earlier confirming compliance with criteria.

4. With respect to requests received by supervisory authorities within the first six months of [OP please insert date = entry into application of this Directive], the period referred to in paragraph 3 shall be extended to four months.
5. An undertaking shall be classified as a small and non-complex undertaking for as long as such classification does not cease in accordance with this paragraph.
   Where a low small and non-complex undertaking no longer complies with any of the criteria set out in Article 29a(1) it shall inform the supervisory authority without delay. Where such non-compliance continuously persists over two consecutive years, the undertaking shall notify the supervisory authority of this situation, and will cease to be classified as small and non-complex undertaking as from the third financial year.
   When a small and non-complex undertaking no longer complies with any of the conditions set out in Article 29a(3), that undertaking shall notify the supervisory authority without delay and will cease to be classified as small and non-complex undertaking as from the following financial year.
6. A small and non-complex undertaking shall notify the supervisory authority where it intends to use more proportionality measures than those previously notified in accordance with paragraph 2(c), or where it intends to refrain from using one or more proportionality measures previously notified in accordance with paragraph 2(c).

**Article 29c Use of proportionality measures by undertakings classified as small and non-complex**

1. Member States shall ensure that undertakings classified as small and non-complex undertakings may use all the proportionality measures.
2. By way of derogation from paragraph 1, where the supervisory authority has serious concerns in relation to the risk profile of a small and non-complex undertaking, the supervisory authority may request the undertaking concerned to refrain from using one or several proportionality measures listed in paragraph 1 provided this is duly justified in writing with reference to the specific concerns relating to the risk profile of the undertaking. A serious concern exists in any of the following:

- the solvency capital requirement is no longer complied with, or there is a risk of non-compliance in the following three months assessed, where applicable, without the use of any of the transitional measures referred to in [Article 77a(2)], Article 308c, Article 308d and, where relevant, [Article 111(1), second subparagraph] ; or
- the undertaking's system of governance in accordance with Article 41 is ineffective; or
- material changes in the risk profile of the undertaking may lead to significant non-compliance of any of the criteria set out in Article 29a(1).

**Article 29d Use of proportionality measures by undertakings not classified as small and non-complex undertakings**

1. Member States shall ensure that insurance and reinsurance undertakings that are not classified as low small and non-complex undertakings may use only proportionality measures provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 77(7) and Article 144a(4) and proportionality measures provided for in the delegated acts adopted pursuant to this Directive explicitly applicable to small and non-complex undertakings in accordance with Article 29c and which measures are identified for the purpose of this Article, subject to prior approval from the supervisory authority.
   The insurance or reinsurance undertaking shall submit a request in writing for approval to the supervisory authority. That request shall include all of the following:
   (a) the list of the proportionality measures intended to be used and the reasons why their use is justified in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;
   (b) any other material information regarding the risk profile of the undertaking;
   (c) a declaration that the undertaking does not plan any strategic change that would have an impact on the risk profile of the undertaking within the next three years.
2. The supervisory authority shall, within two months of receipt, assess the request and inform the undertaking of its approval or rejection, as well as of the proportionality measures granted. Where the supervisory authority approves the use of proportionality measures under certain terms or conditions, the approval decision shall contain the reasons for those terms and conditions. A decision of the supervisory authority to oppose the use of one or several proportionality measures listed in the request submitted by the undertaking shall be done in writing, and state the reasons for the supervisory authority's decision. Such reasons shall be linked to the risk profile of the undertaking.
3. The supervisory authority may request any further information that is necessary to complete the assessment. The assessment period referred to in paragraph 2 shall be suspended for the period between the date of request for information by the supervisory authorities and the receipt of a response thereto by the concerned undertaking. Any further requests by the supervisory authority shall not result in a suspension of the assessment period.
4. With respect to requests received by supervisory authorities within the first six months of [OP please insert date = date of application of this Directive], the period referred to in paragraph 2 shall be four months.
5. Approval to use proportionality measures may be amended or withdrawn at any point in time if the insurance or reinsurance undertaking's risk profile has changed. The authority shall state in writing the reasons of its decision accordingly.
6. The insurance or reinsurance undertaking shall notify the supervisory authority where it intends to refrain from using one or more proportionality measures previously requested in accordance with paragraph 1(a).

**Article 29e Monitoring of the use of proportionality measures**

1. Within one year from their classification as small and non-complex undertaking, insurance and reinsurance undertakings shall report to their supervisory authorities information on the proportionality measures used as part of the information to be provided for supervisory purposes referred to in Article 35. Where undertakings intend to change the list of proportionality measures effectively used, they shall notify their supervisory authorities immediately.

1a. Where insurance and reinsurance undertakings which use proportionality measures pursuant to Article 29d decide to stop applying any such proportionality measures, they shall notify their supervisory authorities thereof.

2. Insurance and reinsurance undertakings applying any proportionality measure that correspond to existing measures under this Directive by [OP please insert date = entry into force of this

Directive] may continue to apply such measures without applying requirements set out in Articles 29b, 29c and 29d , for a period not exceeding four financial years.

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**Article 30 Supervisory authorities and scope of supervision**

1. The financial supervision of insurance and reinsurance undertakings, including that of the business they pursue either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State.
2. Financial supervision pursuant to paragraph 1 shall include verification, with respect to the entire business of the insurance and reinsurance undertaking, of its system of governance, state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds, in accordance with the rules laid down or practices followed in the home Member State under provisions adopted at Community level.
   Where the insurance undertaking concerned is authorised to cover the risks classified in class 18 in Part A of Annex I, supervision shall extend to monitoring of the technical resources which the insurance undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform, where the law of the home Member State provides for the monitoring of such resources.
3. If the supervisory authorities of the Member State in which the risk is situated or the Member State of the commitment or, in case of a reinsurance undertaking, the supervisory authorities of the host Member State, have reason to consider that the activities of an insurance or reinsurance undertaking might affect its financial soundness, they shall inform the supervisory authorities of the home Member State of that undertaking.
   The supervisory authorities of the home Member State shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.

**Article 31 Transparency and accountability**

1. The supervisory authorities shall conduct their tasks in a transparent and accountable manner with due respect for the protection of confidential information.
2. Member States shall ensure that the following information is disclosed:
   (a) the texts of laws, regulations, administrative rules and general guidance in the field of insurance regulation;
   (b) the general criteria and methods, including the tools developed in accordance with Article 34(4), used in the supervisory review process as set out in Article 36;
   (c) aggregate statistical data on key aspects of the application of the prudential framework;
   (d) the manner of exercise of the options provided for in this Directive;
   (e) the objectives of the supervision and its main functions and activities.
   The disclosure provided for in the first subparagraph shall be sufficient to enable a comparison of the supervisory approaches adopted by the supervisory authorities of the different Member States.
   The disclosure shall be made in a common format and be updated regularly. The information referred to in points (a) to (e) of the first subparagraph shall be accessible at a single electronic location in each Member State.
3. Member States shall provide for transparent procedures regarding the appointment and dismissal of the members of the governing and managing bodies of their supervisory authorities.

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4. Without prejudice to Article 35, Article 51, Article 254(2) and Article 256, the Commission shall adopt delegated acts in accordance with Article 301a relating to paragraph 2 of this Article, specifying the key aspects on which aggregate statistical data are to be disclosed, and the contents list and publication date of the disclosures.
5. In order to ensure uniform conditions relating to the application of paragraph 2 of this Article, and without prejudice to Article 35, Article 51, Article 254(2) and Article 256, EIOPA shall develop draft implementing technical standards to specify the templates and structure of the disclosure provided for in this Article.
   EIOPA shall submit those draft implementing technical standards to the Commission by 30 September 2015.
   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

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**Article 32 Prohibition of refusal of reinsurance contracts or retrocession contracts**

1. The home Member State of an insurance undertaking shall not refuse a reinsurance contract concluded with a reinsurance undertaking or an insurance undertaking authorised in accordance with Article 14 on grounds directly related to the financial soundness of that reinsurance undertaking or that insurance undertaking.
2. The home Member State of the reinsurance undertaking shall not refuse a retrocession contract concluded by a reinsurance undertaking with a reinsurance undertaking or an insurance undertaking authorised in accordance with Article 14 on grounds directly related to the financial soundness of that reinsurance undertaking or that insurance undertaking.

**Article 33 Supervision of branches established in another Member State**

Member States shall provide that, where an insurance or reinsurance undertaking authorised in another Member State carries on business through a branch, the supervisory authorities of the home Member State may, after having informed the supervisory authorities of the host Member State concerned, carry out themselves, or through the intermediary of persons appointed for that purpose, on-site verifications of the information necessary to ensure the financial supervision of the undertaking.

The authorities of the host Member State concerned may participate in those verifications.

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Where a supervisory authority has informed the supervisory authorities of a host Member State that it intends to carry out on-site verifications in accordance with the first paragraph and where that supervisory authority is prohibited from exercising its right to carry out those on-site verifications or where the supervisory authorities of the host Member State are unable in practice to exercise their right to participate in accordance with the second paragraph, the supervisory authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

In accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA may participate in on-site examinations where they are carried out jointly by two or more supervisory authorities.

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**Article 34 General supervisory powers**

1. Member States shall ensure that the supervisory authorities have the power to take preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions with which they have to comply in each Member State.
2. The supervisory authorities shall have the power to take any necessary measures, including where appropriate, those of an administrative or financial nature, with regard to insurance or reinsurance undertakings, and the members of their administrative, management or supervisory body.
3. Member States shall ensure that supervisory authorities have the power to require all information necessary to conduct supervision in accordance with Article 35.
4. Member States shall ensure that supervisory authorities have the power to develop, in addition to the calculation of the Solvency Capital Requirement and where appropriate, necessary quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. The supervisory authorities shall have the power to require that corresponding tests are performed by the undertakings.
5. The supervisory authorities shall have the power to carry out on-site investigations at the premises of the insurance and reinsurance undertakings.
6. Supervisory powers shall be applied in a timely and proportionate manner.
7. The powers with regard to insurance and reinsurance undertakings referred to in paragraphs 1 to 5 shall also be available with regard to outsourced activities of insurance and reinsurance undertakings.
8. The powers referred to in paragraphs 1 to 5 and 7 shall be exercised, if need be by enforcement and, where appropriate, through judicial channels.

**Article 35 Information to be provided for supervisory purposes**

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1. Member States shall require insurance and reinsurance undertakings to submit to the supervisory authorities the information which is necessary for the purposes of supervision, taking into account the objectives of supervision laid down in Articles 27 and 28 and the general principles of supervision laid down in Article 29, in particular the principle of proportionality. Such information shall include at least the information necessary for the following when performing the process referred to in Article 36:

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   (a) to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, needs and management;
   (b) to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.

2. Member States shall ensure that the supervisory authorities have the following powers:
   (a) to determine the nature, the scope and the format of the information referred to in paragraph 1 which they require insurance and reinsurance undertakings to submit at the following points in time:
      (i) at predefined periods;
      (ii) upon occurrence of predefined events;
      (iii) during enquiries regarding the situation of an insurance or reinsurance undertaking;
   (b) to obtain any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties; and
   (c) to require information from external experts, such as auditors and actuaries.

3. The information referred to in paragraphs 1 and 2 shall comprise the following:
   (a) qualitative or quantitative elements, or any appropriate combination thereof;
   (b) historic, current or prospective elements, or any appropriate combination thereof; and
   (c) data from internal or external sources, or any appropriate combination thereof.

4. The information referred to in paragraphs 1 and 2 shall comply with the following principles:
   (a) it must reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in that business;
   (b) it must be accessible, complete in all material respects, comparable and consistent over time; and
   (c) it must be relevant, reliable and comprehensible.

5. Member States shall require insurance and reinsurance undertakings to have appropriate systems and structures in place to fulfil the requirements laid down in paragraphs 1 to 4 as well as a written policy, approved by the administrative, management or supervisory body of the insurance or reinsurance undertaking, ensuring the ongoing appropriateness of the information submitted.

5a. Taking into account the information required in paragraphs 1, 2, and 3 and the principles set out in paragraph 4, Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities a regular supervisory report that comprises information on the undertaking's business and performance, system of governance, risk profile, valuation for solvency purposes and capital management over the reporting period.

The frequency of the regular supervisory report shall be:

(a) every three years, for small and non-complex undertakings, or, where permitted by the supervisory authority, up to five years;

(b) every three years for insurance and reinsurance undertakings other than small and non-complex undertakings;

For the purpose of point (b), if deemed necessary, a supervisory authority may require supervised undertakings to report more frequently.[15]

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~~6. Without prejudice to Article 129(4), where the predefined periods referred to in paragraph 2(a)(i) are shorter than one year, the supervisory authorities concerned may limit regular supervisory reporting, where:~~

~~(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;~~

[15] The four column trilogue document says (Line 240a): "Linked to line 239. Consider if line 239 equals five years then line 240a is ok; if line 239 equals three years, line 240a only to apply to point(b)." Line 239 refers to para 5a(a).

(b) the information is reported at least annually.

Supervisory authorities shall not limit regular supervisory reporting with a frequency shorter than one year in the case of insurance or reinsurance undertakings that are part of a group within the meaning of Article 212(1)(c), unless the undertaking can demonstrate to the satisfaction of the supervisory authority that regular supervisory reporting with a frequency shorter than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.

The limitation to regular supervisory reporting shall be granted only to undertakings that do not represent more than 20% of a Member State's life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

Supervisory authorities shall give priority to the smallest undertakings when determining the eligibility of the undertakings for those limitations.

7. The supervisory authorities concerned may limit regular supervisory reporting or exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where:
   (a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;
   (b) the submission of that information is not necessary for the effective supervision of the undertaking;
   (c) the exemption does not undermine the stability of the financial systems concerned in the Union; and
   (d) the undertaking is able to provide the information on an ad-hoc basis.

   Supervisory authorities shall not exempt from reporting on an item-by-item basis insurance or reinsurance undertakings that are part of a group within the meaning of Article 212(1)(c), unless the undertaking can demonstrate to the satisfaction of the supervisory authority that reporting on an item-by-tem basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

   The exemption from reporting on an item-by-item basis shall be granted only to undertakings that do not represent more than 20% of a Member State's life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

   Supervisory authorities shall give priority to the smallest undertakings when determining the eligibility of the undertakings for those exemptions.

8. For the purposes of paragraphs 6 and 7, as part of the supervisory review process, supervisory authorities shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least:
   (a) the volume of premiums, technical provisions and assets of the undertaking;
   (b) the volatility of the claims and benefits covered by the undertaking;
   (c) the market risks that the investments of the undertaking give rise to;
   (d) the level of risk concentrations;
   (e) the total number of classes of life and non-life insurance for which authorisation is granted;
   (f) possible effects of the management of the assets of the undertaking on financial stability;
   (g) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in paragraph 5;
   (h) the appropriateness of the system of governance of the undertaking;
   (i) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement;
   (j) whether the undertaking is a captive insurance or reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

9. The Commission shall adopt delegated acts in accordance with Article 301a specifying the information referred to in paragraphs 1 to 4 of this Article and the deadlines for the submission of that information, with a view to ensuring to the appropriate extent convergence of supervisory reporting.:
   (a) the information referred to in paragraphs 1 to 4 of this Article;
   (b) the criteria for limited supervisory reporting for captive insurance undertakings and reinsurance captive undertakings considering the nature, scale and complexity of the risks of these specific types of undertakings with a view to ensuring, to the appropriate extent, convergence of supervisory reporting.

10. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on regular supervisory reporting with regard to the templates for the submission of information to the supervisory authorities referred to in paragraphs 1 and 2, including the risk-based thresholds establishing the trigger for reporting requirements when applicable or any exemption of specific information for certain types of undertakings such as captive insurance and reinsurance undertakings considering the nature, scale and complexity of the risks of specific types of undertakings. EIOPA shall develop IT solutions, including reporting templates and instructions for the reporting referred to in paragraphs 1 to 2.
EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

~~11. In order to enhance a coherent and consistent application of paragraphs 6 and 7, EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to further specify the methods to be used when determining the market shares referred to in the third subparagraph of paragraphs 6 and 7.~~

12. By [OP please insert date = 2 years after publication date], EIOPA shall submit to the Commission a report on potential measures, including legislative changes, to develop an integrated data collection to:
(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the insurance sector and other sectors of the financial industry;
(b) improve data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant competent authority, both Union and national; and
(ba) reduce compliance costs.
EIOPA shall prioritise, but not limit itself to information concerning the areas of collective investment undertakings and derivatives reporting.
When preparing the report referred to in the first subparagraph, EIOPA shall work in close cooperation with the other European Supervisory Authorities and the European Central Bank and shall, where relevant, involve the national competent authorities.

**Article 35a Exemptions and limitations to quantitative regular supervisory reporting granted by supervisory authorities**

1. Without prejudice to Article 129(4), where the predefined periods referred to in Article 35(2), point (a)(i) are shorter than one year the supervisory authorities concerned may limit regular supervisory reporting, where:
(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;
(b) the information is reported at least annually.
That limitation to regular supervisory reporting shall be granted only to undertakings that collectively do not represent more than 20% of a Member State's life and non-life insurance and reinsurance market respectively, where the non-life market share is
Based on gross written premiums and the life market share is based on gross technical provisions.
When determining the eligibility of undertakings for those limitations, supervisory authorities shall give priority to small and non-complex undertakings.
2. The supervisory authorities concerned may limit regular supervisory reporting, or exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where:
(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;
(b) the submission of that information is not necessary for the effective supervision of the undertaking;
(c) the exemption does not undermine the stability of the financial systems concerned in the Union; and
(d) the undertaking is able to provide the information upon request.
The exemption from reporting on an item-by-item basis shall be granted only to undertakings that collectively do not represent more than 20% of a Member State's life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions. When

determining the eligibility of undertakings for those limitations or exemptions, supervisory authorities shall give priority to small and non-complex undertakings.

3. Captive insurance undertakings and captive reinsurance undertakings shall be exempted from regular supervisory reporting on an item-by-item basis where the predefined periods referred to in Article 35(2), point (a)(i), are shorter than one year, provided that they comply with both of the following conditions:
   (a) all insured persons and beneficiaries are any of the following:
      - legal entities of the group of which the captive insurance undertaking or captive reinsurance undertaking is part,
      - natural persons eligible to be covered under that group's insurance policies, provided that the business covering those natural persons remains below 5% of technical provisions;
   (b) the insurance obligations and the insurance contracts underlying the reinsurance obligations of the captive insurance undertaking or captive reinsurance undertaking do not consist of any compulsory third-party liability insurance.
4. For the purposes of paragraphs 1 and 2, as part of the supervisory review process, in respect of undertakings classified as small and non-complex undertakings, supervisory authorities shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least:
   (a) the market risks that the investments of the undertaking give rise to;
   (b) the level of risk concentrations;
   (c) possible effects of the management of the assets of the undertaking on financial stability;
   (d) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in Article 35(5).
5. For the purposes of paragraphs 1 and 2, as part of the supervisory review process, in respect of undertakings not classified as small and non-complex undertakings, supervisory authorities shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least, points (a) to (d) of paragraph 4 and the following:
   (a) the volume of premiums, technical provisions and assets of the undertaking;
   (b) the volatility of the claims and benefits covered by the undertaking;
   (c) the total number of classes of life and non-life insurance for which authorisation is granted;
   (d) the appropriateness of the system of governance of the undertaking;
   (e) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement;
   (f) whether the undertaking is a captive insurance undertaking or a captive reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.
6. In order to ensure the coherent and consistent application of paragraphs 1 to 5 of this Article, EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) 1094/2010 to further specify:
   (a) the methods for determining the market shares referred to in paragraph 1, second subparagraph, and in paragraph 2, third subparagraph, of this Article;
   (b) the process to be used by the supervisory authorities to inform the insurance and reinsurance undertakings about any limitation or exemption referred to in this Article.

**Article 35b Reporting deadlines**

1. Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in Article 35(1) to (4) on an annual or less frequent basis within 16 weeks following the undertaking's financial year end.
2. Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in Article 35(1) to (4) on a quarterly basis no later than five weeks after the end of each quarter.
3. Member States shall ensure that insurance and reinsurance undertakings submit the regular supervisory report referred to in Article 35(5a) no later than 18 weeks after the undertaking's financial year ends.

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**Article 36 Supervisory review process**

1. Member States shall ensure that the supervisory authorities review and evaluate the strategies, processes and reporting procedures which are established by the insurance and reinsurance undertakings to comply with the laws, regulations and administrative provisions adopted pursuant to this Directive.

   That review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.

2. The supervisory authorities shall in particular review and evaluate compliance with the following:
   (a) the system of governance, including the fit and proper requirements, as set out in Article 42 and the own-risk and solvency assessment, as set out in Chapter IV, Section 2;
   (b) the technical provisions as set out in Chapter VI, Section 2;
   (c) the capital requirements as set out in Chapter VI, Sections 4 and 5;
   (d) the investment rules as set out in Chapter VI, Section 6;
   (e) the quality and quantity of own funds as set out in Chapter VI, Section 3;
   (f) where the insurance or reinsurance undertaking uses a full or partial internal model, ongoing compliance with the requirements for full and partial internal models set out in Chapter VI, Section 4, Subsection 3.

3. The supervisory authorities shall have in place appropriate monitoring tools that enable them to identify deteriorating financial conditions in an insurance or reinsurance undertaking and to monitor how that deterioration is remedied.

4. The supervisory authorities shall assess the adequacy of the methods and practices of the insurance and reinsurance undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned.

   The supervisory authorities shall assess the ability of the undertakings to withstand those possible events or future changes in economic conditions.

5. The supervisory authorities shall have the necessary powers to require insurance and reinsurance undertakings to remedy weaknesses or deficiencies identified in the supervisory review process.

6. The reviews, evaluations and assessments referred to in paragraphs 1, 2 and 4 shall be conducted regularly.

   The supervisory authorities shall establish the minimum frequency and the scope of those reviews, evaluations and assessments having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

**Article 37 Capital add-on**

1. Following the supervisory review process supervisory authorities may in exceptional circumstances set a capital add-on for an insurance or reinsurance undertaking by a decision stating the reasons. That possibility shall exist only in the following cases:
   (a) the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with Chapter VI, Section 4, Subsection 2 and:
      (i) the requirement to use an internal model under Article 119 is inappropriate or has been ineffective; or
      (ii) while a partial or full internal model is being developed in accordance with Article 119;

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   (b) the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with Chapter VI, Section 4, Subsection 3, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

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(c) the supervisory authority concludes that the system of governance of an insurance or reinsurance undertaking deviates significantly from the standards laid down in Chapter IV, Section 2, that those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to and that the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe;

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(d) the insurance or reinsurance undertaking applies the matching adjustment referred to in Article 77b, the volatility adjustment referred to in Article 77d or the transitional measures referred to in Articles 308c and 308d and the supervisory authority concludes that the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures.

(e) the insurance or reinsurance undertaking applies one of the transitional measures referred to in Articles 308c and 308d and all of the following conditions are met:

(i) the undertaking would not comply with the Solvency Capital Requirement without application of the transitional measure;

(ii) the undertaking has failed to submit to the supervisory authority either the initial phasing-in plan within the required period as set out in of Article 308e, second paragraph, or the required annual report as set out the third paragraph of that Article.

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2. In the circumstances set out in points (a) and (b) of paragraph 1, the capital add-on shall be calculated in such a way as to ensure that the undertaking complies with Article 101(3).

In the circumstances set out in paragraph 1(c) the capital add-on shall be proportionate to the material risks arising from the deficiencies which gave rise to the decision of the supervisory authority to set the add-on.

In the circumstances set out in ~~paragraph 1(d),~~ paragraph 1, points (d) and (e), the capital add-on shall be proportionate to the material risks arising from the deviation and respectively the non-compliance referred to in ~~that paragraph~~those points.

In the circumstances set out in paragraph 1, points (d) and (e), the capital add-on shall be proportionate to the material risks arising from the deviation and respectively the non-compliance referred to in those points.

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3. In the cases set out in points (b) and (c) of paragraph 1 the supervisory authority shall ensure that the insurance or reinsurance undertaking makes every effort to remedy the deficiencies that led to the imposition of the capital add-on.

4. The capital add-on referred to in paragraph 1 shall be reviewed at least once a year by the supervisory authority and be removed when the undertaking has remedied the deficiencies which led to its imposition.

5. The Solvency Capital Requirement including the capital add-on imposed shall replace the inadequate Solvency Capital Requirement.

Notwithstanding the first subparagraph the Solvency Capital Requirement shall not include the capital add-on imposed in accordance with paragraph 1(c) for the purposes of the calculation of the risk margin referred to in Article 77(5).

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6. The Commission shall adopt delegated acts in accordance with Article 301a laying down further specifications for the circumstances under which a capital add-on may be imposed.

7. The Commission shall adopt delegated acts in accordance with Article 301a laying down further specifications for the methodologies for the calculation of capital add-ons.

8. In order to ensure uniform conditions of application in relation to this Article, EIOPA shall develop draft implementing technical standards on the procedures for decisions to set, calculate and remove capital add-ons.

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

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

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**Article 38 Supervision of outsourced functions and activities**

1. Without prejudice to Article 49, Member States shall ensure that insurance and reinsurance undertakings which outsource a function or an insurance or reinsurance activity take the necessary steps to ensure that the following conditions are satisfied:
   (a) the service provider must cooperate with the supervisory authorities of the insurance and reinsurance undertaking in connection with the outsourced function or activity;
   (b) the insurance and reinsurance undertakings, their auditors and the supervisory authorities must have effective access to data related to the outsourced functions or activities;
   (c) the supervisory authorities must have effective access to the business premises of the service provider and must be able to exercise those rights of access.
2. The Member State where the service provider is located shall permit the supervisory authorities of the insurance or reinsurance undertaking to carry out themselves, or through the intermediary of persons they appoint for that purpose, on-site inspections at the premises of the service provider. The supervisory authority of the insurance or reinsurance undertaking shall inform the appropriate authority of the Member State of the service provider prior to conducting the on-site inspection. In the case of a non-supervised entity the appropriate authority shall be the supervisory authority.

   The supervisory authorities of the Member State of the insurance or reinsurance undertaking may delegate such on-site inspections to the supervisory authorities of the Member State where the service provider is located.

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   Where a supervisory authority has informed the appropriate authority of the Member State of the service provider that it intends to carry out an on-site inspection in accordance with this paragraph, or where it carries out an on-site inspection in accordance with the first subparagraph where that supervisory authority is unable in practice to exercise its right to carry out that on-site inspection, the supervisory authority may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

   In accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site examination where they are carried out jointly by two or more supervisory authorities.

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**Article 39 Transfer of portfolio**

1. Under the conditions laid down by national law, Member States shall authorise insurance and reinsurance undertakings with head offices within their territory to transfer all or part of their portfolios of contracts, concluded either under the right of establishment or the freedom to provide services, to an accepting undertaking established within the Community.

   Such transfer shall be authorised only if the supervisory authorities of the home Member State of the accepting undertaking certify that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in the first paragraph of Article 100.
2. In the case of insurance undertakings paragraphs 3 to 6 shall apply.
3. Where a branch proposes to transfer all or part of its portfolio of contracts, the Member State where that branch is situated shall be consulted.
4. In the circumstances referred to in paragraphs 1 and 3, the supervisory authorities of the home Member State of the transferring insurance undertaking shall authorise the transfer after obtaining the agreement of the authorities of the Member States where the contracts were concluded, either under the right of establishment or the freedom to provide services.
5. The authorities of the Member States consulted shall give their opinion or consent to the authorities of the home Member State of the transferring insurance undertaking within three months of receiving a request for consultation.

   The absence of any response within that period from the authorities consulted shall be considered as tacit consent.
6. A transfer of portfolio authorised in accordance with paragraphs 1 to 5 shall be published either prior to or following authorisation, as laid down by the national law of the home Member State, of the Member State in which the risk is situated, or of the Member State of the commitment.

   Such transfers shall automatically be valid against policy holders, the insured persons and any other person having rights or obligations arising out of the contracts transferred.

The first and second subparagraphs of this paragraph shall not affect the right of the Member States to give policy holders the option of cancelling contracts within a fixed period after a transfer.

## CHAPTER IV Conditions governing business
## Section 1 Responsibility of the administrative, management or supervisory body

### Article 40 Responsibility of the administrative, management or supervisory body

Member States shall ensure that the administrative, management or supervisory body of the insurance or reinsurance undertaking has the ultimate responsibility for the compliance, by the undertaking concerned, with the laws, regulations and administrative provisions adopted pursuant to this Directive.

The members of the administrative, management and supervisory bodies of the insurance or reinsurance undertaking shall at all times be of good repute and possess collectively sufficient knowledge, skills and experience to perform their duties.

Members of the administrative, management and supervisory bodies shall not have been convicted for any serious or repeated offences relating to money laundering or terrorist financing or other offences that would question their good repute, during at least ten years preceding the year in which they are or would be performing their duties in the undertaking.

## Section 2 System of governance

### Article 41 General governance requirements

1. Member States shall require all insurance and reinsurance undertakings to have in place an effective system of governance which provides for sound and prudent management of the business.

   That system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. It shall include compliance with the requirements laid down in Articles 42 to 49.

   The system of governance shall be subject to regular internal review. Such internal review shall include an assessment on the adequacy of the composition, effectiveness and internal governance of the administrative, management or supervisory body taking into account the nature, scale and complexity of the risks inherent in the undertaking's business.

   Insurance and reinsurance undertakings shall put in place a policy promoting diversity in the administrative, management or supervisory body, including setting individual quantitative objectives related to gender-balance.

   EIOPA shall issue guidelines on the notion of diversity to be taken into account for the selection of members of the administrative, management or supervisory body.

2. The system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

2a. Member States shall require that insurance and reinsurance undertakings appoint different persons to carry-out the key functions of risk management, actuarial, compliance and internal audit, and that each such function is performed in an independent manner from the others in order to avoid conflicts of interest.

   When an undertaking has been classified as a small and non-complex undertaking, pursuant to Article 29b, and when an undertaking has obtained prior supervisory approval, pursuant to Article 29d, the persons responsible for the key functions of risk management, actuarial and compliance may also perform any other key function different from internal audit, any other function, or be a member of the administrative, management or supervisory body provided that the following conditions are met:

   (a) potential conflicts of interests are properly managed;

   (b) the combination of functions or the combination of a function with the condition of membership of the administrative, management or supervisory body does not compromise the person's ability to carry out her or his responsibilities.

3. Insurance and reinsurance undertakings shall have written policies in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing. They shall ensure that those policies are implemented.

   Those written policies shall be reviewed at least annually. They shall be subject to prior approval by the administrative, management or supervisory body and be adapted in view of any

significant change in the system or area concerned. Small and non-complex undertakings may perform a less frequent review, at least every five years, unless the supervisory authority concludes, based on the specific circumstances of that undertaking, that a more frequent review is needed.

4. Insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and procedures.
5. The supervisory authorities shall have appropriate means, methods and powers for verifying the system of governance of the insurance and reinsurance undertakings and for evaluating emerging risks identified by those undertakings which may affect their financial soundness.
   The Member States shall ensure that the supervisory authorities have the powers necessary to require that the system of governance be improved and strengthened to ensure compliance with the requirements set out in Articles 42 to 49.

**Article 42 Fit and proper requirements for persons who effectively run the undertaking or have other key functions**

1. Insurance and reinsurance undertakings shall ensure that all persons who effectively run the undertaking or have other key functions at all times fulfil the following requirements:
   (a) their professional qualifications, knowledge and experience are adequate to enable sound and prudent management (fit); and
   (b) they are of good repute and integrity (proper).
2. Insurance and reinsurance undertakings shall notify the supervisory authority of any changes to the identity of the persons who effectively run the undertaking or are responsible for other key functions, along with the reasons for the changes and all information needed to assess whether any new persons appointed to manage the undertaking are fit and proper.
3. Insurance and reinsurance undertakings shall notify their supervisory authority if any of the persons referred to in paragraphs 1 and 2 ~~have been replaced because they no longer fulfil the requirements referred to in paragraph 1.~~ no longer fulfil the requirements referred to in paragraph 1 or have been replaced for that reason.
4. Where a person who effectively runs the undertaking or has other key functions does not fulfil the requirements set out in paragraph 1, the supervisory authorities shall have the power to require the insurance and reinsurance undertaking to remove such person from that position.

**Article 43 Proof of good repute**

1. Where a Member State requires of its own nationals proof of good repute, proof of no previous bankruptcy, or both, that Member State shall accept as sufficient evidence in respect of nationals of other Member States the production of an extract from the judicial record or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the home Member State or the Member State from which the foreign national comes showing that those requirements have been met.
2. Where the home Member State or the Member State from which the foreign national concerned comes does not issue the document referred to in paragraph 1, it may be replaced by a declaration on oath – or in Member States where there is no provision for declaration on oath by a solemn declaration – made by the foreign national concerned before a competent judicial or administrative authority or, where appropriate, a notary in the home Member State or the Member State from which that foreign national comes.
   Such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.
   The declaration referred to in the first subparagraph in respect of no previous bankruptcy may also be made before a competent professional or trade body in the Member State concerned.
3. The documents and certificates referred to in paragraphs 1 and 2 shall not be presented more than three months after their date of issue.
4. Member States shall designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 and shall forthwith inform the other Member States and the Commission thereof.
   Each Member State shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in paragraphs 1 and 2 are to be submitted in support of an application to pursue in the territory of that Member State the activities referred to in Article 2.

**Article 44 Risk management**

1. Insurance and reinsurance undertakings shall have in place an effective risk-management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, at an individual and at an aggregated level, to which they are or could be exposed, and their interdependencies.
   That risk-management system shall be effective and well integrated into the organisational structure and in the decision-making processes of the insurance or reinsurance undertaking with proper consideration of the persons who effectively run the undertaking or have other key functions.
2. The risk-management system shall cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in Article 101(4) as well as the risks which are not or not fully included in the calculation thereof.
   The risk-management system shall cover at least the following areas:
   (a) underwriting and reserving;
   (b) asset–liability management;
   (c) investment, in particular derivatives and similar commitments;
   (d) liquidity and concentration risk management;
   (e) operational risk management, including cyber security as defined in Article 2, point (1), of Regulation (EU) 2019/881 of the European Parliament and of the Council[16];
   (f) reinsurance and other risk-mitigation techniques.
   The written policy on risk management referred to in Article 41(3) shall comprise policies relating to points (a) to (f) of the second subparagraph of this paragraph.

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   Where insurance or reinsurance undertakings apply the matching adjustment referred to in Article 77b or the volatility adjustment referred to in Article 77d, they shall set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.
   Where insurance or reinsurance undertakings apply the volatility adjustment referred to in Article 77d, their liquidity plans shall take into account the use of the volatility adjustment and assess whether liquidity constraints may arise which are not consistent with the use of the volatility adjustment.
   Insurance and reinsurance undertakings shall explicitly take into account the short, medium and long term horizon when assessing sustainability risks.
   For the purpose of the assessment referred to in the fifth subparagraph, the supervisory authorities shall ensure that undertakings, as part of their risk management, have strategies, policies, processes, and systems for the identification, measurement, management and monitoring of sustainability risks over the short, medium and long term.

2a. As regards asset-liability management, insurance and reinsurance undertakings shall regularly assess:
   (a) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in Article 77a;
   (b) where the matching adjustment referred to in Article 77b is applied:
      (i) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in Article 77c(1)(b), ~~and the possible effect of a forced sale of assets on their eligible own funds;~~;
      (ii) the sensitivity of their technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets;
      ~~(iii) the impact of a reduction of the matching adjustment to zero;~~
   (c) where the volatility adjustment referred to in Article 77d is applied, ~~:~~
      ~~(i)~~ the sensitivity of their technical provisions and eligible own funds to changes in the economic conditions that would affect the risk corrected spread referred to in Article 77d(3).~~the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on their eligible own funds;~~

16 Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act) (OJ L 151, 7.6.2019, p. 15).

~~(ii) the impact of a reduction of the volatility adjustment to zero.~~

Insurance and reinsurance undertakings shall submit the assessments referred to in points (a), (b) and (c) of the first subparagraph annually to the supervisory authority as part of the information reported under Article 35. Where the reduction of the matching adjustment or the volatility adjustment to zero would result in non-compliance with the Solvency Capital Requirement, the undertaking shall also submit an analysis of the measures it could apply in such a situation to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to restore compliance with the Solvency Capital Requirement. Where the volatility adjustment referred to in Article 77d is applied, the written policy on risk management referred to in Article 41(3) shall ~~comprise a policy on the criteria for the application of the volatility adjustment.~~ take account of the volatility adjustment.

2b. Member States shall ensure that insurance and reinsurance undertakings develop and monitor the implementation of specific plans, quantifiable targets, and processes to monitor and address the financial risks arising in the short, medium, and long-term from sustainability factors, including those arising from the process of adjustment and transition trends towards the relevant Member States and Union regulatory objectives and legal acts in relation to sustainability factors, in particular those set out in Regulation (EU) 2021/1119 (European Climate Law)[17].

The targets and measures to address the sustainability risks included in the plans referred to in the first subparagraph shall consider the latest reports and measures prescribed by the European Scientific Advisory Board on Climate Change, in particular in relation to the achievement of the climate targets of the Union. Where the undertaking discloses information on sustainability matters in accordance with Directive 2013/34/EU the plans referred to in the first subparagraph shall be consistent with the plans referred to in Article 19a or Article 29a of that Directive. In particular, the plans referred to in the first subparagraph shall include actions with regards to the business model and strategy of the undertaking that are consistent across both plans. Where relevant, the methodologies and assumptions sustaining the targets, the commitments and strategic decisions disclosed by undertakings to the public shall be consistent with the methodologies and assumptions included in the plans referred to in the first subparagraph.

The targets, processes and actions to address the sustainability risks included in the plans, referred to in this paragraph, shall be proportionate to the nature, scale, and complexity of the sustainability risks of the business model of the insurance and reinsurance activities, in accordance with Article 29(3).

2c. In order to ensure consistent application of this Article, EIOPA shall develop draft regulatory technical standards to further specify:

(a) minimum standards and reference methodologies for the identification, measurement, management and monitoring of sustainability risks;

(b) elements to be covered in the plans to be prepared in accordance with paragraph 2b and 2e, which shall include specific timelines and intermediate quantifiable targets and milestones, in order to monitor and address the financial risks stemming from sustainability factors, as well as the interlinkages with the requirements laid down in Article 45 and Article 45a;

(c) supervisory approaches in relation to the plans, quantifiable targets and processes, referred to in paragraph 2b and 2e.

(d) the elements of the plans referred to in paragraph 2b and 2e, to be disclosed, including the relevant quantifiable targets, in accordance with Article 51.

EIOPA shall submit those draft regulatory technical standards to the Commission by [PO please add date 12 months after entry into force of this amending Directive. Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10-14 of Regulation (EU) No 1094/2010.

2d. The undertaking shall disclose on an annual basis the quantifiable targets included in the plan referred to in paragraph 2b and 2e.

2e. Where a participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union is required to draw up a plan in accordance with paragraph 2b at the level of the group, Member States shall ensure that insurance and reinsurance subsidiaries which are covered by that plan and in the scope

[17] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021, p. 1–17.

of group supervision in accordance with Article 213 (2), points a) and b), are exempted from drawing up a plan at individual level in accordance with paragraph 2b.

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3. As regards investment risk, insurance and reinsurance undertakings shall demonstrate that they comply with Chapter VI, Section 6.

4. Insurance and reinsurance undertakings shall provide for a risk-management function which shall be structured in such a way as to facilitate the implementation of the risk-management system.

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4a. In order to avoid overreliance on external credit assessment institutions when they use external credit rating assessment in the calculation of technical provisions and the Solvency Capital Requirement, insurance and reinsurance undertakings shall assess the appropriateness of those external credit assessments as part of their risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.

In order to ensure uniform conditions of application of this paragraph, EIOPA shall develop draft implementing technical standards on the procedures for assessing external credit assessments.

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

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

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5. For insurance and reinsurance undertakings using a partial or full internal model approved in accordance with Articles 112 and 113 the risk-management function shall cover the following additional tasks:
   (a) to design and implement the internal model;
   (b) to test and validate the internal model;
   (c) to document the internal model and any subsequent changes made to it;
   (d) to analyse the performance of the internal model and to produce summary reports thereof;
   (e) to inform the administrative, management or supervisory body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses.

**Article 45 Own risk and solvency assessment**

1. As part of its risk-management system every insurance undertaking and reinsurance undertaking shall conduct its own risk and solvency assessment.

   That assessment shall include at least the following:
   (a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;
   (b) the compliance, on a continuous basis, with the capital requirements, as laid down in Chapter VI, Sections 4 and 5 and with the requirements regarding technical provisions, as laid down in Chapter VI, Section 2;
   (c) the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the Solvency Capital Requirement as laid down in Article 101(3), calculated with the standard formula in accordance with Chapter VI, Section 4, Subsection 2 or with its partial or full internal model in accordance with Chapter VI, Section 4, Subsection 3.
   (d) consideration and analysis of the macroeconomic situation, and possible macroeconomic and financial markets' developments;
   (e) upon a reasoned request of the supervisory authority, consideration and analysis of:
      (i) the macroprudential concerns that may affect the specific risk profile, the approved risk tolerance limits, the business strategy, the underwriting activities or the investment decisions, and the overall solvency needs of the undertaking referred to in point (a);
      (ii) the activities of the undertaking that may affect the macroeconomic and financial markets' developments, and have the potential to turn into sources of systemic risk;
   (f) the overall capacity of the undertaking to settle its financial obligations towards policyholders and other counterparties when those obligations fall due, even under stressed conditions.

1a. For the purpose of paragraph 1, points (d) and (e), macroeconomic and financial markets' developments shall include, at least, the following:
(a) the level of interest rates and spreads;
(b) the level of financial market indices;
(c) inflation;
(d) interconnectedness with other financial market participants;
(e) climate change, pandemics, other mass-scale events and other catastrophes, which may affect insurance and reinsurance undertakings.
For the purpose of the paragraph 1, point (d)(e) point (i), macroprudential concerns shall include, at least, plausible unfavourable future scenarios and risks related to the credit cycle and economic downturn, herding behaviour in investments or excessive exposure concentrations at the sectoral level.

1b. Member States shall ensure that the analysis required under paragraph 1, point (d), is commensurate to the nature of risks as well as the scale and complexity of the activities of undertakings. Member States shall ensure that insurance and reinsurance undertakings that are classified as small and non-complex undertakings, pursuant to Article 29c, [and undertakings which have obtained prior supervisory approval, pursuant to Article 29d,] are not obliged to conduct the analysis referred to in paragraph 1, point (e).

2. For the purposes of paragraph 1(a), the undertaking concerned shall have in place processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed. The undertaking shall demonstrate the methods used in that assessment.

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2a. Where the insurance or reinsurance undertaking applies the matching adjustment referred to in Article 77b, the volatility adjustment referred to in Article 77d or the transitional measures referred to in Article 308c and 308d, and, where relevant, Article 111(1) second subparagraph 111(2a), it ~~they~~ shall perform the assessment of compliance with the capital requirements referred to in paragraph 1, point (b) ~~1(b)~~ with and without taking into account those adjustments and transitional measures.
(ca) However, by way of derogation, the assessment requirement for the transitional measures referred to in Article 77a, shall not apply to a currency for which one of the following applies:
i. the share of future cash flows associated with insurance or reinsurance obligations in that currency relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 5%;
ii. with respect to future cash flows associated with insurance or reinsurance obligations in that currency, the share of future cash-flows pertaining to maturities where the relevant risk-free interest rate term structure is extrapolated relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 10%.

2.b Where the insurance or reinsurance undertaking applies the volatility adjustment referred to in Article 77d, the assessment referred to in paragraph 1 shall, in addition, include the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the volatility adjustment.

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3. In the case referred to in paragraph 1(c), when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

4. The own-risk and solvency assessment shall be an integral part of the business strategy and shall be taken into account on an ongoing basis in the strategic decisions of the undertaking.

5. Insurance and reinsurance undertakings shall perform the assessment referred to in paragraph 1 annually ~~regularly~~ and without any delay following any significant change in their risk profile.
By way of derogation from the first subparagraph of this paragraph, insurance and reinsurance undertakings may perform the assessment referred to in paragraph 1 at least every two years and without any delay following any significant change in their risk profile, unless the supervisory authority concludes based on the specific circumstances of the undertaking that a more frequent assessment is needed, where either of the following conditions is met:
(a) the undertaking is classified as a small and non-complex/ undertaking;

(b) the undertaking is a captive insurance undertaking or a captive reinsurance undertaking that complies with all of the following criteria:
(i) all insured persons and beneficiaries are legal entities of the group of which the captive insurance undertaking or captive reinsurance undertaking is part or natural persons eligible to be covered under that group's insurance policies and the business covering natural persons eligible to be covered under the group insurance policies remains below 5% of technical provisions;
(ii) the insurance obligations and the insurance contracts underlying the reinsurance obligations of the captive insurance undertaking or captive reinsurance undertaking do not consist of any compulsory third-party liability insurance.

The exemption from the annual assessment shall not prevent the undertaking from identifying, measuring, monitoring, managing and reporting risks on a continuous basis.

6. The insurance and reinsurance undertakings shall inform the supervisory authorities of the results of each own-risk and solvency assessment as part of the information reported under Article 35.
7. The own-risk and solvency assessment shall not serve to calculate a capital requirement. The Solvency Capital Requirement shall be adjusted only in accordance with Articles 37, 231 to 233 and 238.
8. For the purpose of paragraph 1, points (d) and (e), of this Article, where authorities other than the supervisory authorities are entrusted with a macroprudential mandate, Member States shall ensure that the supervisory authorities share the findings of their macroprudential assessments of the own-risk and solvency assessment by insurance and reinsurance undertakings, as referred to in this Article, with the relevant national authorities with a macroprudential mandate.

Member States shall ensure that supervisory authorities cooperate with any national authorities with a macroprudential mandate to analyse the results and, where applicable, to identify any macroprudential concerns on how the activity of the undertakings may affect macroeconomic and financial markets' developments.

Member States shall ensure that the supervisory authorities share any macroprudential concerns and relevant input parameters relevant for the assessment with the undertaking concerned.
9. When deciding whether to request any of the analyses referred to in paragraph 1(e) to an insurance or reinsurance undertaking which is a subsidiary undertaking included in the scope of group supervision in accordance with Article 213(2), points (a) and (b), the supervisory authority shall consider whether any of the analyses referred to in paragraph 1(e) is performed at group level by the participating insurance or reinsurance undertaking, the insurance holding company or mixed financial holding company which has its head office in the Union, and covers the specificities of that subsidiary undertaking.

National supervisory authorities shall notify on a yearly basis to both EIOPA and the ESRB the list of insurance and reinsurance undertakings and the list of groups for which they request the additional macroprudential measures.

**Article 45a Climate change scenario analysis**

1. For the purposes of the identification and assessment of risks referred to in Article 45(2), the undertaking concerned shall also assess whether it has any material exposure to climate change risks. The undertaking shall demonstrate the materiality of its exposure to climate change risks in the assessment referred to in Article 45(1).
2. Where the undertaking concerned has material exposure to climate change risks, the undertaking shall specify at least two long-term climate change scenarios, including the following:
(a) a long-term climate change scenario where the global temperature increase remains below two degrees Celsius;
(b) a long-term climate change scenario where the global temperature increase is significantly higher than two degrees Celsius.
3. At regular intervals, the assessment referred to in Article 45(1) shall contain an analysis of the impact on the business of the undertaking of the long-term climate change scenarios specified pursuant to paragraph 2 of this Article. Those intervals shall be proportionate to the nature, scale and complexity of the climate change risks inherent in the business of the undertaking, but be no longer than three years.
4. The long-term climate change scenarios referred to in the paragraph 2 shall be reviewed, at least every three years, and updated where necessary. When reviewing the long-term climate

change scenarios, insurance and reinsurance undertakings shall take into account the performance of tools and principles used in previous climate change scenarios, so as to enhance their effectiveness.

5. By way of derogation from paragraphs 2, 3 and 4 small and non-complex undertakings shall neither be required to specify climate change scenarios nor to assess their impact on the business of the undertaking.

**Article 46 Internal control**

1. Insurance and reinsurance undertakings shall have in place an effective internal control system.
   That system shall at least include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a compliance function.
2. The compliance function shall include advising the administrative, management or supervisory body on compliance with the laws, regulations and administrative provisions adopted pursuant to this Directive. It shall also include an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking concerned and the identification and assessment of compliance risk.

**Article 47 Internal audit**

1. Insurance and reinsurance undertakings shall provide for an effective internal audit function.
   The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance.
2. The internal audit function shall be objective and independent from the operational functions.
3. Any findings and recommendations of the internal audit shall be reported to the administrative, management or supervisory body which shall determine what actions are to be taken with respect to each of the internal audit findings and recommendations and shall ensure that those actions are carried out.

**Article 48 Actuarial function**

1. Insurance and reinsurance undertakings shall provide for an effective actuarial function to:
   (a) coordinate the calculation of technical provisions;
   (b) ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;
   (c) assess the sufficiency and quality of the data used in the calculation of technical provisions;
   (d) compare best estimates against experience;
   (e) inform the administrative, management or supervisory body of the reliability and adequacy of the calculation of technical provisions;
   (f) oversee the calculation of technical provisions in the cases set out in Article 82;
   (g) express an opinion on the overall underwriting policy;
   (h) express an opinion on the adequacy of reinsurance arrangements; and
   (i) contribute to the effective implementation of the risk-management system referred to in Article 44, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Chapter VI, Sections 4 and 5, and to the assessment referred to in Article 45.
2. The actuarial function shall be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the insurance or reinsurance undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

**Article 49 Outsourcing**

1. Member States shall ensure that insurance and reinsurance undertakings remain fully responsible for discharging all of their obligations under this Directive when they outsource functions or any insurance or reinsurance activities.
2. Outsourcing of critical or important operational functions or activities shall not be undertaken in such a way as to lead to any of the following:
   (a) materially impairing the quality of the system of governance of the undertaking concerned;
   (b) unduly increasing the operational risk;

(c) impairing the ability of the supervisory authorities to monitor the compliance of the undertaking with its obligations;
(d) undermining continuous and satisfactory service to policy holders.

3. Insurance and reinsurance undertakings shall, in a timely manner, notify the supervisory authorities prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities.

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**Article 50 Delegated acts and regulatory technical standards**

1. The Commission shall adopt delegated acts in accordance with Article 301a to further specify the following:
   (a) the elements of the systems referred to in Articles 41, 44, 46 and 47, and in particular the areas to be covered by the asset–liability management and investment policy, as referred to in Article 44(2), of insurance and reinsurance undertakings;
   (b) the functions referred to in Articles 44, 46, 47 and 48.
2. In order to ensure consistent harmonisation in relation to this Section, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to further specify the following:
   (a) the requirements set out in Article 42 and the functions subject thereto;
   (b) the conditions for outsourcing, in particular to service providers located in third countries.
   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.
3. In order to ensure consistent harmonisation in relation to the assessment referred to in Article 45(1)(a), EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to further specify the elements of that assessment.
   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

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**Section 3 Public disclosure**

**Article 51 Report on solvency and financial condition: contents**

1. Member States shall, taking into account the information required in Article 35(3) ~~paragraph 3~~ and the principles set out in paragraph 4 of Article 35, require insurance and reinsurance undertakings to disclose publicly, on an annual basis, a report on their solvency and financial condition.

   The solvency and financial condition report shall consist of two parts, clearly identified and disclosed jointly. The first part shall consist of information specifically targeted to policyholders and beneficiaries, and the second part shall consist of information targeted to market professionals.

   ~~That report shall contain the following information, either in full or by way of references to equivalent information, both in nature and scope, disclosed publicly under other legal or regulatory requirements:~~

   ~~(a) a description of the business and the performance of the undertaking;~~

   ~~(b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;~~

   ~~(c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;~~

   ~~(d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;~~

   ~~(e) a description of the capital management, including at least the following:~~

   ~~(i) the structure and amount of own funds, and their quality;~~

   ~~(ii) the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;~~

   ~~(iii) the option set out in Article 304 used for the calculation of the Solvency Capital Requirement;~~

   ~~(iv) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;~~

~~(v) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.~~

1a. The part of the solvency and financial condition report consisting of information targeted to policyholders and beneficiaries shall contain the following information

(a) a brief description of the business and the performance of the undertaking; and

(b) a brief description of the capital management and the risk profile of the undertaking, including in relation to sustainability risks.

(ba) a statement of whether the undertaking discloses the plans referred to in Article 19a or Article 29a of Directive 2013/34/EU.

1b. The part of the solvency and financial condition report consisting of information targeted to market professionals shall contain the following information, either in full or by way of references to equivalent information, both in nature and scope, disclosed publicly under other legal or regulatory requirements:

(a) a description of the business and the performance of the undertaking

(aa) a description of the system of governance

(b) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation;

(c) a description of the capital management and the risk profile, including at least the following:

(i) the structure and amount of own funds, and their quality;

(ii) the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;

(iii) for insurance and reinsurance undertakings relevant for the financial stability of the financial systems in the Union, information on risk sensitivity;

(iv) the option set out in Article 304 used for the calculation of the Solvency Capital Requirement;

(v) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;

(vi) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

(ca) an indication of whether the undertaking has any material exposure to climate change risks following the materiality assessment referred to in Article 45a(1), and, where relevant, if it has put in place any actions;

(cb) a statement of whether the undertaking discloses the plans referred to in Article 19a or Article 29a of Directive 2013/34/EU.

(cc) the elements referred to in Article 44(2c), point (d).

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1a. Where the matching adjustment referred to in Article 77b is applied, the description referred to in 1b, points (b), (c)(i) and (c)(ii), of this Article ~~paragraph 1(d)~~ shall also describe ~~include a description of~~ the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position.

The description referred to in paragraph 1b, points (b), (c)(i) and (c) (ii), of this Article ~~paragraph 1(d)~~ shall also ~~include~~ contain a statement on whether the volatility adjustment referred to in Article 77d is used by the undertaking and, where the volatility adjustment is used, it shall disclose the following information:

(a) a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.

(b) for each relevant currency or, as applicable, country, the volatility adjustment calculated in accordance with Article 77d and the corresponding best estimates for insurance or reinsurance obligations.

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2. The description referred to in paragraph 1b, point (c)(i), ~~point (e)(i) of paragraph 1~~ shall include an analysis of any significant changes as compared to the previous reporting period and an

explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

The disclosure of the Solvency Capital Requirement referred to in point (e)(ii) of ~~paragraph 1~~ paragraph 1b, point (c)(ii), of this Article shall show separately the amount calculated in accordance with Chapter VI, Section 4, Subsections 2 and 3 and any capital add-on imposed in accordance with Article 37 or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with Article 110, together with concise information on its justification by the supervisory authority concerned. The disclosure of the Solvency Capital Requirement shall be accompanied, where applicable, by an indication that its final amount is still subject to supervisory assessment.

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~~However, and without prejudice to any disclosure that is mandatory under any other legal or regulatory requirements, Member States may provide that, although the total Solvency Capital Requirement referred to in paragraph 1(e)(ii) is disclosed, the capital add-on or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with Article 110 need not be separately disclosed during a transitional period ending no later than 31 December 2020.~~

~~▼B The disclosure of the Solvency Capital Requirement shall be accompanied, where applicable, by an indication that its final amount is still subject to supervisory assessment.~~

3. Captive insurance undertakings shall not be required to disclose the part targeted to policyholders and beneficiaries and they shall only be required to include in the part targeted to market professionals the quantitative data required by the implementing technical standard referred to in Article 56 provided that these undertakings meet the following conditions:
   (a) all insured persons and beneficiaries are legal entities of the group of which the captive insurance undertaking is part or natural persons eligible to be covered under that group's insurance policies and the business covering natural persons eligible to be covered under the group insurance policies remains below 5% of technical provisions;
   (b) the insurance obligations of the captive insurance undertaking do not consist of any compulsory third-party liability insurance.
4. Captive reinsurance undertakings shall not be required to disclose the part targeted to policyholders and beneficiaries, and they shall only be required to include in the part targeted to market professionals the quantitative data required by the implementing technical standards referred to in Article 56, provided that these undertakings meet the following conditions:
   (a) all insured persons and beneficiaries are legal entities of the group of which the captive reinsurance undertaking is part or natural persons eligible to be covered under that group's insurance policies and the business covering natural persons eligible to be covered under the group insurance policies remains below 5% of technical provisions;
   (b) the insurance contracts underlying the reinsurance obligations of the captive reinsurance undertaking do not relate to any compulsory third-party liability insurance;
   (c) loans in place with the parent or any group company, including groups cash pools do not exceed 20% of total assets held by the captive reinsurance undertaking;
   (d) the maximum loss resulting from the gross technical provisions can be deterministically assessed without using stochastic methods.
5. By way of derogation from paragraph 1, reinsurance undertakings may not disclose the part of the solvency and financial condition report targeted to policyholders and beneficiaries.
6. By way of derogation from paragraph 1b small and non-complex undertakings may disclose only the quantitative data required by the implementing technical standards referred to in Article 56 in the part of the solvency and financial condition report consisting of information targeted to other market professionals, provided that they disclose a full report containing all the information required in this Article every three years.
7. Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in this Article on an annual or less frequent basis within 18 weeks after the undertaking's financial year end.
8. As part of the report referred to in paragraph 1 of this Article, insurance and reinsurance undertakings shall be required to disclose the impact of using, for the purposes of determining the technical provisions pursuant to Article 77, the risk-free interest rate term structure determined without the application of the transitional for the extrapolation as referred to Article 77e(1), point (aa), instead of the relevant risk-free interest rate term structure.

   However, by way of derogation from the first subparagraph, the disclosure requirement shall not apply to a currency for which one of the following applies:

(i) the share of future cash flows associated with insurance or reinsurance obligations in that currency relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 5%;

(ii) with respect to future cash flows associated with insurance or reinsurance obligations in that currency, the share of future cash-flows pertaining to maturities where the relevant risk-free interest rate term structure is extrapolated relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 10%.

Article 308f As part of the report on their solvency and financial condition referred to in Article 51, paragraph 1, insurance and reinsurance undertakings shall publicly disclose the combined impact on their financial position of not applying the transitional measures set out in Articles [77a(2)], 308c and 308d and, where relevant, [Article 111(1) second subparagraph/111(2a)].

**Article 51a Solvency and financial condition report: audit requirements**

1. For insurance and reinsurance undertakings other than small and non- complex undertakings and captive insurance undertakings and captive reinsurance undertakings, the balance sheet disclosed as part of the solvency and financial condition report in accordance with Article 51(1) or the balance sheet disclosed as part of the single solvency and financial condition report in accordance with Article 256(2) point (b) shall be subject to an audit.

1a. By way of derogation from Article 29c, Member States may extend the obligation laid down in paragraph 1 to undertakings classified as small and non-complex undertakings, captive insurance undertakings and captive reinsurance undertakings.

2a. Member States may extend the scope of the audit requirement to other elements of the solvency and financial condition report.

3. The audit shall be carried out by a statutory auditor or an audit firm, in accordance with the auditing standards, applicable pursuant to Article 26 of Directive 2006/43/EC. Statutory auditors and audit firms, when performing this task, shall comply with the duties of auditors set out in Article 72.

3a. In Member States where on [OP Please insert the date of publication of this amending Directive], registered actuaries are authorised pursuant to national law to audit technical provisions, reinsurance recoverables and related items, those registered actuaries may continue to provide such an audit provided they act in accordance with binding standards that ensure a high-quality audit and cover at least the area of audit practice, independence and internal quality controls when performing such audit, and in compliance with the duties referred to in Article 72.

4. A separate report, including a description of the nature, and the results, of the audit, prepared by the statutory auditor or the audit firm shall be submitted together with the solvency and financial condition report to the supervisory authority by the insurance and reinsurance undertakings.

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**Article 52 Information for and reports by the European Insurance and Occupational Pensions Authority**

1. Without prejudice to Article 35 of Regulation (EU) No 1094/2010, Member States shall require the supervisory authorities to provide the following information to EIOPA on an annual basis:
   (a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by the supervisory authority during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately for:
      (i) insurance and reinsurance undertakings;
      (ii) life insurance undertakings;
      (iii) non-life insurance undertakings;
      (iv) insurance undertakings pursuing both life and non-life activities;
      (v) reinsurance undertakings;
   (b) for each of the disclosures set out in point (a) of this paragraph, the proportion of capital add-ons imposed under Article 37(1)(a), (b) and (c) respectively;
   (c) the number of insurance and reinsurance undertakings benefiting from the limitation from regular supervisory reporting and the number of insurance and reinsurance undertakings benefiting from the exemption of reporting on an item-by-item basis referred to in Article 35(6) and (7), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of

capital requirements, premiums, technical provisions and assets of the insurance and reinsurance undertakings of the Member State;

(d) the number of groups benefiting from the limitation from regular supervisory reporting and the number of groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 254(2) together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all the groups.

(e) the total number of insurance and reinsurance undertakings, broken down by small and non-complex undertakings and others, using simplifications or proportionality measures and the number of undertakings using specific proportionality measures;

(f) the number of groups, broken down by small and non-complex groups and others, using simplifications or proportionality measures and the number of groups using specific proportionality measures.

2. EIOPA shall publicly disclose, on an annual basis, the following information:

(a) for all Member States together, the total distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, for each of the following:

(i) insurance and reinsurance undertakings;

(ii) life insurance undertakings;

(iii) non-life insurance undertakings;

(iv) insurance undertakings pursuing both life and non-life activities;

(v) reinsurance undertakings;

(b) for each Member State separately, the distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, covering all insurance and reinsurance undertakings in that Member State;

(c) for each of the disclosures referred to in points (a) and (b) of this paragraph, the proportion of capital add-ons imposed under Article 37(1)(a), (b) and (c) respectively;

(d) for all Member States collectively, the total number of insurance and reinsurance undertakings and groups benefiting from the limitation from regular supervisory reporting and the total number of insurance and reinsurance undertakings and groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 35(6) and (7) and Article 254(2), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all insurance and reinsurance undertakings and groups;

(e) for each Member State separately, the number of insurance and reinsurance undertakings and groups benefiting from the limitation from regular supervisory reporting and the number of insurance and reinsurance undertakings and groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 35(6) and (7) and Article 254(2), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of premiums, technical provisions and assets of the insurance and reinsurance undertakings and groups of the Member State.

(f) for each Member State, the number of insurance and reinsurance undertakings and the number of groups, broken down by small and non-complex undertakings or groups and others using simplifications or proportionality measures and the number of undertakings or groups using specific simplifications and other proportionality measures.

3. EIOPA shall provide the information referred to in paragraph 2 to the European Parliament, the Council and to the Commission, together with a report outlining the degree of supervisory convergence in the use of capital add-ons and in the use of proportionality measures between supervisory authorities in the different Member States.

4. EIOPA shall assess the effects of applying the criteria in Article 29a paragraph 1 for identifying small and non-complex undertakings, and the criteria in Article 213a (1) for identifying small and non-complex groups, at least with respect to the objectives of policyholders' protection, financial stability and level playing field. EIOPA shall submit a report on its findings to the Commission by [OP please insert date = three years after entry into application]. Where appropriate, the report shall consider the possibility to amend these criteria.

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**Article 53 Report on solvency and financial condition: applicable principles**

1. Supervisory authorities shall permit insurance and reinsurance undertakings not to disclose information where:

(a) by disclosing such information, the competitors of the undertaking would gain significant undue advantage;
(b) there are obligations to policy holders or other counterparty relationships binding an undertaking to secrecy or confidentiality.

2. Where non-disclosure of information is permitted by the supervisory authority, undertakings shall make a statement to this effect in their report on solvency and financial condition and shall state the reasons.
3. Supervisory authorities shall permit insurance and reinsurance undertakings, to make use of – or refer to – public disclosures made under other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information required under Article 51 in both their nature and scope.
4. Paragraphs 1 and 2 shall not apply to the information referred to in Article 51(1)~~(c)~~, point (c). EIOPA shall develop IT solutions for the procedures, formats and templates referred to in paragraph 2, including for instructions.

**Article 54 Report on solvency and financial condition: updates and additional voluntary information**

1. In the event of any major development affecting significantly the relevance of the information disclosed in accordance with Articles 51 and 53, insurance and reinsurance undertakings shall disclose appropriate information on the nature and effects of that major development.
   For the purposes of the first subparagraph, at least the following shall be regarded as major developments:
   (a) non-compliance with the Minimum Capital Requirement is observed and the supervisory authorities either consider that the undertaking will not be able to submit a realistic short-term finance scheme or do not obtain such a scheme within one month of the date when non-compliance was observed;
   (b) significant non-compliance with the Solvency Capital Requirement is observed and the supervisory authorities do not obtain a realistic recovery plan within two months of the date when non-compliance was observed.
   In regard to point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved three months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.
   In regard to point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved six months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.
2. Insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with Articles 51 and 53 and paragraph 1 of this Article.

**Article 55 Report on solvency and financial condition: policy and approval**

1. Member States shall require insurance and reinsurance undertakings to have appropriate systems and structures in place to fulfil the requirements laid down in Articles 51 and 53 and Article 54(1), as well as to have a written policy ensuring the ongoing appropriateness of any information disclosed in accordance with Articles 51, 53 and 54.
2. The solvency and financial condition report shall be subject to approval by the administrative, management or supervisory body of the insurance or reinsurance undertaking and be published only after that approval.

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**Article 56 Solvency and financial condition report: delegated acts and implementing technical standards**

The Commission shall adopt delegated acts in accordance with Article 301a further specifying the information which must be disclosed and the deadlines for the annual disclosure of the information in accordance with Section 3.

In order to ensure uniform conditions of application of this Section, EIOPA shall develop draft implementing technical standards on the procedures, formats and templates.

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

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

EIOPA shall develop IT solutions for the procedures, formats and templates referred to in paragraph 2, including for instructions.

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**Section 4 Qualifying holdings**

**Article 57 Acquisitions**

1. Member States shall require any natural or legal person or such persons acting in concert (the proposed acquirer) who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an insurance or reinsurance undertaking or to further increase, directly or indirectly, such a qualifying holding in an insurance or reinsurance undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20%, 30% or 50% or so that the insurance or reinsurance undertaking would become its subsidiary (the proposed acquisition), first to notify in writing the supervisory authorities of the insurance or reinsurance undertaking in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information, as referred to in Article 59(4). Member States need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one third.
2. Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an insurance or reinsurance undertaking first to notify in writing the supervisory authorities of the home Member State, indicating the size of that person's holding after the intended disposal. Such a person shall likewise notify the supervisory authorities of a decision to reduce that person's qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20%, 30% or 50% or so that the insurance or reinsurance undertaking would cease to be a subsidiary of that person. Member States need not apply the 30% threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one third.

**Article 58 Assessment period**

1. The supervisory authorities shall, promptly and in any event within two working days following receipt of the notification required under Article 57(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2, acknowledge receipt thereof in writing to the proposed acquirer.

   The supervisory authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 59(4) (the assessment period), to carry out the assessment provided for in Article 59(1) (the assessment).

   The supervisory authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.
2. The supervisory authorities may, during the assessment period, if necessary, and no later than on the fiftieth working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

   For the period between the date of request for information by the supervisory authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. That interruption shall not exceed 20 working days. Any further requests by the

supervisory authorities for completion or clarification of the information shall be at their discretion but shall not result in an interruption of the assessment period.

3. The supervisory authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is:
   (a) situated or regulated outside the Union~~Community~~; or
   (b) a natural or legal person not subject to supervision under this Directive, ~~Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ( 7 ), Directive 2004/39/EC, or Directive 2006/48/EC.~~[18] Directive 2009/65/EC of the European Parliament and of the Council[19], Directive 2013/36/EU, or Directive 2014/65/EU.
4. If the supervisory authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing stating the reasons. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the supervisory authority to make such disclosure in the absence of a request by the proposed acquirer.
5. If the supervisory authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.
6. The supervisory authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.
7. Member States shall not impose requirements for the notification to and approval by the supervisory authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

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8. In order to ensure consistent harmonisation in relation to this Section, EIOPA may develop draft regulatory technical standards to establish an exhaustive list of information, referred to in Article 59(4), to be included by proposed acquirers in their notification, without prejudice to Article 58(2).
   In order to ensure consistent harmonisation in relation to this Section and to take account of future developments, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the adjustments of the criteria set out in Article 59(1).
   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first and second subparagraphs in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.
9. In order to ensure uniform conditions of application of this Directive, EIOPA may develop draft implementing technical standards on the procedures, forms and templates for the consultation process between the relevant supervisory authorities as referred to in Article 60.
   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

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**Article 59 Assessment**

1. In assessing the notification provided for in Article 57(1) and the information referred to in Article 58(2) the supervisory authorities shall, in order to ensure the sound and prudent management of the insurance or reinsurance undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the insurance or reinsurance undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:
   (a) the reputation of the proposed acquirer;
   (b) the reputation and experience of any person who will direct the business of the insurance or reinsurance undertaking as a result of the proposed acquisition;

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18 OJ L 375, 31.12.1985, p. 3.

19 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance or reinsurance undertaking in which the acquisition is proposed;
(d) whether the insurance or reinsurance undertaking will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, notably, Directive 2002/87/EC, in particular, whether the group of which it will become part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the supervisory authorities and determine the allocation of responsibilities among the supervisory authorities;
(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing[20] is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The supervisory authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.
3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their supervisory authorities to examine the proposed acquisition in terms of the economic needs of the market.
4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the supervisory authorities at the time of notification referred to in Article 57(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.
5. Notwithstanding Article 58(1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same insurance or reinsurance undertaking have been notified to the supervisory authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

**Article 60 Acquisitions by regulated financial undertakings**

1. The relevant supervisory authorities shall work in full consultation with each other when carrying out the assessment if the proposed acquirer is one of the following:
(a) a credit institution, insurance or reinsurance undertaking, investment firm or management company within the meaning of Article 2(1), point (b), of Directive 2009/65/EC ~~point 2 of Article 1a of Directive 85/611/EEC~~ (the UCITS management company) authorised in another Member State or in a sector other than that in which the acquisition is proposed;
(b) the parent undertaking of a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or
(c) a natural or legal person controlling a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.
2. The supervisory authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the supervisory authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the supervisory authority that has authorised the insurance or reinsurance undertaking in which the acquisition is proposed shall indicate any views or reservations expressed by the supervisory authority responsible for the proposed acquirer.

**Article 61 Information to the supervisory authority by the insurance or reinsurance undertaking**

On becoming aware of them, the insurance or reinsurance undertaking shall inform the supervisory authority of its home Member State of any acquisitions or disposals of holdings in its capital that cause those holdings to exceed or fall below any of the thresholds referred to in Article 57 and Article 58(1) to (7).

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20 OJ L 309, 25.11.2005, p. 15.

The insurance or reinsurance undertaking shall also, at least once a year, inform the supervisory authority of its home Member State of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

**Article 62 Qualifying holdings, powers of the supervisory authority**

~~Member States shall require that,~~W~~ w~~here the influence exercised by the persons referred to in Article 57 is likely to operate against the sound and prudent management of an insurance or reinsurance undertaking, Member States shall require the supervisory authority of the home Member State of that undertaking in which a qualifying holding is held, sought or increased to take appropriate measures to put an end to that situation. Such measures may consist, for example, of injunctions, penalties against directors and managers, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the notification obligation established in Article 57.

Where a holding is acquired despite the opposition of the supervisory authorities, the Member States shall, regardless of any other sanctions to be adopted, provide for:

(1) the suspension of the exercise of the corresponding voting rights; or

(2) the nullity of any votes cast or the possibility of their annulment.

**Article 63 Voting rights**

For the purposes of this Section, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2014/65/EU~~Directive 2004/39/EC~~, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

**Section 5 Professional secrecy, exchange of information and promotion of supervisory convergence**

**Article 64 Professional secrecy**

Member States shall provide that all persons who are working or who have worked for the supervisory authorities, as well as auditors and experts acting on behalf of those authorities, are bound by the obligation of professional secrecy.

Without prejudice to cases covered by criminal law, any confidential information received by such persons whilst performing their duties shall not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual insurance and reinsurance undertakings cannot be identified.

However, where an insurance or reinsurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

The first three paragraphs of this Article shall not prevent the supervisory authorities from publishing the outcome of stress tests carried out in accordance with Article 34(4) of this Directive or Article 32 of Regulation (EU) No 1094/2010 or from transmitting the outcome of stress tests to EIOPA for the purpose of the publication by EIOPA of the results of Union-wide stress tests.

**Article 65 Exchange of information between supervisory authorities of Member States**

Article 64 shall not preclude the exchange of information between supervisory authorities of different Member States. Such information shall be subject to the obligation of professional secrecy laid down in Article 64.

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**Article 65a Cooperation with EIOPA**

Member States shall ensure that the supervisory authorities cooperate with EIOPA for the purposes of this Directive in accordance with Regulation (EU) No 1094/2010.

Member States shall ensure that the supervisory authorities provide EIOPA, without delay, with all the information necessary to carry out its duties in accordance with Regulation (EU) No 1094/2010.

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**Article 66 Cooperation agreements with third countries**

Member States may conclude cooperation agreements providing for the exchange of information with the supervisory authorities of third countries or with authorities or bodies of third countries as defined in Article 68(1) and (2) only if the information to be disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Section. Such exchange of information must be intended for the performance of the supervisory task of those authorities or bodies.

Where the information to be disclosed by a Member State to a third country originates in another Member State, it shall not be disclosed without the express agreement of the supervisory authority of that Member State and, where appropriate, solely for the purposes for which that authority gave its agreement.

**Article 67 Use of confidential information**

Supervisory authorities which receive confidential information under Articles 64 or 65 may use it only in the course of their duties and for the following purposes:

(1) to check that the conditions governing the taking-up of the business of insurance or reinsurance are met and to facilitate the monitoring of the conduct of such business, especially with regard to the monitoring of the technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement, and the system of governance;
(2) to impose sanctions;
(3) in administrative appeals against decisions of the supervisory authorities;
(4) in court proceedings under this Directive.

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**Article 67a European Parliament powers of investigation**

Articles 64 and 67 shall be without prejudice to the powers of investigation conferred on the European Parliament by Article 226 of the Treaty on the Functioning of the European Union (TFEU).

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**Article 68 Exchange of information with other authorities**

1. Articles 64 and 67 shall not preclude any of the following:
   (a) the exchange of information between several supervisory authorities in the same Member State in the discharge of their supervisory functions;
   (b) the exchange of information, in the discharge of their supervisory functions, between supervisory authorities and any of the following which are situated in the same Member State:
      (i) authorities responsible for the supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;
      (ii) bodies involved in the liquidation and bankruptcy of insurance undertakings or reinsurance undertakings and in other similar procedures;
      (iii) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions;
      ▼M8
      (iv) authorities responsible for supervising the obliged entities listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 of the European Parliament and of the Council[21] for compliance with that Directive;

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   (c) the disclosure, to bodies which administer compulsory winding-up proceedings or guarantee funds, of information necessary for the performance of their duties.

   Article 64 first subparagraph and Article 67 shall not prevent the exchange of information between supervisory authorities and tax authorities in the same Member State to the extent that

[21] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

such exchange is allowed by national law. Where this information originates in another Member State, it shall only be exchanged with the express agreement of the authority from which the information originates.

The exchanges of information referred to in points (b) and (c) may also take place between different Member States.

The information received by those authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in Article 64.

2. Articles 64 to 67 shall not preclude Member States from authorising exchanges of information between the supervisory authorities and any of the following:
   (a) the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of insurance undertakings, reinsurance undertakings and other similar procedures;
   (b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions;
   (c) independent actuaries of insurance undertakings or reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

   Member States which apply the first subparagraph shall require at least that the following conditions are met:
   (a) the information must be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph;
   (b) the information received must be subject to the obligation of professional secrecy laid down in Article 64;
   (c) where the information originates in another Member State, it must not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

   Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to the first and second subparagraphs.
3. Articles 64 to 67 shall not preclude Member States from authorising, with the aim of strengthening the stability, and integrity, of the financial system, the exchange of information between the supervisory authorities and the authorities or bodies responsible for the detection and investigation of breaches of company law.

   Member States which apply the first subparagraph shall require that at least the following conditions are met:
   (a) the information must be intended for the purpose of detection and investigation as referred to in the first subparagraph;
   (b) information received must be subject to the obligation of professional secrecy laid down in Article 64;
   (c) where the information originates in another Member State, it shall not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.

   Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid of persons appointed, in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions set out in the second subparagraph.

   In order to implement point (c) of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the supervisory authority from which the information originates the names and precise responsibilities of the persons to whom it is to be sent.
4. Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons or bodies which may receive information pursuant to paragraph 3.

**Article 69 Disclosure of information to government administrations responsible for financial legislation**

Articles 64 and 67 shall not preclude Member States from authorising, under provisions laid down by law, the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions,

investment services and insurance or reinsurance undertakings and to inspectors acting on behalf of those departments.

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Such disclosure shall be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under Article 65 and Article 68(1), and information obtained by means of on-site verification referred to in Article 33, may be disclosed only with the express consent of the supervisory authority from which the information originated or the supervisory authority of the Member State in which the on-site verification was carried out.

**Article 70 Transmission of information to central banks, monetary authorities, payment systems overseers and the European Systemic Risk Board**

1. Without prejudice to Articles 64 to 69, a supervisory authority may transmit information intended for the performance of their tasks to the following:
   (a) central banks of the European System of Central Banks (ESCB), including the European Central Bank (ECB) and other bodies with a similar function in their capacity as monetary authorities where this information is relevant to their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system;
   (b) where appropriate, other national public authorities responsible for overseeing payment systems; and
   (c) the European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council[22], where that information is relevant to carrying out its tasks.
2. In an emergency situation, including an emergency situation as referred to in Article 18 of Regulation (EU) No 1094/2010, Member States shall allow the supervisory authorities to communicate, without delay, information to the central banks of the ESCB, including the ECB, where that information is relevant to their statutory tasks including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, and to the ESRB, where such information is relevant to its tasks.
3. Such authorities or bodies may also communicate to the supervisory authorities such information as they may need for the purposes of Article 67. Information received in this context shall be subject to the provisions on professional secrecy laid down in this Section.

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**Article 71 Supervisory convergence**

1. Member States shall ensure that the mandates of supervisory authorities take into account, in an appropriate way, a European Union dimension.

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2. Member States shall ensure that in the exercise of their duties supervisory authorities have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:
   (a) the supervisory authorities participate in the activities of EIOPA;
   (b) the supervisory authorities make every effort to comply with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of Regulation (EU) No 1094/2010 and state reasons if they do not do so;
   (c) national mandates conferred on the supervisory authorities do not inhibit the performance of their duties as members of EIOPA or under this Directive.

[22] Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

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**Section 6 Duties of auditors**

**Article 72 Duties of auditors**

1. Member States shall provide at least that persons authorised within the meaning of Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents[23], who perform in an insurance or reinsurance undertaking the statutory audit referred to in Article 34 or 35 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC~~Article 51 of Directive 78/660/EEC, Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC~~ or any other statutory task, shall have a duty to report promptly to the supervisory authorities any fact or decision concerning that undertaking of which they have become aware while carrying out that task and which is liable to bring about any of the following:
   (a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance and reinsurance undertakings;
   (b) the impairment of the continuous functioning of the insurance or reinsurance undertaking;
   (c) a refusal to certify the accounts or to the expression of reservations;
   (d) non-compliance with the Solvency Capital Requirement;
   (e) non-compliance with the Minimum Capital Requirement.

   The persons referred to in the first subparagraph shall also report any facts or decisions of which they have become aware in the course of carrying out a task as described in the first subparagraph in an undertaking which has close links resulting from a control relationship with the insurance or reinsurance undertaking within which they are carrying out that task.
2. The disclosure in good faith to the supervisory authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

**CHAPTER V Pursuit of life and non-life insurance activity**

**Article 73 Pursuit of life and non-life insurance activity**

1. Insurance undertakings shall not be authorised to pursue life and non-life insurance activities simultaneously.
2. By way of derogation from paragraph 1, Member States may provide that:
   (a) undertakings authorised to pursue life insurance activity may obtain authorisation for non-life insurance activities for the risks listed in classes 1 and 2 in Part A of Annex I;
   (b) undertakings authorised solely for the risks listed in classes 1 and 2 in Part A of Annex I may obtain authorisation to pursue life insurance activity.

   However, each activity shall be separately managed in accordance with Article 74.
3. Member States may provide that the undertakings referred to in paragraph 2 shall comply with the accounting rules governing life insurance undertakings for all of their activities. Pending coordination in this respect, Member States may also provide that, with regard to rules on winding-up, activities relating to the risks listed in classes 1 and 2 in Part A of Annex I pursued by those undertakings shall be governed by the rules applicable to life insurance activities.
4. Where a non-life insurance undertaking has financial, commercial or administrative links with a life insurance undertaking, the supervisory authorities of the home Member States shall ensure that the accounts of the undertakings concerned are not distorted by agreements between those undertakings or by any arrangement which could affect the apportionment of expenses and income.
5. Undertakings which on the following dates pursued simultaneously both life and non-life insurance activities covered by this Directive may continue to pursue those activities simultaneously, provided that each activity is separately managed in accordance with Article 74:
   (a) 1 January 1981 for undertakings authorised in Greece;
   (b) 1 January 1986 for undertakings authorised in Spain and Portugal;
   (c) 1 January 1995 for undertakings authorised in Austria, Finland and Sweden;

[23] OJ L 126, 12.5.1984, p. 20.

(d) 1 May 2004 for undertakings authorised in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia, and Slovenia;
(e) 1 January 2007 for undertakings authorised in Bulgaria and Romania;
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(ea) 1 July 2013 for undertakings authorised in Croatia;
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(f) 15 March 1979 for all other undertakings.

The home Member State may require insurance undertakings to cease, within a period to be determined by that Member State, the simultaneous pursuit of life and non-life insurance activities in which they were engaged on the dates referred to in the first subparagraph.

**Article 74 Separation of life and non-life insurance management**

1. The separate management referred to in Article 73 shall be organised in such a way that the life insurance activity is distinct from non-life insurance activity.
   The respective interests of life and non-life policy holders shall not be prejudiced and, in particular, profits from life insurance shall benefit life policy holders as if the life insurance undertaking only pursued the activity of life insurance.
2. Without prejudice to Articles 100 and 128, the insurance undertakings referred to in Article 73(2) and (5) shall calculate:
   (a) a notional life Minimum Capital Requirement with respect to their life insurance or reinsurance activity, calculated as if the undertaking concerned only pursued that activity, on the basis of the separate accounts referred to in paragraph 6; and
   (b) a notional non-life Minimum Capital Requirement with respect to their non-life insurance or reinsurance activity, calculated as if the undertaking concerned only pursued that activity, on the basis of the separate accounts referred to in paragraph 6.
3. As a minimum, the insurance undertakings referred to in Article 73(2) and (5) shall cover the following by an equivalent amount of eligible basic own-fund items:
   (a) the notional life Minimum Capital Requirement, in respect of the life activity;
   (b) the notional non-life Minimum Capital Requirement, in respect of the non-life activity.
   The minimum financial obligations referred to in the first subparagraph, in respect of the life insurance activity and the non-life insurance activity, shall not be borne by the other activity.
4. As long as the minimum financial obligations referred to in paragraph 3 are fulfilled and provided the supervisory authority is informed, the undertaking may use to cover the Solvency Capital Requirement referred to in Article 100, the explicit eligible own-fund items which are still available for one or the other activity.
5. The supervisory authorities shall analyse the results in both life and non-life insurance activities so as to ensure that the requirements of paragraphs 1 to 4 are fulfilled.
6. Accounts shall be drawn up so as to show the sources of the results for life and non-life insurance separately. All income, in particular premiums, payments by reinsurers and investment income, and expenditure, in particular insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business, shall be broken down according to origin. Items common to both activities shall be entered in the accounts in accordance with methods of apportionment to be accepted by the supervisory authority.
   Insurance undertakings shall, on the basis of the accounts, prepare a statement in which the eligible basic own-fund items covering each notional Minimum Capital Requirement as referred to in paragraph 2 are clearly identified, in accordance with Article 98(4).
7. If the amount of eligible basic own-fund items with respect to one of the activities is insufficient to cover the minimum financial obligations referred to in first subparagraph of paragraph 3, the supervisory authorities shall apply to the deficient activity the measures provided for in this Directive, whatever the results in the other activity.
   By way of derogation from the second subparagraph of paragraph 3, those measures may involve the authorisation of a transfer of explicit eligible basic own-fund items from one activity to the other.

## CHAPTER VI Rules relating to the valuation of assets and liabilities, technical provisions, own funds, Solvency Capital Requirement, Minimum Capital Requirement and investment rules

### Section 1 Valuation of assets and liabilities

#### Article 75 Valuation of assets and liabilities

1. Member States shall ensure that, unless otherwise stated, insurance and reinsurance undertakings value assets and liabilities as follows:
   (a) assets shall be valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;
   (b) liabilities shall be valued at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm's length transaction.

   When valuing liabilities under point (b), no adjustment to take account of the own credit standing of the insurance or reinsurance undertaking shall be made.

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2. The Commission shall adopt delegated acts in accordance with Article 301a to lay down the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1.
3. In order to ensure consistent harmonisation in relation to valuation of assets and liabilities, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify:
   (a) to the extent that the delegated acts referred to in paragraph 2 require the use of international accounting standards as adopted by the Commission in accordance with Regulation (EC) No 1606/2002, the consistency of those accounting standards with the valuation approach of assets and liabilities as laid down in paragraphs 1 and 2;
   (b) the methods and assumptions to be used where quoted market prices are either not available or where international accounting standards as adopted by the Commission in accordance with Regulation (EC) No 1606/2002 are either temporarily or permanently inconsistent with the valuation approach of assets and liabilities as laid down in paragraphs 1 and 2;
   (c) the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1, where the delegated acts referred to in paragraph 2 allow for the use of alternative valuation methods.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

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### Section 2 Rules relating to technical provisions

#### Article 76 General provisions

1. Member States shall ensure that insurance and reinsurance undertakings establish technical provisions with respect to all of their insurance and reinsurance obligations towards policy holders and beneficiaries of insurance or reinsurance contracts.
2. The value of technical provisions shall correspond to the current amount insurance and reinsurance undertakings would have to pay if they were to transfer their insurance and reinsurance obligations immediately to another insurance or reinsurance undertaking.
3. The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on underwriting risks (market consistency).
4. Technical provisions shall be calculated in a prudent, reliable and objective manner.
5. Following the principles set out in paragraphs 2, 3 and 4 and taking into account the principles set out in Article 75(1), the calculation of technical provisions shall be carried out in accordance with Articles 77 to 82 and 86.

#### Article 77 Calculation of technical provisions

1. The value of technical provisions shall be equal to the sum of a best estimate and a risk margin as set out in paragraphs 2 and 3.
2. The best estimate shall correspond to the probability-weighted average of future cash-flows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure.

The calculation of the best estimate shall be based upon up-to-date and credible information and realistic assumptions and be performed using adequate, applicable and relevant actuarial and statistical methods.

The cash-flow projection used in the calculation of the best estimate shall take account of all the cash in- and out-flows required to settle the insurance and reinsurance obligations over the lifetime thereof.

The best estimate shall be calculated gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles. Those amounts shall be calculated separately, in accordance with Article 81.

3. The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount that insurance and reinsurance undertakings would be expected to require in order to take over and meet the insurance and reinsurance obligations.

4. Insurance and reinsurance undertakings shall value the best estimate and the risk margin separately.

However, where future cash flows associated with insurance or reinsurance obligations can be replicated reliably using financial instruments for which a reliable market value is observable, the value of technical provisions associated with those future cash flows shall be determined on the basis of the market value of those financial instruments. In this case, separate calculations of the best estimate and the risk margin shall not be required.

5. Where insurance and reinsurance undertakings value the best estimate and the risk margin separately, the risk margin shall be calculated by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over the lifetime thereof. The adjustment of the Solvency Capital Requirement consists of an exponential and time-dependent element.

The rate used in the determination of the cost of providing that amount of eligible own funds (Cost-of-Capital rate) shall be the same for all insurance and reinsurance undertakings and shall be reviewed periodically.

The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking would incur holding an amount of eligible own funds, as set out in Section 3, equal to the Solvency Capital Requirement necessary to support insurance and reinsurance obligations over the lifetime of those obligations.

5a. The Cost-of-Capital rate referred to in paragraph 5 shall be assumed to be equal to 4,75% as of [PO please insert the date of application]. The periodical review referred to in the second subparagraph of paragraph 5 shall be undertaken by the Commission not earlier than [PO please add 5 years after the date of application].

6. Where insurance and reinsurance contracts include financial options and guarantees, the methods used to calculate the best estimate shall appropriately reflect that the present value of cash flows arising from those contracts may depend both on the expected outcome of future events and developments and on potential deviations of the actual outcome from the expected outcome in certain scenarios.

7. Notwithstanding paragraph 6, insurance and reinsurance undertakings that are classified as small and non-complex undertakings and undertakings that have obtained prior supervisory approval may use a prudent deterministic valuation of the best estimate for life obligations with options and guarantees that are not deemed material.

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**Article 77a Extrapolation of the relevant risk-free interest rate term structure**

~~The determination of the relevant risk-free interest rate term structure referred to in Article 77(2) shall make use of, and be consistent with, information derived from relevant financial instruments. That determination shall take into account relevant financial instruments of those maturities where the markets for those financial instruments as well as for bonds are deep, liquid and transparent. For maturities where the markets for the relevant financial instruments or for bonds are no longer deep, liquid and transparent, the relevant risk-free interest rate term structure shall be extrapolated. The extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument and the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate.~~

1. The determination of the relevant risk-free interest rate term structure referred to in Article 77(2) shall make use of, and be consistent with, information derived from relevant financial instruments. That determination shall take into account relevant financial instruments of those

maturities where the markets for those financial instruments are deep, liquid and transparent. As of the first maturity (the 'first smoothing point') where markets for those financial instruments are not deep, liquid or transparent, the relevant risk-free interest rate shall be extrapolated in accordance with the third subparagraph. The first smoothing point for a currency shall be the longest maturity for which all of the following conditions are met:

(a) the markets for financial instruments of that maturity are deep, liquid and transparent;

(b) the percentage of outstanding bonds of that or a longer maturity among all outstanding bonds denominated in that currency is sufficiently high.

The extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly from the applicable forward rate at the first smoothing point to an ultimate forward rate (UFR).

The extrapolated forward rates shall be equal to a weighted average of a liquid forward rate and the UFR. The liquid forward rate shall be based on one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument can be observed in a deep, liquid and transparent market. For maturities of at least 40 years past the first smoothing point the weight of the UFR shall be at least 77,5%.

The extrapolated part of the relevant risk-free interest rates shall take into account information from financial instruments other than bonds where the markets for those financial instruments are deep liquid and transparent.

2. Insurance and reinsurance undertakings, may, subject to prior approval by their supervisory authority, apply the phasing-in mechanism set out in the second subparagraph.

The phasing-in mechanism referred to in the first subparagraph shall consist of the following:

(a) On [PO please insert date = application date], the parameters determining the speed of the convergence of the forward rates towards the ultimate forward rate of the extrapolation would be set such that the risk-free interest rate term structure is sufficiently similar to the risk-free interest rate term structure on that date determined in line with the rules for the extrapolation applicable on [PO please insert date = one day before date of application].

(b) The parameters determining the speed of the convergence of the forward rates towards the ultimate forward rate of the extrapolation shall be decreased linearly at the beginning of each calendar year, such that the final parameters of the extrapolation are applied as of 1 January 2032.

The phasing-in mechanism referred to in the first subparagraph shall not affect the determination of the depth, liquidity and transparency of financial markets and the first smoothing point referred to in paragraph 1.

Insurance and reinsurance undertakings applying subparagraphs 1 and 2 shall within the part of their report on their solvency financial condition consisting of information targeted to market professionals referred to in Article 51(1b) publicly disclose: (i) the fact that they apply the transitional for extrapolation and (ii) the quantification of the impact of not applying the transitional on their financial position.

2a. Notwithstanding paragraph 1, on [PO please insert the date of entry into force of this amending Directive], the first smoothing point for the euro, shall be at a maturity of 20 years.

**Article 77b Matching adjustment to the relevant risk-free interest rate term structure**

1. Insurance and reinsurance undertakings may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts subject to prior approval by the supervisory authorities where the following conditions are met:

(a) the insurance or reinsurance undertaking has assigned a portfolio of assets, consisting of bonds and other assets with similar cash-flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations and maintains that assignment over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;

(b) the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed separately from other activities of the undertakings, and the assigned portfolio of assets cannot be used to cover losses arising from other activities of the undertakings;

(c) the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency

and any mismatch does not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;

(d) the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;

(e) the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk and mortality risk;

(f) where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under a mortality risk stress that is calibrated in accordance with Article 101(2) to (5);

(g) the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the policy holder or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with Article 75, covering the insurance or reinsurance obligations at the time the surrender option is exercised;

(h) the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties;

(i) the insurance or reinsurance obligations of an insurance or reinsurance contract are not split into different parts when composing the portfolio of insurance or reinsurance obligations for the purpose of this paragraph.

For the purpose of point (i) of subparagraph 1, a group life contract shall be considered a single contract.

Notwithstanding point (h) of the first subparagraph, insurance or reinsurance undertakings may use assets where the cash flows are fixed except for a dependence on inflation, provided that those assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation.

In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that the investor receives sufficient compensation to allow it to obtain the same cash flows by re-investing in assets of an equivalent or better credit quality, the right to change the cash flows shall not disqualify the asset for admissibility to the assigned portfolio in accordance with point (h) of the first subparagraph.

2. Insurance or reinsurance undertakings that apply the matching adjustment to a portfolio of insurance or reinsurance obligations shall not revert back to an approach that does not include a matching adjustment. Where an insurance or reinsurance undertaking that applies the matching adjustment is no longer able to comply with the conditions set out in paragraph 1, it shall immediately inform the supervisory authority and take the necessary measures to restore compliance with those conditions. Where the undertaking is not able to restore compliance with those conditions within two months of the date of non-compliance, it shall cease to apply the matching adjustment to any of its insurance or reinsurance obligations and shall not apply the matching adjustment for a period of a further 24 months.

3. The matching adjustment shall not be applied with respect to insurance or reinsurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment under Article 77d or transitional measure on the risk-free interest rates under Article 308c.

**Article 77c Calculation of the matching adjustment**

1. For each currency the matching adjustment referred to in Article 77b shall be calculated in accordance with the following principles:

(a) the matching adjustment must be equal to the difference of the following:

(i) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value in accordance with Article 75 of the portfolio of assigned assets;

(ii) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of insurance or reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure;

(b) the matching adjustment must not include the fundamental spread reflecting the risks retained by the insurance or reinsurance undertaking;

(c) notwithstanding point (a), the fundamental spread must be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and asset class;

(d) the use of external credit assessments in the calculation of the matching adjustment must be in accordance with Article 111(1)(n).

2. For the purposes of paragraph 1(b), the fundamental spread shall be:

(a) equal to the sum of the following:

(i) the credit spread corresponding to the probability of default of the assets;

(ii) the credit spread corresponding to the expected loss resulting from downgrading of the assets;

(b) for exposures to Member States' central governments and central banks, no lower than 30% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets;

(c) for assets other than exposures to Member States' central governments and central banks, no lower than 35% of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets.

The probability of default referred to in point (a)(i) of the first subparagraph shall be based on long-term default statistics that are relevant for the asset in relation to its duration, credit quality and asset class.

Where no reliable credit spread can be derived from the default statistics referred to in the second subparagraph, the fundamental spread shall be equal to the portion of the long-term average of the spread over the risk-free interest rate set out in points (b) and (c).

**Article 77d Volatility adjustment to the relevant risk-free interest rate term structure**

1. Member States ~~may require~~ shall ensure ~~prior approval by supervisory authorities for insurance and reinsurance undertakings~~ that an insurance and reinsurance undertaking may ~~to~~ apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2)~~.~~ subject to prior approval by the supervisory authorities where at least the following conditions are met:

(a) the volatility adjustment for a given currency is applied in the calculation of the best estimate of all insurance and reinsurance obligations of the undertaking denominated in that currency where the relevant risk-free interest rate term structure used to calculate the best estimate for those obligations does not include a matching adjustment as referred to in Article 77b;

(b) the undertaking demonstrates to the satisfaction of the supervisory authority that it has adequate processes in place to calculate the volatility adjustment pursuant to paragraphs 3 and 4 of this Article.

1a. Notwithstanding paragraph 1 of this Article, insurance and reinsurance undertakings who applied a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2) before [OP please insert date = one year before application date] may, without prior approval by the supervisory authority, continue applying a volatility adjustment provided that they comply with paragraph 1, points (a) and (b)the conditions for prior approval under paragraph 1, of this Article as of [OP please insert date = application date].

1b. Member States shall ensure that supervisory authorities have the power to require an insurance and reinsurance undertaking to stop applying a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2) where the undertaking no longer meets the conditions set out infor prior approval under paragraph 1 of this Article. When an undertaking restores compliance with paragraph 1, points (a) and (b),the conditions for prior approval under paragraph 1 of this Article, it may request prior approval to the supervisory authorities to apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate pursuant to paragraph 1 of this Article.

1c. Insurance and reinsurance undertakings may, subject to prior approval by the supervisory authority, apply an undertaking-specific adjustment to the risk-corrected spread of the currency referred to in paragraph 3, under the conditions that:

(i) the risk-corrected spread exceeded, during the four quarterly reporting periods prior to the reporting date, the risk-corrected spread calculated on the basis of the undertaking's portfolio of investments in debt instruments; and

(ii) the information that is inherent to the relevant assets of the undertaking and that is reported by the undertaking in line with Article 35(1) to (4) is of sufficient quality to allow a robust and reliable calculation of this adjustment.

That adjustment shall correspond to the lowest between 105% and the ratio of the risk-corrected spread calculated based on the undertaking's portfolio of investments in debt instruments and the risk-corrected spread calculated on the basis of the reference portfolio for the relevant currency. The risk-corrected spread based on the undertaking's portfolio of investments in debt instruments shall be calculated in the same manner as the risk-corrected spread based on the reference portfolio for the relevant currency, but using undertaking-specific data on the weights and the average duration of the relevant sub-classes within the undertaking's portfolio of investments in debt instruments for the relevant currency.

Where the adjustment is applied, the volatility adjustment shall not be increased by a macro volatility adjustment as referred to in paragraph 4.

Insurance and reinsurance undertakings shall immediately stop applying this adjustment when it increases the risk-corrected spread of the currency referred to in paragraph 3 for two consecutive quarterly reporting periods.'

2. For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure shall be based on the spread between the interest rate that could be earned from ~~assets included in~~ a reference portfolio of investments in debt instruments for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency.

The reference portfolio for a currency shall be representative for the assets which are denominated in that currency and which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

The reference portfolio of investments in debt instruments for a currency shall be representative for the assets which are denominated in that currency and which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

4a. To calculate the spread underlying the volatility adjustment, for each currency and each country, the spread referred to in paragraph 2 and 4 shall be the value weighted sum of the average currency spread on government bonds and the average currency spread on bonds other than government bonds, loans, and securitisations. For the purpose of the first sentence the respective weights shall be the ratio of the value of government bonds included in the reference portfolio of assets for that currency or country and the value of all assets included in that reference portfolio, and the ratio of the value of bonds other than government bonds, loans and securitisations included in the reference portfolio of assets for that currency or country and the value of all assets included in that reference portfolio.[24]

3. The amount of the volatility adjustment to risk-free interest rates for a currency shall ~~correspond to 65% of the risk-corrected currency spread.~~be calculated as follows:

$$VA_{cu} = 85\% \cdot CSSR_{cu} \cdot RCS_{cu}$$

Where:

(a) $VA_{cu}$ is the volatility adjustment for a currency cu

(b) $CSSR_{cu}$ is the credit spread sensitivity ratio of an insurance or reinsurance undertaking for the currency cu;

(c) $RCS_{cu}$ is the risk-corrected spread for the currency cu.

$CSSR_{cu}$ shall not be negative and not be higher than one. It shall take values lower than one where the sensitivity of the assets of an insurance or reinsurance undertaking in a currency to changes in credit spreads is lower than the sensitivity of the technical provisions of that undertaking in that currency to changes in interest rates.

$RCS_{cu}$ shall be calculated as the difference between the spread referred to in paragraph 2 and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

$VA_{cu}$ shall apply to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with Article 77a. Where the extrapolated part of the relevant risk-free interest rates takes into account information from financial instruments other than bonds pursuant to Article 77a(1), VAcu shall also apply to risk-free interest rates derived

[24] The four column trilogue document says (Line 464a): "Topic covered in Article 50 DA. Text moved to a new paragraph 4a. "

from those financial instruments. The extrapolation of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.

The portion of the spread that is attributable to a realistic assessment of expected losses, unexpected credit risk or any other risk shall be calculated as a percentage of spreads. That percentage shall decrease as spreads increase and shall at least differentiate the following three cases:

(a) Where current spreads do not exceed their long-term average;

(b) Where current spreads exceed their long-term average but do not exceed twice their long-term average;

(c) Where current spreads exceed twice their long-term average.

By way of derogation from the first subparagraph, insurance and reinsurance undertakings having their head office in a Member State with a currency pegged to the euro which complies with the detailed criteria for the adjustments for currencies pegged to the euro for the purpose of facilitating the calculation of the currency risk sub-module, as established pursuant to Article 111(1)(p), when calculating the volatility adjustment to risk-free interest rates for the pegged currency and the volatility adjustment to risk-free interest rates for the euro, shall be allowed to calculate a single $CSSR_{cu}$ for both their local currency and the euro, by jointly taking into account the assets and liabilities denominated in euro and their local currency.

~~The risk-corrected currency spread shall be calculated as the difference between the spread referred to in paragraph 2 and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.~~

~~The volatility adjustment shall apply only to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with Article 77a. The extrapolation of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.~~

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~~For each relevant country, the volatility adjustment to the risk-free interest rates referred to in paragraph 3 for the currency of that country shall, before the application of the 65% factor, be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread whenever that difference is positive and the risk-corrected country spread is higher than 85 basis points. ◄ The increased volatility adjustment shall be applied to the calculation of the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country. The risk-corrected country spread is calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets which insurance and reinsurance undertakings are invested in to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and denominated in the currency of that country.~~

4. Without prejudice to paragraph 1c, the volatility adjustment for the euro shall be increased by a macro volatility adjustment. The macro volatility adjustment shall be calculated as follows:

$$VA_{Euro,macro} = 85\% \cdot CSSR_{Euro} \cdot \max\left(RCS_{co} - 1.3 \cdot RCS_{Euro}; 0\right) \cdot \omega co$$

Where:

(a) $VA_{Euro,macro}$ is the macro volatility adjustment for a country co

(b) $CSSR_{Euro}$ is the credit spread sensitivity ratio of an insurance or reinsurance undertaking for the euro;

(c) $RCS_{co}$ is the risk-corrected spread for the country co

(d) $RCS_{Euro}$ is the risk-corrected spread for the euro

(e) ωco is the country adjustment factor for country co

$CSSR_{Euro}$ shall be calculated as the credit spread sensitivity ratio of an insurance or reinsurance undertaking for the euro in accordance with paragraph 3.

$RCS_{co}$ shall be calculated in the same way as the risk-corrected spread for the euro under paragraph 3, but based on a reference portfolio that is representative for the assets which insurance and reinsurance undertakings are investing in to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and denominated in euro.

$RCS_{Euro}$ is calculated as the risk-corrected spread for the euro in accordance with paragraph 3.

The country adjustment factor referred to in point (e) shall be calculated as follows:

$$\omega co = \max\left(\min\left(\left(\left(RCS_{co^*} - 0.6\%\right)/0.3\%\right);1\right);0\right)$$

Where $RCS_{co^*}$ is the risk-corrected spread for the country co as referred to in the first subparagraph, point (c), multiplied by the percentage of investments in debt instruments relative to total assets held by insurance and reinsurance undertakings authorised in country co.

5. The volatility adjustment shall not be applied with respect to insurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment under Article 77b.
6. By way of derogation from Article 101, the Solvency Capital Requirement shall not cover the risk of loss of basic own funds resulting from changes of the volatility adjustment.

**Article 77e Technical information produced by the European Insurance and Occupational Pensions Authority**

1. EIOPA shall lay down and publish for each relevant currency the following technical information at least on a quarterly basis:
   (a) a relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2), without any matching adjustment or volatility adjustment;
   (aa) for the purposes of the disclosures pursuant to Article 51(8), a relevant risk-free interest rate term structure without any matching adjustment or volatility adjustment and determined without the application of the transitional for the extrapolation as set out in paragraph 2 of Article 77a;
   (ab) the set of scenarios to be used for the prudent deterministic valuation of the best estimate for life obligations pursuant to Article 77(7);[25]
   (b) for each relevant duration, credit quality and asset class a fundamental spread for the calculation of the matching adjustment referred to in Article 77c(1)(b);
   (c) for each relevant currency and national insurance market a ~~volatility adjustment to the relevant risk-free interest rate term structure referred to in Article 77d(1).~~a risk-corrected spread referred to in Article 77d(3) and (4) respectively;
   (d) for each relevant Member State, the percentage of investments in debt instruments relative to total assets held by insurance and reinsurance undertakings authorised in the country as referred to in Article 77d(4).

1a. EIOPA shall lay down and publish, at least on an annual basis, for each relevant currency and each maturity where the markets for relevant financial instruments or bonds of that maturity are deep, liquid and transparent, the percentage of bonds with that or a longer maturity among all bonds denominated in that currency as referred to in Article 77a(1).

2. In order to ensure uniform conditions for the calculation of technical provisions and basic own funds, the Commission may adopt implementing acts which set out, for each relevant currency, the technical information referred to in paragraph 1 of this Article and the first smoothing point pursuant to Article 77a(1). Those implementing acts ~~shall~~ may make use of ~~that~~ the information published by EIOPA pursuant to paragraph 1 of this Article.
   Those implementing acts shall be adopted in accordance with the advisory procedure referred to in Article 301(2).
   On duly justified imperative grounds of urgency relating to the availability of the relevant risk-free interest rate term structure, the Commission shall adopt immediately applicable implementing acts in accordance with the procedure referred to in Article 301(3).
3. Where the technical information referred to in paragraph 1 is adopted by the Commission in accordance with paragraph 2, insurance and reinsurance undertakings shall use that technical information in calculating the best estimate in accordance with Article 77, the matching adjustment in accordance with Article 77c, and the volatility adjustment in accordance with Article 77d.
   With respect to currencies and national markets where the adjustment referred to in paragraph 1, point (c)~~paragraph 1(c)~~ is not set out in the implementing acts referred to in paragraph 2, no volatility adjustment shall be applied to the relevant risk-free interest rate term structure to calculate the best estimate. With respect to Member States whose currency is the euro and where the risk-corrected spread referred to in paragraph 1, point (c), and the percentage referred to in paragraph 1, point (d), are not set out in the implementing acts referred to in paragraph 2, no macro volatility adjustment shall be added to the volatility adjustment.
4. For the purposes of paragraph 2 of this Article, a first smoothing point for a currency set out in an implementing act shall not be modified, unless an assessment of the percentages of bonds

[25] The four column trilogue document says (Line 491a): "Linked to lines 499 and 522. ITS on methodology of scenarios (Article 86(2a)) plus quarterly IA on the scenario itself (Article 77e(2))."

with maturity larger than or equal to a given maturity among all bonds denominated in that currency indicates a different first smoothing point pursuant to Article 77a(1) and the percentage set out in delegated acts referred to in Article 86(1), point (b) (iii) for at least two consecutive years.

**Article 77f Review of long-term guarantees measures and measures on equity risk**

1. EIOPA shall, on an annual basis and until 1 January 2021, report to the European Parliament, the Council and the Commission about the impact of the application of Articles 77a to 77e and 106, Article 138(4) and Articles 304, 308c and 308d, including the delegated or implementing acts adopted pursuant thereto.
   Supervisory authorities shall, on an annual basis during that period, provide EIOPA with the following information:
   (a) the availability of long-term guarantees in insurance products in their national markets and the behaviour of insurance and reinsurance undertakings as long-term investors;
   (b) the number of insurance and reinsurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period in accordance with Article 138(4), the duration-based equity risk sub-module and the transitional measures set out in Articles 308c and 308d;
   (c) the impact on the insurance and reinsurance undertakings' financial position of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge, the duration-based equity risk sub-module and the transitional measures set out in Articles 308c and 308d, at national level and in anonymised way for each undertaking;
   (d) the effect of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the equity capital charge and the duration-based equity risk sub-module on the investment behaviour of insurance and reinsurance undertakings and whether they provide undue capital relief;
   (e) the effect of any extension of the recovery period in accordance with Article 138(4) on the efforts of insurance and reinsurance undertakings to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile in order to ensure compliance with the Solvency Capital Requirement;
   (f) where insurance and reinsurance undertakings apply the transitional measures set out in Articles 308c and 308d, whether they comply with the phasing-in plans referred to in Article 308e and the prospects for a reduced dependency on these transitional measures, including measures that have been taken or are expected to be taken by the undertakings and supervisory authorities, taking into account the regulatory environment of the Member State concerned.
2. EIOPA, where appropriate after consulting the ESRB and conducting a public consultation, shall submit to the Commission an opinion on the assessment of the application of Articles 77a to 77e and 106, Article 138(4), and Articles 304, 308c and 308d, including the delegated or implementing acts adopted pursuant thereto. That assessment shall be made in relation to the availability of long-term guarantees in insurance products, the behaviour of insurance and reinsurance undertakings as long-term investors and, more generally, financial stability.
3. Based on the opinion submitted by EIOPA, referred to in paragraph 2, the Commission shall submit a report to the European Parliament and to the Council by 1 January 2021, or, where appropriate, earlier. The report shall focus, in particular, on the effects on:
   (a) policy holder protection;
   (b) the functioning and stability of European insurance markets;
   (c) the internal market and in particular the competition and the level playing field in European insurance markets;
   (d) the extent to which insurance and reinsurance undertakings continue to operate as long-term investors;
   (e) the availability and pricing of annuity products;
   (f) the availability and pricing of competing products;
   (g) long-term investment strategies by insurance undertakings in relation to products to which Articles 77b and 77c are applied relative to those in relation to other long-term guarantees;
   (h) consumer choice and consumer awareness of risk;
   (i) the degree of diversification in the insurance business and asset portfolio of insurance and reinsurance undertakings;
   (j) financial stability.

In addition, the report shall build on the supervisory experience relating to the application of Articles 77a to 77e and 106, Article 138(4) and Articles 304, 308c and 308d, including the delegated or implementing acts adopted pursuant thereto.

4. The Commission report shall be accompanied, if necessary, by legislative proposals.

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**Article 78 Other elements to be taken into account in the calculation of technical provisions**

In addition to Article 77, when calculating technical provisions, insurance and reinsurance undertakings shall take account of the following:

(1) all expenses that will be incurred in servicing insurance and reinsurance obligations;

(2) inflation, including expenses and claims inflation;

(3) all payments to policy holders and beneficiaries, including future discretionary bonuses, which insurance and reinsurance undertakings expect to make, whether or not those payments are contractually guaranteed, unless those payments fall under Article 91(2).

**Article 79 Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts**

When calculating technical provisions, insurance and reinsurance undertakings shall take account of the value of financial guarantees and any contractual options included in insurance and reinsurance policies.

Any assumptions made by insurance and reinsurance undertakings with respect to the likelihood that policy holders will exercise contractual options, including lapses and surrenders, shall be realistic and based on current and credible information. The assumptions shall take account, either explicitly or implicitly, of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

**Article 80 Segmentation**

Insurance and reinsurance undertakings shall segment their insurance and reinsurance obligations into homogeneous risk groups, and as a minimum by lines of business, when calculating their technical provisions.

**Article 81 Recoverables from reinsurance contracts and special purpose vehicles**

The calculation by insurance and reinsurance undertakings of amounts recoverable from reinsurance contracts and special purpose vehicles shall comply with Articles 76 to 80.

When calculating amounts recoverable from reinsurance contracts and special purpose vehicles, insurance and reinsurance undertakings shall take account of the time difference between recoveries and direct payments.

The result from that calculation shall be adjusted to take account of expected losses due to default of the counterparty. That adjustment shall be based on an assessment of the probability of default of the counterparty and the average loss resulting therefrom (loss-given-default).

**Article 82 Data quality and application of approximations, including case-by-case approaches, for technical provisions**

Member States shall ensure that insurance and reinsurance undertakings have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of their technical provisions.

Where, in specific circumstances, insurance and reinsurance undertakings have insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of their insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and special purpose vehicles, appropriate approximations, including case-by-case approaches, may be used in the calculation of the best estimate.

**Article 83 Comparison against experience**

Insurance and reinsurance undertakings shall have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.

Where the comparison identifies systematic deviation between experience and the best estimate calculations of insurance or reinsurance undertakings, the undertaking concerned shall make appropriate adjustments to the actuarial methods being used and/or the assumptions being made.

**Article 84 Appropriateness of the level of technical provisions**

Upon request from the supervisory authorities, insurance and reinsurance undertakings shall demonstrate the appropriateness of the level of their technical provisions, as well as the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used.

**Article 85 Increase of technical provisions**

To the extent that the calculation of technical provisions of insurance and reinsurance undertakings does not comply with Articles 76 to 83, the supervisory authorities may require insurance and reinsurance undertakings to increase the amount of technical provisions so that they correspond to the level determined pursuant to those Articles.

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**Article 86 Delegated acts and regulatory and implementing technical standards**

1. The Commission shall adopt delegated acts in accordance with Article 301a laying down the following:
   (a) actuarial and statistical methodologies to calculate the best estimate referred to in Article 77(2);
   (aa) the prudent deterministic valuation referred to in Article 77(7) as well as the conditions under which that valuation may be used to value the best estimate of technical provisions with options and guarantees;
   (b) the methodologies, principles and techniques for the determination of the relevant risk-free interest rate term structure to be used to calculate the best estimate referred to in Article 77(2)~~,~~ in particular:
      (i) the formula for the extrapolation referred to in Article 77a(1), including the parameters that determine the convergence speed of the extrapolation;
      (ii) the method for the determination of the depth, liquidity and transparency of bond markets referred to in Article 77a(1);
      (iii) the currency related percentages below which the share of bonds with maturities longer than or equal to a given maturity among all bonds shall be regarded as low for the purposes of Article 77a(1);
      (iia) the phasing-in mechanism as referred to in Article 77a(2);
   (c) the circumstances in which technical provisions shall be calculated as a whole, or as a sum of a best estimate and a risk margin, and the methods to be used in the case where technical provisions are calculated as a whole, as referred to in Article 77(4);
   (d) the methods and assumptions to be used in the calculation of the risk margin including the determination of the amount of eligible own funds necessary to support the insurance and reinsurance obligations and the calibration of the cost-of-capital rate, as referred to in Article 77(5);
   (e) the lines of business on the basis of which insurance and reinsurance obligations are to be segmented in order to calculate technical provisions referred to in Article 80;
   (f) the standards to be met with respect to ensuring the appropriateness, completeness and accuracy of the data used in the calculation of technical provisions, and the specific circumstances in which it would be appropriate to use approximations, including case-by-case approaches, to calculate the best estimate, as referred to in Article 82;
   (g) specifications with respect to the requirements set out in Article 77b(1) including the methods, assumptions and standard parameters to be used when calculating the impact of the mortality risk stress referred to in Article 77b(1)(e);
   (h) specifications with respect to the requirements set out in Article 77c including assumptions and methods to apply in the calculation of the matching adjustment and the fundamental spread;
   (i) methods and assumptions for the calculation of the volatility adjustment referred to in Article 77d including the following:
      (i) a formula for the calculation of the spread referred to in paragraph 2 of that Article;
      (ii) a formula for the calculation of the credit spread sensitivity ratio referred to in paragraphs 3 and 4 of that Article;
      (iii) for each relevant asset class, the percentage of the spread that represents the portion of the spread that is attributable to a realistic assessment of expected losses, unexpected credit risk or any other risk shall be calculated as referred to in Article 77d(3). Such percentage should decrease as spreads increase, taking into account at least the following three cases:

- Where current spreads do not exceed their long-term average;
- Where current spreads exceed their long-term average but do not exceed twice their long-term average;
- Where current spreads exceed twice their long-term average. The risk correction shall never exceed an appropriate percentage of the long-term average spreads.

1a. The Commission may adopt delegated acts in accordance with Article 301a laying down criteria for assets to be eligible to be included in the portfolio of assets referred to in Article 77b(1), point (a).

1b. Where the periodical review of the cost of capital rate referred to in Article 77(5) concludes that the assumed value is no longer appropriate, the Commission may adopt a delegated act amending the assumed value of the cost-of-capital rate set out in Article 77(5a). The Commission may only set the assumed value of the cost-of-capital rate at a level that is not higher than 5% and not lower than 4%.

2. In order to ensure consistent harmonisation in relation to the methods for the calculation of technical provisions, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify:
   (a) the methodologies to be used when calculating the counterparty default adjustment referred to in Article 81 designed to capture expected losses due to default of the counterparty;
   (b) where necessary, simplified methods and techniques to calculate technical provisions, in order to ensure the actuarial and statistical methods referred to in points (a) and (d) are proportionate to the nature, scale and complexity of the risks supported by insurance and reinsurance undertakings including captive insurance and reinsurance undertakings.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

2a. In order to ensure uniform conditions of application of Article 77(7), EIOPA shall develop draft implementing technical standards specifying the methodology to determine the set of scenarios to be used for the prudent deterministic valuation of the best estimate for life obligations referred to in that paragraph.

   EIOPA shall submit those draft implementing technical standards to the Commission by [OP please insert date = 12 months after entry into force].

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

3. In order to ensure consistent conditions of application of Article 77b, EIOPA shall develop draft implementing technical standards on the procedures for the approval of the application of a matching adjustment referred to in Article 77b(1).

   EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.

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

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**Section 3 Own funds**

**Subsection 1 Determination of own funds**

**Article 87 Own funds**

Own funds shall comprise the sum of basic own funds, referred to in Article 88 and ancillary own funds referred to in Article 89.

**Article 88 Basic own funds**

Basic own funds shall consist of the following items:

(1) the excess of assets over liabilities, valued in accordance with Article 75 and Section 2;

(2) subordinated liabilities.

The excess amount referred to in point (1) shall be reduced by the amount of own shares held by the insurance or reinsurance undertaking.

**Article 89 Ancillary own funds**

1. Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses.

Ancillary own funds may comprise the following items to the extent that they are not basic own-fund items:

(a) unpaid share capital or initial fund that has not been called up;

(b) letters of credit and guarantees;

(c) any other legally binding commitments received by insurance and reinsurance undertakings.

In the case of a mutual or mutual-type association with variable contributions, ancillary own funds may also comprise any future claims which that association may have against its members by way of a call for supplementary contribution, within the following 12 months.

2. Where an ancillary own-fund item has been paid in or called up, it shall be treated as an asset and cease to form part of ancillary own-fund items.

**Article 90 Supervisory approval of ancillary own funds**

1. The amounts of ancillary own-fund items to be taken into account when determining own funds shall be subject to prior supervisory approval.
2. The amount ascribed to each ancillary own-fund item shall reflect the loss-absorbency of the item and shall be based upon prudent and realistic assumptions. Where an ancillary own-fund item has a fixed nominal value, the amount of that item shall be equal to its nominal value, where it appropriately reflects its loss-absorbency.
3. Supervisory authorities shall approve either of the following:
   (a) a monetary amount for each ancillary own-fund item;
   (b) a method by which to determine the amount of each ancillary own-fund item, in which case supervisory approval of the amount determined in accordance with that method shall be granted for a specified period of time.
4. For each ancillary own-fund item, supervisory authorities shall base their approval on an assessment of the following:
   (a) the status of the counterparties concerned, in relation to their ability and willingness to pay;
   (b) the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up;
   (c) any information on the outcome of past calls which insurance and reinsurance undertakings have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

**Article 91 Surplus funds**

1. Surplus funds shall be deemed to be accumulated profits which have not been made available for distribution to policy holders and beneficiaries.
2. In so far as authorised under national law, surplus funds shall not be considered as insurance and reinsurance liabilities to the extent that they fulfil the criteria set out in Article 94(1).

**Article 92 ▼M5 Delegated acts and regulatory and implementing technical standards**

1. In order to ensure consistent harmonisation in relation to the determination of own funds, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the criteria for granting supervisory approval of ancillary own funds in accordance with Article 90. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

1a. The Commission shall adopt delegated acts in accordance with Article 301a specifying the treatment of participations, within the meaning of the third subparagraph of Article 212(2), in financial and credit institutions with respect to the determination of own funds. The Commission shall adopt delegated acts in accordance with Article 301a specifying the treatment of participations, within the meaning of Article 212(2), third subparagraph, in financial and credit institutions with respect to the determination of own funds, including approaches to deductions from the basic own funds of an insurance or reinsurance undertaking of material participations in credit and financial institutions.

Notwithstanding the deductions of participations from the own funds eligible to cover the Solvency Capital Requirement as specified in the delegated act adopted pursuant to the first subparagraph, for the purpose of determining the basic own funds as referred to in Article 88, supervisory authorities may permit an insurance or reinsurance undertaking not to deduct the value of its participation in a credit or financial institution, provided that all of the following conditions are met:

(a) the insurance or reinsurance undertaking is in one of the circumstances described in point (i) or (ii) of this point:
(i) the credit or financial institution and the insurance or reinsurance undertaking belong to the same group, as defined in Article 212, to which group supervision applies in accordance with Article 213(2), points (a), (b) and (c), and the related credit or financial institution is not subject to the deduction referred to in Article 228(5);
(ii) supervisory authorities require or permit insurance or reinsurance undertakings to apply technical calculation methods in accordance with Part II of Annex I to Directive 2002/87/EC, and the credit or financial institution is included in the same supplementary supervision under that Directive as the insurance or reinsurance undertaking;
(b) supervisory authorities are satisfied as to the level of integrated management, risk management and internal control regarding the undertakings in the scope of group supervision referred to in point (a)(i) of this subparagraph or in the scope of supplementary supervision referred to in point (a)(ii) of this subparagraph;
(c) the related participation in the credit or financial institution is an equity investment of strategic nature as specified in the delegated act adopted pursuant to Article 111(1), point (m).

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2. Participations in financial and credit institutions as referred to in ~~paragraph 1(b)~~ paragraph 1a shall comprise the following:
(a) participations which insurance and reinsurance undertakings hold in:
(i) credit institutions and financial institutions within the meaning of Article 4(1) and (5) of ~~Directive 2006/48/EC,~~ Article 4(1), points (1) and (26), of Regulation (EU) No 575/2013,
(ii) investment firms within the meaning of point 1 of ~~Article 4(1) of Directive 2004/39/EC~~ Article 4(1), point 1, of Directive 2014/65/EU;
(b) Additional Tier 1 instruments referred to in Article 52 of Regulation (EU) No 575/2013 and Tier 2 instruments ~~subordinated claims and instruments~~ referred to in Article 63 ~~and Article 64(3) of Directive 2006/48/EC~~ of that Regulation, as well as Additional Tier 1 and Tier 2 instruments within the meaning of Article 9 of Regulation (EU) No 2019/2033, which insurance and reinsurance undertakings hold in respect of the entities defined in point (a) of this paragraph in which they hold a participation.

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3. In order to ensure uniform conditions of application of Article 90, EIOPA shall develop draft implementing technical standards on the procedures for granting supervisory approval for the use of ancillary own funds.
EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.
Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

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**Subsection 2 Classification of own funds**

**Article 93 Characteristics and features used to classify own funds into tiers**

1. Own-fund items shall be classified into three tiers. The classification of those items shall depend upon whether they are basic own fund or ancillary own-fund items and the extent to which they possess the following characteristics:
(a) the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis, as well as in the case of winding-up (permanent availability);
(b) in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and reinsurance contracts, have been met (subordination).
2. When assessing the extent to which own-fund items possess the characteristics set out in points (a) and (b) of paragraph 1, currently and in the future, due consideration shall be given to the duration of the item, in particular whether the item is dated or not. Where an own-fund item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the undertaking shall be considered (sufficient duration).
In addition, the following features shall be considered:

(a) whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);
(b) whether the item is free from mandatory fixed charges (absence of mandatory servicing costs);
(c) whether the item is clear of encumbrances (absence of encumbrances).

**Article 94 Main criteria for the classification into tiers**

1. Basic own-fund items shall be classified in Tier 1 where they substantially possess the characteristics set out in Article 93(1)(a) and (b), taking into consideration the features set out in Article 93(2).
2. Basic own-fund items shall be classified in Tier 2 where they substantially possess the characteristic set out in Article 93(1)(b), taking into consideration the features set out in Article 93(2).
   Ancillary own-fund items shall be classified in Tier 2 where they substantially possess the characteristics set out in Article 93(1)(a) and (b), taking into consideration the features set out in Article 93(2).
3. Any basic and ancillary own-fund items which do not fall under paragraphs 1 and 2 shall be classified in Tier 3.

**Article 95 Classification of own funds into tiers**

Member States shall ensure that insurance and reinsurance undertakings classify their own-fund items on the basis of the criteria laid down in Article 94.
For that purpose, insurance and reinsurance undertakings shall where applicable, refer to the list of own-fund items referred to in ~~Article 97(1)(a), where applicable.~~Article 97(1).
Where an own-fund item is not covered by that list, it shall be assessed and classified by insurance and reinsurance undertakings, in accordance with the first paragraph. That classification shall be subject to approval by the supervisory authority.

**Article 96 Classification of specific insurance own-fund items**

Without prejudice to Article 95 and ~~Article 97(1)(a)~~ Article 97(1) for the purposes of this Directive the following classifications shall be applied:
(1) surplus funds falling under Article 91(2) shall be classified in Tier 1;
(2) letters of credit and guarantees which are held in trust for the benefit of insurance creditors by an independent trustee and provided by credit institutions authorised in accordance with ~~Directive 2006/48/EC~~ Directive 2013/36/EU shall be classified in Tier 2;
(3) any future claims which mutual or mutual-type associations of shipowners with variable contributions solely insuring risks listed in classes 6, 12 and 17 in Part A of Annex I may have against their members by way of a call for supplementary contributions, within the following 12 months, shall be classified in Tier 2.

In accordance with the second subparagraph of Article 94(2), any future claims which mutual or mutual-type associations with variable contributions may have against their members by way of a call for supplementary contributions, within the following 12 months, not falling under point (3) of the first subparagraph shall be classified in Tier 2 where they substantially possess the characteristics set out in Article 93(1)(a) and (b), taking into consideration the features set out in Article 93(2).

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**Article 97 Delegated acts and regulatory technical standards**

1. The Commission shall adopt delegated acts in accordance with Article 301a laying down a list of own-fund items, including those referred to in Article 96, deemed to fulfil the criteria, set out in Article 94, which contains for each own-fund item a precise description of the features which determined its classification.
2. In order to ensure consistent harmonisation in relation to classification of own funds, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the methods to be used by supervisory authorities, when approving the assessment and classification of own-fund items which are not covered by the list referred to in paragraph 1.
   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.
   The Commission shall regularly review and, where appropriate, update the list referred to in paragraph 1 in light of market developments.

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**Subsection 3 Eligibility of own funds**

**Article 98 Eligibility and limits applicable to Tiers 1, 2 and 3**

1. As far as the compliance with the Solvency Capital Requirement is concerned, the eligible amounts of Tier 2 and Tier 3 items shall be subject to quantitative limits. Those limits shall be such as to ensure that at least the following conditions are met:
   (a) the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds;
   (b) the eligible amount of Tier 3 items is less than one third of the total amount of eligible own funds.
2. As far as compliance with the Minimum Capital Requirement is concerned, the amount of basic own-fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 shall be subject to quantitative limits. Those limits shall be such as to ensure, as a minimum, that the proportion of Tier 1 items in the eligible basic own funds is higher than one half of the total amount of eligible basic own funds.
3. The eligible amount of own funds to cover the Solvency Capital Requirement set out in Article 100 shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.
4. The eligible amount of basic own funds to cover the Minimum Capital Requirement set out in Article 128 shall be equal to the sum of the amount of Tier 1 and the eligible amount of basic own-fund items classified in Tier 2.

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**Article 99 Delegated acts on the eligibility of own funds**

The Commission shall adopt delegated acts in accordance with Article 301a laying down:

(a) the quantitative limits referred to in Article 98(1) and (2);
(b) the adjustments that should be made to reflect the lack of transferability of those own-fund items that can be used only to cover losses arising from a particular segment of liabilities or from particular risks (ring-fenced funds).

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**Section 4 Solvency capital requirement**
**Subsection 1 General provisions for the solvency capital requirement using the standard formula or an internal model**

**Article 100 General provisions**

Member States shall require that insurance and reinsurance undertakings hold eligible own funds covering the Solvency Capital Requirement.

The Solvency Capital Requirement shall be calculated, either in accordance with the standard formula in Subsection 2 or using an internal model, as set out in Subsection 3.

**Article 101 Calculation of the Solvency Capital Requirement**

1. The Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 5.
2. The Solvency Capital Requirement shall be calculated on the presumption that the undertaking will pursue its business as a going concern.
3. The Solvency Capital Requirement shall be calibrated so as to ensure that all quantifiable risks to which an insurance or reinsurance undertaking is exposed are taken into account. It shall cover existing business, as well as the new business expected to be written over the following 12 months. With respect to existing business, it shall cover only unexpected losses.
   It shall correspond to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 99,5% over a one-year period.
4. The Solvency Capital Requirement shall cover at least the following risks:
   (a) non-life underwriting risk;
   (b) life underwriting risk;
   (c) health underwriting risk;
   (d) market risk;
   (e) credit risk;
   (f) operational risk.

Operational risk as referred to in point (f) of the first subparagraph shall include legal risks, and exclude risks arising from strategic decisions, as well as reputation risks.

5. When calculating the Solvency Capital Requirement, insurance and reinsurance undertakings shall take account of the effect of risk-mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

**Article 102 Frequency of calculation**

1. Insurance and reinsurance undertakings shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the supervisory authorities.
   Insurance and reinsurance undertakings shall hold eligible own funds which cover the last reported Solvency Capital Requirement.
   Insurance and reinsurance undertakings shall monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis.
   If the risk profile of an insurance or reinsurance undertaking deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement, the undertaking concerned shall recalculate the Solvency Capital Requirement without delay and report it to the supervisory authorities.
2. Where there is evidence to suggest that the risk profile of the insurance or reinsurance undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the supervisory authorities may require the undertaking concerned to recalculate the Solvency Capital Requirement.

**Subsection 2 Solvency capital requirement standard formula**

**Article 103 Structure of the standard formula**

The Solvency Capital Requirement calculated on the basis of the standard formula shall be the sum of the following items:

(a) the Basic Solvency Capital Requirement, as laid down in Article 104;
(b) the capital requirement for operational risk, as laid down in Article 107;
(c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in Article 108.

**Article 104 Design of the Basic Solvency Capital Requirement**

1. The Basic Solvency Capital Requirement shall comprise individual risk modules, which are aggregated in accordance with point (1) of Annex IV.
   It shall consist of at least the following risk modules:
   (a) non-life underwriting risk;
   (b) life underwriting risk;
   (c) health underwriting risk;
   (d) market risk;
   (e) counterparty default risk.
2. For the purposes of points (a), (b) and (c) of paragraph 1, insurance or reinsurance operations shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.
3. The correlation coefficients for the aggregation of the risk modules referred to in paragraph 1, as well as the calibration of the capital requirements for each risk module, shall result in an overall Solvency Capital Requirement which complies with the principles set out in Article 101.
4. Each of the risk modules referred to in paragraph 1 shall be calibrated using a Value-at-Risk measure, with a 99,5% confidence level, over a one-year period.
   Where appropriate, diversification effects shall be taken into account in the design of each risk module.
5. The same design and specifications for the risk modules shall be used for all insurance and reinsurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in Article 109.
6. With regard to risks arising from catastrophes, geographical specifications may, where appropriate, be used for the calculation of the life, non-life and health underwriting risk modules.
7. Subject to approval by the supervisory authorities, insurance and reinsurance undertakings may, within the design of the standard formula, replace a subset of its parameters by

parameters specific to the undertaking concerned when calculating the life, non-life and health underwriting risk modules.

Such parameters shall be calibrated on the basis of the internal data of the undertaking concerned, or of data which is directly relevant for the operations of that undertaking using standardised methods.

When granting supervisory approval, supervisory authorities shall verify the completeness, accuracy and appropriateness of the data used.

**Article 105 Calculation of the Basic Solvency Capital Requirement**

1. The Basic Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 6.
2. The non-life underwriting risk module shall reflect the risk arising from non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

   It shall take account of the uncertainty in the results of insurance and reinsurance undertakings related to the existing insurance and reinsurance obligations as well as to the new business expected to be written over the following 12 months.

   It shall be calculated, in accordance with point (2) of Annex IV, as a combination of the capital requirements for at least the following sub-modules:
   (a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk);
   (b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events (non-life catastrophe risk).
3. The life underwriting risk module shall reflect the risk arising from life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

   It shall be calculated, in accordance with point (3) of Annex IV, as a combination of the capital requirements for at least the following sub-modules:
   (a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);
   (b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);
   (c) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability – morbidity risk);
   (d) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts (life-expense risk);
   (e) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk);
   (f) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy lapses, terminations, renewals and surrenders (lapse risk);
   (g) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life-catastrophe risk).
4. The health underwriting risk module shall reflect the risk arising from the underwriting of health insurance obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business.

   It shall cover at least the following risks:
   (a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts;

(b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning;

(c) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.

5. The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking. It shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof.

It shall be calculated, in accordance with point (4) of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

(a) the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk);

(b) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);

(c) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);

(d) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);

(e) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk);

(f) additional risks to an insurance or reinsurance undertaking stemming either from lack of diversification in the asset portfolio or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).

6. The counterparty default risk module shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of insurance and reinsurance undertakings over the following 12 months. The counterparty default risk module shall cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module. It shall take appropriate account of collateral or other security held by or for the account of the insurance or reinsurance undertaking and the risks associated therewith.

For each counterparty, the counterparty default risk module shall take account of the overall counterparty risk exposure of the insurance or reinsurance undertaking concerned to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.

6a. The Commission is empowered to adopt, in accordance with Article 301a, delegated acts supplementing this Directive, in order to reflect the risk posed by crypto-assets in the market risk sub-module referred to in paragraph 5 and in the counterparty risk sub-module referred to in paragraph 6.

**Article 105a Long-term equity investments**

1. By way of derogation from Article 101(3), and as part of the equity risk sub-module referred to in Article 105(5), Member States shall allow insurance and reinsurance undertakings which comply with the conditions laid down in the second subparagraph, to apply to a specific subset of equity investments held with a long-term perspective a capital requirement in accordance with paragraph 4. For the purpose of the first subparagraph, a sub-set of equity investments may be treated as long-term equity investments if the insurance or reinsurance undertaking demonstrates, to the satisfaction of the supervisory authority, that all of the following conditions are met:

(a) the sub-set of equity investments is clearly identified and managed separately from the other activities of the undertaking;

(b) a policy for long-term investment management is set up for each long-term equity portfolio and reflects the undertaking's commitment to hold the global exposure to equity in the sub-set of equity investment for a period that exceeds five years on average. The administrative, management or supervisory board of the undertaking shall explicitly endorse these investment management policies and these policies are frequently reviewed against

the actual management of the portfolios, and reported in the own-risk solvency assessment of the undertaking referred to in Article 45;

(c) the sub-set of equity investments consists only of equities that are listed in countries that are member of the EEA or of the OECD or of unlisted equities of companies that have their head offices in countries that are member of the EEA or of the OECD;

(d) the insurance or reinsurance undertaking is able to demonstrate to the satisfaction of the supervisory authority that on an ongoing basis and under stressed conditions, it is able to avoid forced selling of equity investments within the sub-set for five years ;

(e) the risk management, asset-liability management and investment policies of the insurance or reinsurance undertaking reflect the undertaking's intention to hold the sub-set of equity investments for a period that is compatible with the requirement laid down in point (b) and its ability to meet the requirement laid down in point (d);

(f) the sub-set of equity investments is appropriately diversified in such a way as to avoid excessive reliance on any particular issuer or group of undertakings and excessive accumulation of risk in the portfolio of long-term equity investments as a whole with the same risk profile;

(g) the sub-set of equity investments does not include participations.

2. Where equities are held within European Long Term Investment Funds (ELTIFs) or within certain types of collective investment undertakings, including Alternative Investment Funds (AIFs), which are identified in the delegated acts adopted pursuant to this Directive as having a lower risk-profile (SIC !), the conditions laid down in paragraph 1 may be assessed at the level of the funds and not of the underlying assets held within those funds.

3. Insurance or reinsurance undertakings that treat a sub-set of equity investments as long-term equity investments in accordance with paragraph 1 of this Article shall not revert back to an approach that does not include long-term equity investments. Where an insurance or reinsurance undertaking that treats a sub-set of equity investments as long-term equity investments is no longer able to comply with the conditions laid down in paragraph 1 of this Article, it shall immediately inform the supervisory authority and take the necessary measures to restore compliance. Within one month from the first observation of non-compliance with the conditions set out in paragraph 1, the insurance or reinsurance undertaking shall provide the supervisory authority with the necessary information and the actions to be taken by the undertaking to achieve, within 6 months from the observation of non-compliance, the re-establishment of compliance with those conditions.

Where the undertaking is not able to restore compliance within 6 months of the date of non-compliance, it shall cease to classify any equity investment as long-term equity investment in accordance with this Article for a period of two and a half years, or as long as compliance with the criteria is not restored, whichever period is longer.

4. The capital requirement for long-term equity investments shall be equal to the loss in the basic own funds that would result from an instantaneous decrease equal to 22% in the value of investments that are treated as long-term equity.

5. The Commission shall adopt delegated acts in accordance with Article 301a further specifying the following:

a) the conditions set out in paragraph 1, second subparagraph;

b) the types of collective investment undertakings referred to in paragraph 2;

(c) the information to be included in the solvency and financial condition report and in the regular supervisory report.

**Article 106 Calculation of the equity risk sub-module: symmetric adjustment mechanism**

1. The equity risk sub-module calculated in accordance with the standard formula shall include a symmetric adjustment to the equity capital charge applied to cover the risk arising from changes in the level of equity prices.
2. The symmetric adjustment made to the standard equity capital charge, calibrated in accordance with Article 104(4), covering the risk arising from changes in the level of equity prices shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index. The weighted average shall be calculated over an appropriate period of time which shall be the same for all insurance and reinsurance undertakings.
3. The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices shall not result in an equity capital charge being

applied that is more than ~~10~~ 13 percentage points[26] lower or ~~10 percentage points~~ higher than the standard equity capital charge.

**Article 107 Capital requirement for operational risk**

1. The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in Article 104. That requirement shall be calibrated in accordance with Article 101(3).
2. With respect to life insurance contracts where the investment risk is borne by the policy holders, the calculation of the capital requirement for operational risk shall take account of the amount of annual expenses incurred in respect of those insurance obligations.
3. With respect to insurance and reinsurance operations other than those referred to in paragraph 2, the calculation of the capital requirement for operational risk shall take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations. In this case, the capital requirement for operational risks shall not exceed 30% of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

**Article 108 Adjustment for the loss-absorbing capacity of technical provisions and deferred taxes**

The adjustment referred to in Article 103(c) for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of the two.

That adjustment shall take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent insurance and reinsurance undertakings can establish that a reduction in such benefits may be used to cover unexpected losses when they arise. The risk mitigating effect provided by future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

For the purpose of the second paragraph, the value of future discretionary benefits under adverse circumstances shall be compared to the value of such benefits under the underlying assumptions of the best-estimate calculation.

**Article 109 Simplifications in the standard formula**

1. Insurance and reinsurance undertakings may use a simplified calculation for a specific risk module or risk sub-module where all the following conditions are met:
   - the nature, scale and complexity of the risks they face justifies the use of a simplified calculation;
   - it would be disproportionate to require the insurance and reinsurance undertaking to apply the standardised calculation;
   - the error introduced in the results of the simplified calculation does not lead to a material misstatement of the Solvency Capital Requirement, unless the simplified calculation leads to a Solvency Capital Requirement which exceeds the Solvency Capital Requirement that results from the standardised calculation.

   Notwithstanding the first subparagraph, small and non-complex undertakings may use a simplified calculation for a specific risk module or risk sub-module without having to comply with the conditions set out in the first subparagraph, where they can demonstrate to the satisfaction of the supervisory authority and at least every five years that both of the following conditions are met:
   - each individual risk module or risk sub-module for which a simplified calculation is intended to be used, represents, without applying the simplification, less than 2% of the Basic Solvency Capital Requirement;
   - the sum of all risk modules or risk sub-modules for which a simplified calculation is intended to be used, represents, without applying the simplification, less than 10% of the Basic Solvency Capital Requirement.

   For the purposes of this paragraph, simplified calculations shall be calibrated in accordance with Article 101(3).
2. Without prejudice to paragraph 1 of this Article and to Article 102(1), where an insurance or reinsurance undertaking calculates the Solvency Capital Requirement and a risk module or

[26] The four column trilogue document says (Line 548): "COM: 17pp would have been useful during dotcom crisis and just before subprime crisis and COVID."

sub-module does not represent a share of more than 5% of the Basic Solvency Capital Requirement referred to in Article 103, point (a), the undertaking may use a simplified calculation for that risk module or sub-module during a period of no more than three years following that calculation of the Solvency Capital Requirement.

3. For the purposes of paragraph 2, the sum of the shares, relative to the Basic Solvency Capital Requirement, of each risk module or sub-module where the simplified calculations pursuant to paragraph 2 are applied shall not exceed 10%.

The share of a risk module or sub-module relative to the Basic Solvency Capital Requirement referred to in the first subparagraph shall be that share as calculated the last time when the risk module or sub-module was calculated without a simplified calculation pursuant to paragraph 2.

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**Article 109a Harmonised technical inputs to standard formula**

1. For the purposes of the calculation of the Solvency Capital Requirement in accordance with the standard formula, the ESAs through the Joint Committee shall develop draft implementing technical standards on the allocation of credit assessments of external credit assessment institutions (ECAIs) to an objective scale of credit quality steps applying the steps specified in accordance with Article 111(1)(n).

   The ESAs' Joint Committee shall submit those draft implementing technical standards to the Commission by 30 June 2015.

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

2. In order to ensure uniform conditions of application of this Article and for the purposes of facilitating the calculation of the market risk module referred to in Article 105(5), facilitating the calculation of the counterparty default risk module referred to in Article 105(6), evaluating risk mitigation techniques referred to in Article 101(5), and calculating technical provisions, EIOPA shall develop draft implementing technical standards on:

   (a) lists of regional governments and local authorities, exposures to whom are to be treated as exposures to the central government of the jurisdiction in which they are established, provided that there is no difference in risk between such exposures because of the specific revenue-raising powers of the former, and specific institutional arrangements exist, the effect of which is to reduce the risk of default;

   (b) the equity index referred to in Article 106(2), in accordance with the detailed criteria established under Article 111(1)(c) and (o);

   (c) the adjustments to be made for currencies pegged to the euro in the currency risk sub-module referred to in Article 105(5), in accordance with the detailed criteria for the adjustments for currencies pegged to the euro for the purpose of facilitating the calculation of the currency risk sub-module, as established under Article 111(1)(p).

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

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

3. EIOPA shall publish technical information including information concerning the symmetric adjustment referred to in Article 106 on at least a quarterly basis.

4. In order to ensure uniform conditions of application of this Article and for the purpose of facilitating the calculation of the health underwriting risk module referred to in Article 105(4), EIOPA shall develop draft implementing technical standards, taking into account the calculations provided by the supervisory authorities of the Member States concerned, on standard deviations in relation to specific national legislative measures of Member States which permit the sharing of claims payments in respect of health risk amongst insurance and reinsurance undertakings and which meet the criteria in paragraph 5 and any additional criteria established by delegated acts.

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

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

5. The implementing technical standards referred to in paragraph 4 shall apply only to the national legislative measures of Member States which permit the sharing of claims payments in respect

of health risk amongst insurance and reinsurance undertakings and which meet the following criteria:

(a) the mechanism for the sharing of claims is transparent and fully specified in advance of the annual period to which it applies;

(b) the mechanism for the sharing of claims, the number of insurance undertakings that participate in the health risk equalisation system (HRES) and the risk characteristics of the business subject to the HRES ensure that for each undertaking participating in the HRES the volatility of annual losses of the business subject to the HRES is significantly reduced by means of the HRES, both in relation to premium and to reserve risk;

(c) health insurance subject to the HRES is compulsory and serves as a partial or complete alternative to health cover provided by the statutory social security system;

(d) in the event of default of insurance undertakings participating in the HRES, one or more Member States' governments guarantee to meet the policy holder claims of the insurance business that is subject to the HRES in full.

The Commission shall adopt delegated acts in accordance with Article 301a which set out the additional criteria that the national legislative measures arrangements shall meet, and the methodology and the requirements for the calculation of the standard deviations referred to in paragraph 4 of this Article.

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**Article 110 Significant deviations from the assumptions underlying the standard formula calculation**

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance or reinsurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the supervisory authorities may, by means of a decision stating the reasons, require the undertaking concerned to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Article 104(7). Those specific parameters shall be calculated in such a way to ensure that the undertaking complies with Article 101(3).

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**Article 111 Delegated acts and regulatory and implementing technical standards concerning Articles 103 to 109**

1. The Commission shall adopt delegated acts in accordance with Article 301a providing for the following:

(a) a standard formula in accordance with Articles 101 and 103 to 109;

(b) any sub-modules necessary or covering more precisely the risks which fall under the respective risk modules referred to in Article 104 as well as any subsequent updates;

(c) the methods, assumptions and standard parameters to be calibrated to the confidence level referred to in Article 101(3) and to be used when calculating each of the risk modules or sub-modules of the basic Solvency Capital Requirement laid down in Articles 104, 105 and 304, the symmetric adjustment mechanism and the appropriate period of time, expressed in the number of months, as referred to in Article 106, and the appropriate approach for integrating the method referred to in Article 304 in the Solvency Capital Requirement as calculated in accordance with the standard formula;

(d) the correlation parameters, including, where necessary, those set out in Annex IV, and the procedures for updating those parameters;

(e) where insurance and reinsurance undertakings use risk-mitigation techniques, the methods and assumptions to be used to assess the changes in the risk profile of the undertaking concerned and to adjust the calculation of the Solvency Capital Requirement;

(f) the qualitative criteria that the risk-mitigation techniques referred to in point (e) must fulfil in order to ensure that the risk has been effectively transferred to a third party;

(fa) the method and parameters to be used when assessing the capital requirement for counterparty default risk in the case of exposures to qualifying central counterparties, those parameters ensuring consistency with the treatment of such exposures in the case of credit institutions and financial institutions within the meaning of Article 4(1)(1) and (26) of Regulation (EU) No 575/2013;

(g) the methods and parameters to be used when assessing the capital requirement for operational risk set out in Article 107, including the percentage referred to in Article 107(3);

(h) the methods and adjustments to be used to reflect the reduced scope for risk diversification of insurance and reinsurance undertakings relating to ring-fenced funds;

(i) the method to be used when calculating the adjustment for the loss absorbing capacity of technical provisions or deferred taxes, as laid down in Article 108;

(j) the subset of standard parameters in the life, non-life and health underwriting risk modules that may be replaced by undertaking-specific parameters as set out in Article 104(7);

(k) the standardised methods to be used by the insurance or reinsurance undertaking to calculate the undertaking-specific parameters referred to in point (j), and any criteria with respect to the completeness, accuracy, and appropriateness of the data used that must be met before supervisory approval is given together with the procedure to be followed for such approval;

(l) the simplified calculations provided for specific sub-modules and risk modules referred to in Article 109(1), ~~as well as the criteria that insurance and reinsurance undertakings, including captive insurance and reinsurance undertakings~~and for immaterial risk modules and sub-modules referred to in Article 109(2), as well as the criteria that insurance and reinsurance undertakings, including captive insurance undertakings and captive reinsurance undertakings, shall be required to fulfil in order to be entitled to use each of those simplifications, as set out in ~~Article 109;~~Article 109(1);

(m) the approach to be used with respect to qualifying holdings within the meaning of Article 13(21)~~related undertakings within the meaning of Article 212~~ in the calculation of the Solvency Capital Requirement, in particular the calculation of the equity risk sub-module referred to in Article 105(5), taking into account the likely reduction in the volatility of the value of those ~~related undertakings~~ qualifying holdings arising from the strategic nature of those investments and the influence exercised by the ~~participating~~ insurance or reinsurance undertaking on those ~~related undertakings;~~investees;

(n) how to use external credit assessments from ECAIs in the calculation of the Solvency Capital Requirement in accordance with the standard formula and the allocation of external credit assessments to a scale of credit quality steps referred to in Article 109a(1) which shall be consistent with the use of external credit assessments from ECAIs in the calculation of the capital requirements for credit institutions as defined in Article 4(1)(1) of Regulation (EU) No 575/2013 and financial institutions as defined in Article 4(1)(26) thereof;

(o) the detailed criteria for the equity index referred to in Article 109a(2)(c);

(p) the detailed criteria for the adjustments for currencies pegged to the euro for the purpose of facilitating the calculation of the currency risk sub-module referred to in Article 109a(2)(d);

(q) the conditions for a categorisation of regional governments and local authorities referred to in Article 109a(2)(a).

For the purpose of the first subparagraph, point (h), the methods and adjustments to be used to reflect the reduced scope for risk diversification of insurance and reinsurance undertakings relating to ring-fenced funds shall not apply to the portfolios of assets that are not ring-fenced funds and that are assigned to cover a corresponding best estimate of insurance or reinsurance obligations as referred to in Article 77b(1), point (a).

For the purpose of the first subparagraph, point (c), the methods, assumptions and standard parameters for the interest rate risk sub-module referred to in Article 105(5), second subparagraph, point (a), shall reflect the risk that interest rates may further decrease even where they are low or negative and its calculation shall be consistent with the extrapolation of interest rates according to Article 77a. Notwithstanding the previous sentence, the calculation of the interest rate risk sub-module shall not be required to take into account the risk of interest rates falling to levels below a negative floor where a negative floor is determined such that the likelihood of interest rates across relevant currencies and across maturities not being at all times above the negative floor is sufficiently small.

2. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the procedures for supervisory approval of undertaking-specific parameters referred to in point (k) of paragraph 1.

EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.

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

2a. Where the Commission, pursuant to paragraph 1, first subparagraph, point (c), adopts delegated acts supplementing this Directive in order to specify the methods, assumptions and

standard parameters to be used for calculating the interest rate risk sub-module referred to in Article 105(5), point (a), with the objective to improve the sensitivity of capital requirements in line with developments in interest rates, such adjustments to the interest rate risk sub-module may be phased in over a transitional period of up to five years. Such phasing-in shall be mandatory and apply to all insurance or reinsurance undertakings.

3. By ~~31 December 2020, the Commission~~ [five years after entry into force], and every five years thereafter, EIOPA shall make an assessment of the appropriateness of the methods, assumptions and standard parameters used when calculating the Solvency Capital Requirement standard formula. It shall in particular take into account the performance of any asset class and financial instruments, the behaviour of investors in those assets and financial instruments as well as developments in international standard setting in financial services. The review of certain asset classes may be prioritised. On the basis of EIOPA's assessment, the ~~The~~ Commission shall present where appropriate, ~~a report to the European Parliament and to the Council, accompanied, where appropriate, by~~ proposals for the amendment of this Directive, or of delegated or implementing acts adopted pursuant hereto.
Insurance and reinsurance undertakings applying Article 111(1) subparagraph 2/Article 111(2a) shall within the part of their report on their solvency financial condition consisting of information targeted to market professionals referred to in Article 51(1b) publicly disclose:
(i) the fact that they apply the transitional for extrapolation and
~~(i)~~(ii) the quantification of the impact of not applying the transitional on their financial position.

4. In order to ensure consistent harmonisation in relation to the Solvency Capital Requirement, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify quantitative limits and asset eligibility criteria where those risks are not adequately covered by a sub-module.
Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010. Those regulatory technical standards shall apply to assets covering technical provisions, excluding assets held in respect of life insurance contracts where the investment risk is borne by the policy holders. They shall be reviewed by the Commission in the light of developments in the standard formula and financial markets.

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**Subsection 3 Solvency capital requirement full and partial internal models**

**Article 112 General provisions for the approval of full and partial internal models**

1. Member States shall ensure that insurance or reinsurance undertakings may calculate the Solvency Capital Requirement using a full or partial internal model as approved by the supervisory authorities.
2. Insurance and reinsurance undertakings may use partial internal models for the calculation of one or more of the following:
   (a) one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in Articles 104 and 105;
   (b) the capital requirement for operational risk as set out in Article 107;
   (c) the adjustment referred to in Article 108.
   In addition, partial modelling may be applied to the whole business of insurance and reinsurance undertakings, or only to one or more major business units.
3. In any application for approval, insurance and reinsurance undertakings shall submit, as a minimum, documentary evidence that the internal model fulfils the requirements set out in Articles 120 to 125.
   Where the application for that approval relates to a partial internal model, the requirements set out in Articles 120 to 125 shall be adapted to take account of the limited scope of the application of the model.

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3a. Supervisory authorities shall inform EIOPA in accordance with Article 35(1) of Regulation (EU) No 1094/2010 of any applications to use or change an internal model. Upon the request of one or more supervisory authorities concerned, EIOPA may provide technical assistance, pursuant to point (b) of Article 8(1) of that Regulation, to the supervisory authority or authorities which requested the assistance, with respect to the decision on the application.

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4. The supervisory authorities shall decide on the application within six months from the receipt of the complete application.
5. Supervisory authorities shall give approval to the application only if they are satisfied that the systems of the insurance or reinsurance undertaking for identifying, measuring, monitoring, managing and reporting risk are adequate and in particular, that the internal model fulfils the requirements referred to in paragraph 3.
6. A decision by the supervisory authorities to reject the application for the use of an internal model shall state the reasons on which it is based.
7. After having received approval from supervisory authorities to use an internal model, insurance and reinsurance undertakings shall~~may, by means of a decision stating the reasons, be required to~~ provide every two years the supervisory authorities with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2. Supervisory authorities may by means of a decision stating the reasons, request more frequent reporting from the insurance or reinsurance undertaking.[27]

**Article 113 Specific provisions for the approval of partial internal models**

1. In the case of a partial internal model, supervisory approval shall be given only where that model fulfils the requirements set out in Article 112 and the following additional conditions:
   (a) the reason for the limited scope of application of the model is properly justified by the undertaking;
   (b) the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and in particular complies with the principles set out in Subsection 1;
   (c) its design is consistent with the principles set out in Subsection 1 so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement standard formula.
2. When assessing an application for the use of a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of an insurance or reinsurance undertaking with respect to a specific risk module, or parts of both, supervisory authorities may require the insurance and reinsurance undertakings concerned to submit a realistic transitional plan to extend the scope of the model.
   The transitional plan shall set out the manner in which insurance and reinsurance undertakings plan to extend the scope of the model to other sub-modules or business units, in order to ensure that the model covers a predominant part of their insurance operations with respect to that specific risk module.

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**Article 114 Delegated acts and implementing technical standards concerning the Solvency Capital Requirement internal models**

1. The Commission shall adopt delegated acts in accordance with Article 301a setting out the following:
   (a) the adaptations to be made to the standards set out in Articles 120 to 125 in light of the limited scope of the application of the partial internal model;
   (b) the manner in which a partial internal model is to be fully integrated into the Solvency Capital Requirement standard formula referred to in Article 113(1)(c) and the requirements for the use of alternative integration techniques.
2. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the procedures for:
   (a) the approval of an internal model in accordance with Article 112; and
   (b) the approval of major changes to an internal model and changes to the policy for changing an internal model referred to in Article 115.
   EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.
   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

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**Article 115 Policy for changing the full and partial internal models**

[27] The four column trilogue document says (Line ): "[…]Recital to be developed by the COM on 'estimate'."

As part of the initial approval process of an internal model, the supervisory authorities shall approve the policy for changing the model of the insurance or reinsurance undertaking. Insurance and reinsurance undertakings may change their internal model in accordance with that policy.
The policy shall include a specification of minor and major changes to the internal model.
Major changes to the internal model, as well as changes to that policy, shall always be subject to prior supervisory approval, as laid down in Article 112.
Minor changes to the internal model shall not be subject to prior supervisory approval, insofar as they are developed in accordance with that policy.

**Article 116 Responsibilities of the administrative, management or supervisory bodies**
The administrative, management or supervisory bodies of the insurance and reinsurance undertakings shall approve the application to the supervisory authorities for approval of the internal model referred to in Article 112, as well as the application for approval of any subsequent major changes made to that model.
The administrative, management or supervisory body shall have responsibility for putting in place systems which ensure that the internal model operates properly on a continuous basis.

**Article 117 Reversion to the standard formula**
After having received approval in accordance with Article 112, insurance and reinsurance undertakings shall not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, except in duly justified circumstances and subject to the approval of the supervisory authorities.

**Article 118 Non-compliance of the internal model**
1. If, after having received approval from the supervisory authorities to use an internal model, insurance and reinsurance undertakings cease to comply with the requirements set out in Articles 120 to 125, they shall, without delay, either present to the supervisory authorities a plan to restore compliance within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.
2. In the event that insurance and reinsurance undertakings fail to implement the plan referred to in paragraph 1, the supervisory authorities may require insurance and reinsurance undertakings to revert to calculating the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2.

**Article 119 Significant deviations from the assumptions underlying the standard formula calculation**
Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance or reinsurance undertaking concerned deviates significantly from the assumptions underlying the standard formula calculation, the supervisory authorities may, by means of a decision stating the reasons, require the undertaking concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules thereof.

**Article 120 Use test**
Insurance and reinsurance undertakings shall demonstrate that the internal model is widely used in and plays an important role in their system of governance, referred to in Articles 41 to 50, in particular:
(a) their risk-management system as laid down in Article 44 and their decision-making processes;
(b) their economic and solvency capital assessment and allocation processes, including the assessment referred to in Article 45.
In addition, insurance and reinsurance undertakings shall demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which they use their internal model for the other purposes covered by the first paragraph.
The administrative, management or supervisory body shall be responsible for ensuring the ongoing appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the insurance and reinsurance undertakings concerned.

**Article 121 Statistical quality standards**

1. The internal model, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the criteria set out in paragraphs 2 to 9.
2. The methods used to calculate the probability distribution forecast shall be based on adequate, applicable and relevant actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.
   The methods used to calculate the probability distribution forecast shall be based upon current and credible information and realistic assumptions.
   Insurance and reinsurance undertakings shall be able to justify the assumptions underlying their internal model to the supervisory authorities.
3. Data used for the internal model shall be accurate, complete and appropriate.
   Insurance and reinsurance undertakings shall update the data sets used in the calculation of the probability distribution forecast at least annually.
4. No particular method for the calculation of the probability distribution forecast shall be prescribed.
   Regardless of the calculation method chosen, the ability of the internal model to rank risk shall be sufficient to ensure that it is widely used in and plays an important role in the system of governance of insurance and reinsurance undertakings, in particular their risk-management system and decision-making processes, and capital allocation in accordance with Article 120.
   The internal model shall cover all of the material risks to which insurance and reinsurance undertakings are exposed. Internal models shall cover at least the risks set out in Article 101(4).
5. As regards diversification effects, insurance and reinsurance undertakings may take account in their internal model of dependencies within and across risk categories, provided that supervisory authorities are satisfied that the system used for measuring those diversification effects is adequate.
6. Insurance and reinsurance undertakings may take full account of the effect of risk-mitigation techniques in their internal model, as long as credit risk and other risks arising from the use of risk-mitigation techniques are properly reflected in the internal model.
7. Insurance and reinsurance undertakings shall accurately assess the particular risks associated with financial guarantees and any contractual options in their internal model, where material. They shall also assess the risks associated with both policy holder options and contractual options for insurance and reinsurance undertakings. For that purpose, they shall take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.
8. In their internal model, insurance and reinsurance undertakings may take account of future management actions that they would reasonably expect to carry out in specific circumstances.
   In the case set out in the first subparagraph, the undertaking concerned shall make allowance for the time necessary to implement such actions.
9. In their internal model, insurance and reinsurance undertakings shall take account of all payments to policy holders and beneficiaries which they expect to make, whether or not those payments are contractually guaranteed.

**Article 122 Calibration standards**

1. Insurance and reinsurance undertakings may use a different time period or risk measure than that set out in Article 101(3) for internal modelling purposes as long as the outputs of the internal model can be used by those undertakings to calculate the Solvency Capital Requirement in a manner that provides policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101.
2. Where practicable, insurance and reinsurance undertakings shall derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model of those undertakings, using the Value-at-Risk measure set out in Article 101(3).
3. Where insurance and reinsurance undertakings cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model, the supervisory authorities may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as those undertakings can demonstrate to the supervisory authorities that policy holders are provided with a level of protection equivalent to that provided for in Article 101.
4. Supervisory authorities may require insurance and reinsurance undertakings to run their internal model on relevant benchmark portfolios and using assumptions based on external rather

than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

5. Member States may allow insurance and reinsurance undertakings to take into account the effect of credit spread movements on the volatility adjustment calculated in accordance with Article 77d in their internal model, only where:

(a) the method to take into account the effect of credit spread movements on the volatility adjustment a currency does neither take into account the undertaking-specific adjustment of the risk-corrected spread pursuant to Article 77d(1c) nor, in the case of the euro, a possible increase of the volatility adjustment by a macro volatility adjustment pursuant to Article 77d(4);[28]

(b) the Solvency Capital Requirement is not lower than any of the following:

(i) a notional Solvency Capital Requirement calculated as the Solvency Capital Requirement, except that the effect of credit spread movements on the volatility adjustment is taken into account in accordance with the methodology used by EIOPA for the purposes of the publication of technical information pursuant to Article 77e(1), point (c);

(ii) a notional Solvency Capital Requirement calculated in accordance with (i), except that the representative portfolio for a currency referred to in Article 77d(2), second subparagraph, is determined on the basis of the assets in which the insurance and reinsurance undertaking is investing instead of the assets of all insurance or reinsurance undertakings with insurance or reinsurance obligations denominated in that currency.

For the purpose of the first subparagraph, point (b), the determination of the representative portfolio for a given currency shall be based on the undertaking's assets denominated in that currency and used to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

**Article 123 Profit and loss attribution**

Insurance and reinsurance undertakings shall review, at least annually, the causes and sources of profits and losses for each major business unit.

They shall demonstrate how the categorisation of risk chosen in the internal model explains the causes and sources of profits and losses. The categorisation of risk and attribution of profits and losses shall reflect the risk profile of the insurance and reinsurance undertakings.

**Article 124 Validation standards**

Insurance and reinsurance undertakings shall have a regular cycle of model validation which includes monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specification, and testing its results against experience.

The model validation process shall include an effective statistical process for validating the internal model which enables the insurance and reinsurance undertakings to demonstrate to their supervisory authorities that the resulting capital requirements are appropriate.

The statistical methods applied shall test the appropriateness of the probability distribution forecast compared not only to loss experience but also to all material new data and information relating thereto.

The model validation process shall include an analysis of the stability of the internal model and in particular the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions. It shall also include an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

**Article 125 Documentation standards**

Insurance and reinsurance undertakings shall document the design and operational details of their internal model.

The documentation shall demonstrate compliance with Articles 120 to 124.

The documentation shall provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model.

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[28] The four column trialogue document says (Line 566): "The undertaking specific overshooting should be deactivated for the purpose of capital requirements, see line 549b Council text and 461d EP. Text." Line 549b = art. 109. Line 461d = art. 109(3).

The documentation shall indicate any circumstances under which the internal model does not work effectively.
Insurance and reinsurance undertakings shall document all major changes to their internal model, as set out in Article 115.

**Article 126 External models and data**
The use of a model or data obtained from a third party shall not be considered to be a justification for exemption from any of the requirements for the internal model set out in Articles 120 to 125.

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**Article 127 Delegated acts concerning Articles 120 to 126**
The Commission shall adopt delegated acts in accordance with Article 301a with respect to Articles 120 to 126 to enhance the better assessment of the risk profile and management of the business of insurance and reinsurance undertakings regarding the use of internal models throughout the Union.

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**Section 5 Minimum capital requirement**

**Article 128 General provisions**
Member States shall require that insurance and reinsurance undertakings hold eligible basic own funds, to cover the Minimum Capital Requirement.

**Article 129 Calculation of the Minimum Capital Requirement**
1. The Minimum Capital Requirement shall be calculated in accordance with the following principles:
   (a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;
   (b) it shall correspond to an amount of eligible basic own funds below which policy holders and beneficiaries are exposed to an unacceptable level of risk were insurance and reinsurance undertakings allowed to continue their operations;
   (c) the linear function referred to in paragraph 2 used to calculate the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 85% over a one-year period;
   (d) it shall have an absolute floor of:
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      (i) ►M10 EUR 2 700 000 ◄ for non-life insurance undertakings, including captive insurance undertakings, save in the case where all or some of the risks included in one of the classes 10 to 15 listed in Part A of Annex I are covered, in which case it shall be no less than ►M10 EUR 4 000 000 ◄ ;
      (ii) ►M10 EUR 4 000 000 ◄ for life insurance undertakings, including captive insurance undertakings;
      (iii) ►M10 EUR 3 900 000 ◄ for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be not less than ►M10 EUR 1 300 000 ◄ ;
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      (iv) the sum of the amounts set out in points (i) and (ii) for insurance undertakings as referred to in Article 73(5).
2. Subject to paragraph 3, the Minimum Capital Requirement shall be calculated as a linear function of a set or sub-set of the following variables: the undertaking's technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses. The variables used shall be measured net of reinsurance.
3. Without prejudice to paragraph 1(d), the Minimum Capital Requirement shall neither fall below 25% nor exceed 45% of the undertaking's Solvency Capital Requirement, calculated in accordance with Chapter VI, Section 4, Subsections 2 or 3, and including any capital add-on imposed in accordance with Article 37.

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Member States shall allow their supervisory authorities, for a period ending no later than 31 December 2017, to require an insurance or reinsurance undertaking to apply the percentages

referred to in the first subparagraph exclusively to the undertaking's Solvency Capital Requirement calculated in accordance with Chapter VI, Section 4, Subsection 2.

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4. Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to supervisory authorities.

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For the purposes of calculating the limits referred to in paragraph 3, undertakings shall not be required to calculate the Solvency Capital Requirement on a quarterly basis.

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Where either of the limits referred to in paragraph 3 determines an undertaking's Minimum Capital Requirement, the undertaking shall provide to the supervisory authority information allowing a proper understanding of the reasons therefor.

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5. The Commission shall submit to the European Parliament and the Council by 31 December 2020 a report on Member States' rules and supervisory authorities' practices adopted pursuant to paragraphs 1 to 4.

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That report shall address, in particular, the use and level of the cap and the floor set out in paragraph 3 as well as any problems faced by supervisory authorities and by undertakings in the application of this Article.

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**Article 130 Delegated acts**

The Commission shall adopt delegated acts in accordance with Article 301a specifying the calculation of the Minimum Capital Requirement, referred to in Articles 128 and 129.

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**Article 131 Transitional arrangements regarding compliance with the Minimum Capital Requirement**

By way of derogation from Articles 139 and 144, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 28 of Directive 2002/83/EC, Article 16a of Directive 73/239/EEC or Article 37, 38 or 39 of Directive 2005/68/EC respectively on ►M5 31 December 2015 ◄ but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertakings concerned shall comply with Article 128 by ►M5 31 December 2016 ◄ .

Where the undertaking concerned fails to comply with Article 128 within the period set out in the first paragraph, the authorisation of the undertaking shall be withdrawn, subject to the applicable processes provided for in the national legislation.

**Section 6 Investments**

**Article 132 Prudent person principle**

1. Member States shall ensure that insurance and reinsurance undertakings invest all their assets in accordance with the prudent person principle, as specified in paragraphs 2, 3 and 4.
2. With respect to the whole portfolio of assets, insurance and reinsurance undertakings shall only invest in assets and instruments whose risks the undertaking concerned can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with point (a) of the second subparagraph of Article 45(1).

   All assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole. In addition the localisation of those assets shall be such as to ensure their availability.

   Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested in the best interest of all policy holders and beneficiaries taking into account any disclosed policy objective.

In the case of a conflict of interest, insurance undertakings, or the entity which manages their asset portfolio, shall ensure that the investment is made in the best interest of policy holders and beneficiaries.

3. Without prejudice to paragraph 2, with respect to assets held in respect of life insurance contracts where the investment risk is borne by the policy holders, the second, third and fourth subparagraphs of this paragraph shall apply.
   Where the benefits provided by a contract are directly linked to the value of units in an UCITS as defined in Directive 2009/65/EC~~Directive 85/611/EEC~~, or to the value of assets contained in an internal fund held by the insurance undertakings, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets.
   Where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in the second subparagraph, the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based.
   Where the benefits referred to in the second and third subparagraphs include a guarantee of investment performance or some other guaranteed benefit, the assets held to cover the corresponding additional technical provisions shall be subject to paragraph 4.
4. Without prejudice to paragraph 2, with respect to assets other than those covered by paragraph 3, the second to fifth subparagraphs of this paragraph shall apply.
   The use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management.
   Investment and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels.
   Assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area and excessive accumulation of risk in the portfolio as a whole.
   Investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the insurance undertakings to excessive risk concentration.
5. Insurance and reinsurance undertakings shall take account of possible macroeconomic and financial markets' developments when they decide on their investment strategy.
   Insurance and reinsurance undertakings shall also take account of the impact of sustainability risks on their investments and the potential long-term impact of their investment decisions on sustainability factors when they decide on their investment strategy.
6. At the request of the supervisory authority, insurance and reinsurance undertakings shall take account of macroprudential concerns when they decide on their investment strategy and assess the extent to which their investment strategy may affect macroeconomic and financial markets' developments and have the potential to turn into sources of systemic risk, and incorporate such considerations as part of their investment decisions.
7. For the purpose of paragraphs 5 and 6, macroeconomic and financial markets' developments as well as macroprudential concerns shall have the same meaning as in Article 45.
8. When deciding whether to make the request referred to in paragraph 6 to an insurance or reinsurance undertaking which is a subsidiary undertaking included in the scope of group supervision in accordance with Article 213(2), points (a) and (b), the supervisory authority shall consider whether the assessment referred to in paragraph 6 is performed at group level by the participating insurance or reinsurance undertaking, the insurance holding company or mixed financial holding company which has its head office in the Union, and covers the specificities of that subsidiary undertaking.

**Article 133 Freedom of investment**

1. Member States shall not require insurance and reinsurance undertakings to invest in particular categories of asset.
2. Member States shall not subject the investment decisions of an insurance or reinsurance undertaking or its investment manager to any kind of prior approval or systematic notification requirements.
3. This Article is without prejudice to Member States' requirements restricting the types of assets or reference values to which policy benefits may be linked. Any such rules shall be applied

only where the investment risk is borne by a policy holder who is a natural person and shall not be more restrictive than those set out in the Directive 2009/65/EC'~~Directive 85/611/EEC~~.

**Article 134 Localisation of assets and prohibition of pledging of assets**

1. With respect to insurance risks situated in the Community, Member States shall not require that the assets held to cover the technical provisions related to those risks are localised within the Community or in any particular Member States.
   In addition, with respect to recoverables from reinsurance contracts against undertakings authorised in accordance with this Directive or which have their head office in a third country whose solvency regime is deemed to be equivalent in accordance with Article 172, Member States shall not require the localisation within the Community of the assets representing those recoverables.
2. Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is an insurance or reinsurance undertaking authorised in accordance with this Directive.

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**Article 135 Delegated acts and regulatory technical standards concerning qualitative requirements**

1. The Commission may adopt delegated acts in accordance with Article 301a specifying qualitative requirements in the following areas:
   (a) the identification, measurement, monitoring and managing of risks arising from investments in relation to the first subparagraph of Article 132(2);
   (b) the identification, measurement, monitoring and managing of specific risks arising from investment in derivative instruments and assets referred to in the second subparagraph of Article 132(4) and the determination of the extent to which the use of such assets qualifies as risk reduction or efficient portfolio management as referred to in the third subparagraph of Article 132(4).

▼M7

2. The Commission shall adopt delegated acts in accordance with Article 301a of this Directive supplementing this Directive by laying down the specifications for the circumstances under which a proportionate additional capital charge may be imposed when the requirements provided for in Articles 5 or 6 of Regulation (EU) 2017/2402 of the European Parliament and of the Council[29] have been breached, without prejudice to Article 101(3) of this Directive.
3. In order to ensure consistent harmonisation in relation to paragraph 2 of this Article, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the methodologies for the calculation of a proportionate additional capital charge referred to therein.
   The Commission is empowered to supplement this Directive by adopting the regulatory technical standards referred to in this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

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**CHAPTER VII Insurance and reinsurance undertakings in difficulty or in an irregular situation**

**Article 136 Identification and notification of deteriorating financial conditions by the insurance and reinsurance undertaking**

Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the supervisory authorities when such deterioration occurs.

**Article 137 Non-Compliance with technical provisions**

Where an insurance or reinsurance undertaking does not comply with Chapter VI, Section 2, the supervisory authorities of its home Member State may prohibit the free disposal of its assets after

[29] Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 (OJ L 347, 28.12.2017, p. 35).

having communicated their intentions to the supervisory authorities of the host Member States. The supervisory authorities of the home Member State shall designate the assets to be covered by such measures.

**Article 138 Non-Compliance with the Solvency Capital Requirement**

1. Insurance and reinsurance undertakings shall immediately inform the supervisory authority as soon as they observe that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.
2. Within two months from the observation of non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the supervisory authority.
3. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.
   The supervisory authority may, if appropriate, extend that period by three months.

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4. In the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, as declared by EIOPA, ~~and where appropriate after consulting the ESRB,~~ the supervisory authority may extend, for affected undertakings, the period set out in ~~the second subparagraph of paragraph 3~~ paragraph 3, second subparagraph by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.
   Without prejudice to the powers of EIOPA under Article 18 of Regulation (EU) No 1094/2010, for the purposes of this paragraph EIOPA shall, following a request by the supervisory authority concerned, and, where appropriate, after consulting the ESRB, declare the existence of exceptional adverse situations. The supervisory authority concerned may make a request if insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in paragraph 3.
   Exceptional adverse situations exist where the financial situation of insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are seriously or adversely affected by one or more of the following conditions:
   (a) a fall in financial markets which is unforeseen, sharp and steep;
   (b) a persistent low interest rate environment;
   (c) a high-impact catastrophic event.
   EIOPA shall, in cooperation with the supervisory authority concerned, assess on a regular basis whether the conditions referred to in the second subparagraph still apply. EIOPA shall, in cooperation with the supervisory authority concerned, declare when an exceptional adverse situation has ceased to exist.
   The insurance or reinsurance undertaking concerned shall, every three months, submit a progress report to its supervisory authority setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.
   The extension referred to in the first subparagraph shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

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5. In exceptional circumstances, where the supervisory authority is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. That supervisory authority shall inform the supervisory authorities of the host Member States of any measures it has taken. Those authorities shall, at the request of the supervisory authority of the home Member State, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.

**Article 139 Non-Compliance with the Minimum Capital Requirement**

1. Insurance and reinsurance undertakings shall inform the supervisory authority immediately where they observe that the Minimum Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.
   For the purpose of the first subparagraph of this paragraph, the requirement to inform the supervisory authority shall apply irrespective of whether the insurance or reinsurance undertaking observes the failure to comply with the Minimum Capital Requirement or the risk of non-compliance during a calculation of the Minimum Capital Requirement pursuant to Article 129(4) or during a calculation of the Minimum Capital Requirement between two dates when such calculation is reported to the supervisory authority pursuant to Article 129(4).
2. Within one month from the observation of non-compliance with the Minimum Capital Requirement, or from the observation of the risk of non-compliance, the insurance or reinsurance undertaking concerned shall submit, for approval by the supervisory authority, a short-term realistic finance scheme to restore, within three months of that observation, the eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce its risk profile to ensure compliance with the Minimum Capital Requirement.
3. If a winding-up proceeding is not opened within two months of receipt of the information referred to in paragraph 1, the ~~The~~ supervisory authority of the home Member State shall consider restricting or prohibiting ~~may also restrict or prohibit~~ the free disposal of the assets of the insurance or reinsurance undertaking. It shall inform the supervisory authorities of the host Member States accordingly. At the request of the supervisory authority of the home Member State, those authorities shall, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.
   Article 140 Prohibition of free disposal of assets located within the territory of a Member State
   Member States shall take the measures necessary to be able, in accordance with national law, to prohibit the free disposal of assets located within their territory at the request, in the cases provided for in Articles 137 to 139 and Article 144(2) of the undertaking's home Member State, which shall designate the assets to be covered by such measures.
4. EIOPA may develop guidelines for the actions that supervisory authorities should take when they observe a failure to comply with the Minimum Capital Requirement or the risk of non-compliance referred to in paragraph 1.

**Article 141 Supervisory powers in deteriorating financial conditions**

Notwithstanding Articles 138 and 139, where the solvency position of the undertaking continues to deteriorate, the supervisory authorities shall have the power to take all measures necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

Those measures shall be proportionate and thus reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.

**Article 142 Recovery plan and finance scheme**

1. The recovery plan referred to in Article 138(2) and the finance scheme referred to in Article 139(2) shall, at least include particulars or evidence concerning the following:
   (a) estimates of management expenses, in particular current general expenses and commissions;
   (b) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
   (c) a forecast balance sheet;
   (d) estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement;
   (e) the overall reinsurance policy.
2. Where the supervisory authorities have required a recovery plan referred to in Article 138(2) or a finance scheme referred to in Article 139(2) in accordance with paragraph 1 of this Article, they shall refrain from issuing a certificate in accordance with Article 39 for as long as they consider that the rights of the policy holders, or the contractual obligations of the reinsurance undertaking are threatened.

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**Article 143 Delegated acts and regulatory technical standards concerning Article 138(4)**

1. The Commission shall adopt delegated acts in accordance with Article 301a supplementing the types of exceptional adverse situations and specifying the factors and criteria to be taken into account by EIOPA in declaring the existence of exceptional adverse situations and by supervisory authorities in determining the extension to recovery period in accordance with Article 138(4).
2. In order to ensure consistent harmonisation in relation to Article 138(2), Article 139(2) and Article 141, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the recovery plan referred to in Article 138(2), and the finance scheme referred to in Article 139(2) and with respect to Article 141, taking due care to avoid pro-cyclical effects.
   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

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**Article 144 Withdrawal of authorisation**

1. The supervisory authority of the home Member State may withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:
   (a) the undertaking concerned does not make use of the authorisation within 12 months, expressly renounces it or ceases to pursue business for more than six months, unless the Member State concerned has made provision for authorisation to lapse in such cases;
   (b) the undertaking concerned no longer fulfils the conditions for authorisation;
   (c) the undertaking concerned fails seriously in its obligations under the regulations to which it is subject.
   The supervisory authority of the home Member State shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the event that the undertaking does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is manifestly inadequate or the undertaking concerned fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement.
2. In the event of the withdrawal or lapse of authorisation, the supervisory authority of the home Member State shall notify the supervisory authorities of the other Member States accordingly, and those authorities shall take appropriate measures to prevent the insurance or reinsurance undertaking from commencing new operations within their territories.
   The supervisory authority of the home Member State shall, together with those authorities, take all measures necessary to safeguard the interests of insured persons and, in particular, shall restrict the free disposal of the assets of the insurance undertaking in accordance with Article 140.
3. Any decision to withdraw authorisation shall state the full reasons and shall be communicated to the insurance or reinsurance undertaking concerned.
4. In the event of withdrawal of authorisation, Member States shall ensure that insurance and reinsurance undertakings continue to be subject to the general rules and objectives of the insurance supervision set out in Title I, Chapter III, until any winding-up proceedings are opened.

## CHAPTER VIIA Macroprudential tools

### Article 144a Liquidity risk management

1. Member States shall ensure that the liquidity risk management of insurance and reinsurance undertakings referred to in Article 44(2), point (d), ensure they maintain adequate liquidity to settle their financial obligation towards policyholders and other counterparties when they fall due, even under stressed conditions.
2. For the purpose of paragraph 1, Member States shall ensure that insurance and reinsurance undertakings draw up and keep up to date a liquidity risk management plan covering liquidity analysis over the short term, projecting the incoming and outgoing cash flows in relation to their assets and liabilities. When requested by the supervisory authorities, insurance and reinsurance undertakings shall extend the liquidity risk management plan to cover also liquidity analysis over medium and long-term. Member States shall ensure that insurance and

reinsurance undertakings develop and keep up to date a set of liquidity risk indicators to identify, monitor and address potential liquidity stress.[30]

3. Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities the liquidity risk management plan as part of the information referred to in Article 35(1).
4. Member States shall ensure that small and non-complex undertakings and insurance or reinsurance, and undertakings which have obtained prior approval from the supervisory authority pursuant to Article 29d are not obliged to draw up a liquidity risk management plan as referred to in paragraph 2 of this Article.
5. Member States shall ensure that, where insurance and reinsurance undertakings apply the matching adjustment referred to in Article 77b or the volatility adjustment referred to in Article 77d, they may combine the liquidity risk management plan referred to in paragraph 2 of this Article with the plan required in accordance with Article 44(2), third subparagraph.

**Article 144b Supervisory powers to remedy liquidity vulnerabilities in exceptional circumstances**

1. As part of the regular supervisory review process, supervisory authorities shall monitor the liquidity position of insurance and reinsurance undertakings. Where they identify material liquidity risks, they shall inform the concerned insurance or reinsurance undertaking of this assessment. The insurance or reinsurance undertaking shall explain how it intends to address those liquidity risks.
2. Member States shall ensure that supervisory authorities have the necessary powers to require undertakings to reinforce their liquidity position when material liquidity risks or deficiencies are identified. Such powers shall be applied where there is sufficient evidence regarding the existence of material liquidity risk and the absence of effective remedies taken by the insurance or reinsurance undertaking.

   The measures taken by supervisory authorities on the basis of this paragraph shall be reviewed at least every six months by the supervisory authority and be removed when the undertaking has taken effective remedies.

   Where relevant, the supervisory authority shall share the evidence of vulnerabilities of liquidity risks with EIOPA.
3. Member States shall ensure that in relation to individual undertakings facing material liquidity risks that may cause a an imminent threat to the protection of policyholders or to the stability of the financial system, supervisory authorities have the power to temporarily:
   (a) restrict or suspend dividend distributions to shareholders and other subordinated creditors;
   (b) restrict or suspend other payments to shareholders and other subordinated creditors;
   (c) restrict or suspend share buy-backs and repayment or redemption of own fund items;
   (d) restrict or suspend bonuses or other variable remuneration;
   (e) suspend redemption rights of life insurance policy holders.

   The power to suspend redemption rights shall only be exercised in exceptional circumstances which affects the undertaking, as a last resort measure and where this is in the collective interest of policy holders and beneficiaries of the undertaking. Before exercising such a power, the supervisory authority shall take into account potential unintended effects on financial markets and on the rights of policyholders and beneficiaries of the undertaking, including in a cross-border context. Supervisory authorities shall make the justification for the application of this power public.

   The application of the measure referred to in the first subparagraph shall last no more than three months. Member States shall ensure that the measure can be renewed if the underlying reasons that justify it are still present and it is no longer applied when those reasons are no longer present.

   Without prejudice to Article 144c (6), Member States shall ensure that insurance and reinsurance undertakings concerned shall:
   i) not make any distributions or other payments to shareholders and other subordinated creditors;

[30] The four column document of the trilogue notes (Line 596): "Council's mandate includes a liquidity plan at the request of the supervisor, not as an obligation on all undertakings. COM and EP assess that this is not consistent with lines 595 and 597 and that a mandatory liquidity risk management plan is consistent with the obligation under Article 44." This becomes irrelevant if it doesn't appear in the recital."

ii) not proceed to share buy-backs or repay or redeem any own fund items; and
iii) not pay bonuses or other variable remuneration to members of the administrative management and supervisory board, key function holders and senior management; until the suspension of redemption rights is lifted by the supervisory authorities.

Member States shall ensure that supervisory authorities have the necessary powers for this purpose.

Member States shall ensure that authorities with a macroprudential mandate, where different from the supervisory authorities, are duly and timely informed of the supervisory authority's intention to make use of the power referred to in this paragraph, and are involved in assessing the potential unintended effects referred to in the second subparagraph.

Member States shall ensure that supervisory authorities shall notify EIOPA and ESRB whenever the power referred to in paragraph 3this paragraph is exercised to address a risk for the stability of the financial system.

3a. The application of the measures referred to in paragraph 3 of this Article shall duly take into account the proportionality criteria referred to in Article 29(3).

Where, after consulting the ESRB, EIOPA considers that the exercise of the power referred to in paragraph 3 by the competent authority is excessive, it shall issue an opinion to the supervisory authority concerned to review its decision. This opinion shall not be made public.

3b. The application of measures referred to in paragraph 3 of this Article shall take into account the evidence resulting from the supervisory process and a forward-looking assessment of the solvency and financial position of the undertakings concerned, in line with the assessment referred to in Article 45(1), second subparagraph, points (a) and (b).

4. The power referred to in paragraph 3 may be exercised in relation to undertakings concerned operating in that Member State where the exceptional circumstances referred to in paragraph 3 affect the whole or a significant part of the insurance market.

Member States shall appoint an authority to exercise the power referred to in this paragraph.

Where the appointed authority is different from the supervisory authority, the Member State shall ensure proper coordination and exchange of information between the different authorities. In particular, authorities shall be required to cooperate closely and to share all the information that may be necessary for the adequate performance of the duties entrusted to the authority appointed pursuant to this paragraph.

5. Member States shall ensure that the authority referred to in paragraph 4, second subparagraph, shall notify in due time EIOPA and, where the measure is taken to address a risk to the stability of the financial system, the ESRB of the use of the power referred to in paragraph 4.

The notification shall include a description of the measure applied, its duration, and a description of the reasons and risks that motivated the use of the power, including the reasons why it was considered effective and proportionate in relation to its negative effects on policyholders.

6. In order to ensure consistent application of this Article, EIOPA shall, after consulting the ESRB, develop guidelines further specifying:
(a) the measures to address deficiencies in liquidity risk management and on the form, activation and calibration of powers that supervisory authorities may exercise to reinforce the liquidity position of undertakings when liquidity risks are identified and are not adequately remedied by these undertakings;
(b) the existence of exceptional circumstances that may justify the temporary suspension of redemption rights;
(c) the conditions for ensuring the consistent application of the temporary suspension of redemption rights as a last resort measure across the Union and the aspects to consider for equally and adequately protecting policyholders in all home and host jurisdictions.

**Article 144c Supervisory measures to preserve the financial position of undertakings during exceptional sector-wide shocks**

1. Without prejudice to Article 141, Member States shall ensure that supervisory authorities have the power to take measures to preserve the financial position of individual insurance or reinsurance undertakings during periods of exceptional sector-wide shocks that have the potential to threaten the financial position of the undertaking concerned or the stability of the financial system.

2. During periods of exceptional sector-wide shocks, supervisory authorities shall have the power to require undertakings with a particularly vulnerable risk profile to take at least the following measures:
(a) restrict or suspend dividend distributions to shareholders and other subordinated creditors;

(b) restrict or suspend other payments to shareholders and other subordinated creditors;
(c) restrict or suspend share buy-backs and repayment or redemption of own fund items;
(d) restrict or suspend bonuses or other variable remuneration.

Member States shall ensure that the relevant national bodies and authorities which have a macroprudential mandate are duly informed of the national supervisory authority's intention to make use of the powers provided for in this Article, and are appropriately involved in the assessment of exceptional sector-wide shocks in accordance with this paragraph.

3. The application of the measures referred to in paragraph 2 shall duly take into account the proportionality criteria referred to in Article 29(3), and the existence of approved risk tolerance limits by the undertaking and thresholds in its risk management system.
4. The application of measures referred to in paragraph 2 of this Article shall take into account the evidence resulting from the supervisory review process and a forward-looking assessment of the solvency and financial position of the undertakings concerned, in line with the assessment referred to in Article 45(1), second subparagraph, points (a) and (b).
5. The application of the measures referred to in paragraph 2 shall last for as long as the underlying reasons that justify the measure are present. Those measures shall be reviewed at least every three months and shall be removed as soon as the underlying conditions that motivated the measures are over.
6. For the purpose of this Article, significant intra-group transactions referred to in Article 245(2) including intra-group dividend distributions, shall only be suspended or restricted where they are a threat to the solvency or liquidity position of the group or of at least one of the undertakings within the group. The authorities of the related undertakings shall consult the group supervisor before suspending or restricting transactions with the rest of the group.
7. In order to ensure consistent conditions of application of this Article, EIOPA shall, after consulting the ESRB, develop draft regulatory technical standards to specify the criteria for the identification of exceptional sector-wide shocks.

   EIOPA shall submit those draft regulatory technical standards to the Commission by [OP please add date = 12 months after entry into force].

   Power is conferred on the Commission to adopt those regulatory technical standards in accordance with Article 10 to 14 of Regulation (EU) No 1094/2010.

**Article 144d Application of additional macroprudential tools**[31]

1. In order to ensure consistent application of the macroprudential tools referred to in Articles 45(1) point e), 132(6) and 144a(2) EIOPA shall develop draft regulatory technical standards on the following:
   (a) the criteria to be taken into account by supervisory authorities when defining the insurance or reinsurance undertakings and groups which shall be requested to:
      (i) carry out the additional macroprudential analyses referred to in Article 45(1) point e), taking into account the circumstances referred to in paragraph 9 of that Article;
      (ii) incorporate macroprudential considerations as part of the prudent person principle referred to in Article 132(6), taking into account the circumstances referred to in paragraph 8 of that Article;
   (b) the criteria to be taken into account by supervisory authorities when defining the insurance or reinsurance undertakings and groups which shall be requested to draw up and maintain a liquidity risk management plan covering liquidity analysis over the medium and long term in accordance with Article 144a(2).
2. In order to ensure consistent application of the macroprudential tools referred to in Article 144a(2), EIOPA shall develop draft regulatory technical standards specifying the content and frequency of update of liquidity risk management plans, taking into account possible combination of plans as referred to in paragraph 5 of that Article.

   EIOPA shall submit those draft regulatory standards to the Commission by [OP please add date = 12 months after entry into force]. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) N° 1094/2010.

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31 The four column trilogue document says (Line 636a): "Also linked to Article 144a and point (b) in this Article 144d. COM: if Art. 144a would be a supervisory discretion point b needs to be an RTS; if Art. 144a applies generally a Guideline in point (b) could be considered. EP observes that consistent application in line 636b cannot be achieved with Guidelines but only via RTS."

3. For the purpose of paragraph (1) point (a), the criteria shall be proportionate to the nature, scale, and complexity of the risks, and in particular the level of interconnectedness with financial markets, the cross-border nature of insurance and reinsurance activities, and the investments of the insurance and reinsurance undertakings.
4. For the purpose of paragraph (1), point (b), the criteria shall be proportionate to the nature, scale, and complexity of the risks, and in particular the composition of the asset and liability portfolios, the nature and variability of insurance and reinsurance obligations and the exposure of assets' expected cash-flows to market fluctuations.

## CHAPTER VIII Right of establishment and freedom to provide services

### Section 1 Establishment by insurance undertakings

#### Article 145 Conditions for branch establishment

1. Member States shall ensure that an insurance undertaking which proposes to establish a branch within the territory of another Member State notifies the supervisory authorities of its home Member State.
   Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.
2. Member States shall require every insurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:
   (a) the Member State within the territory of which it proposes to establish a branch;
   (b) a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;
   (c) the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking ~~or, in the case of Lloyd's, the underwriters concerned and to represent it or them in relations with the authorities and courts of the host Member State (the authorised agent);~~;
   (d) the address in the host Member State from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent.

   ~~With regard to Lloyd's, in the event of any litigation in the host Member State arising out of underwritten commitments, the insured persons shall not be treated less favourably than if the litigation had been brought against businesses of a conventional type.~~
3. Where a non-life insurance undertaking intends its branch to cover risks in class 10 in Part A of Annex I, not including carrier's liability, it shall produce a declaration that it has become a member of the national bureau and the national guarantee fund of the host Member State.
4. In the event of a change in any of the particulars communicated under point (b), (c) or (d) of paragraph 2, an insurance undertaking shall give written notice of the change to the supervisory authorities of the home Member State and of the Member State where that branch is situated at least one month before making the change so that the supervisory authorities of the home Member State and the supervisory authorities of the Member State where that branch is situated may fulfil their respective obligations under Article 146.

#### Article 146 Communication of information

1. Unless the supervisory authorities of the home Member State have reason to doubt the adequacy of the system of governance or the financial situation of the insurance undertaking or the fit and proper requirements in accordance with Article 42 of the authorised agent, taking into account the business planned, they shall, within three months of receiving all the information referred to in Article 145(2), communicate that information to the supervisory authorities of the host Member State and shall inform the insurance undertaking concerned thereof.
   The supervisory authorities of the home Member State shall also attest that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 129.
2. Where the supervisory authorities of the home Member State refuse to communicate the information referred to in Article 145(2) to the supervisory authorities of the host Member State they shall state the reasons for their refusal to the insurance undertaking concerned within three months of receiving all the information in question.

Such a refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

3. Before the branch of an insurance undertaking starts business, the supervisory authorities of the host Member State shall, where applicable, within two months of receiving the information referred to in paragraph 1, inform the supervisory authority of the home Member State of the conditions under which, in the interest of the general good, that business must be pursued in the host Member State. The supervisory authority of the home Member State shall communicate this information to the insurance undertaking concerned.

   The insurance undertaking may establish the branch and start business as from the date upon which the supervisory authority of the home Member State has received such a communication or, if no communication is received, on expiry of the period provided for in the first subparagraph.

**Section 2 Freedom to provide services: by insurance undertakings**

**Subsection 1 General provisions**

**Article 147 Prior notification to the home Member State**

Any insurance undertaking that intends to pursue business for the first time in one or more Member States under the freedom to provide services shall first notify the supervisory authorities of the home Member State, indicating the nature of the risks or commitments it proposes to cover.

**Article 148 Notification by the home Member State**

1. Within one month of the notification provided for in Article 147, the supervisory authorities of the home Member State shall communicate the following to the Member State or States within the territories of which an insurance undertaking intends to pursue business under the freedom to provide services:
   (a) a certificate attesting that the insurance undertaking covers the Solvency Capital Requirement and Minimum Capital Requirement calculated in accordance with Articles 100 and 129;
   (b) the classes of insurance which the insurance undertaking has been authorised to offer;
   (c) the nature of the risks or commitments which the insurance undertaking proposes to cover in the host Member State.

   At the same time, the supervisory authorities of the home Member State shall inform the insurance undertaking concerned of that communication.
2. Member States within the territory of which a non-life insurance undertaking intends, under the freedom to provide services, to cover risks in class 10 in Part A of Annex I other than carrier's liability may require that insurance undertaking to submit the following:
   (a) the name and address of the representative referred to in Article 18(1)(h);
   (b) a declaration that it has become a member of the national bureau and national guarantee fund of the host Member State.
3. Where the supervisory authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down therein, they shall state the reasons for their refusal to the insurance undertaking within that same period.

   Such a refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.
4. The insurance undertaking may start business as from the date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.

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**Article 149 Changes in the nature of the risks or commitments**

~~Any change which an insurance undertaking intends to make to the information referred to in Article 147 shall be subject to the procedure provided for in Articles 147 and 148.~~

1. The procedure provided for in Articles 147 and 148 shall apply to any change which an insurance undertaking intends to make to the information referred to in Article 147.
2. Where there is a change in the business pursued by the insurance undertaking under the freedom to provide services that is materially affecting its risk profile or materially influencing the insurance activities in one or more host Member States, the insurance undertaking shall inform the supervisory authority of the home Member State immediately. The supervisory

authority of the home Member State shall inform the supervisory authorities of the host Member States concerned without delay.

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**Subsection 2 Third party motor vehicle liability**

**Article 150 Compulsory insurance on third party motor vehicle liability**

1. Where a non-life insurance undertaking, through an establishment situated in one Member State, covers a risk, other than carrier's liability, classified under class 10 in Part A of Annex I which is situated in another Member State, the host Member State shall require that undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.
2. The financial contribution referred to in paragraph 1 shall be made only in relation to risks, other than carrier's liability, classified under class 10 in Part A of Annex I covered by way of provision of services. That contribution shall be calculated on the same basis as for non-life insurance undertakings covering those risks, through an establishment situated in that Member State.
   The calculation shall be made by reference to the insurance undertakings' premium income from that class in the host Member State or the number of risks in that class covered there.
3. The host Member State may require an insurance undertaking providing services to comply with the rules in that Member State concerning the cover of aggravated risks, insofar as they apply to non-life insurance undertakings established in that State.

**Article 151 Non-discrimination of persons pursuing claims**

The host Member State shall require the non-life insurance undertaking to ensure that persons pursuing claims arising out of events occurring in its territory are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier's liability, classified under class 10 in Part A of Annex I by way of provision of services rather than through an establishment situated in that State.

**Article 152 Representative**

1. For the purposes referred to in Article 151, the host Member State shall require the non-life insurance undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to those claims.
   That representative may also be required to represent the non-life insurance undertaking before the supervisory authorities of the host Member State with regard to checking the existence and validity of motor vehicle liability insurance policies.
2. The host Member State shall not require that representative to undertake activities on behalf of the non-life insurance undertaking which appointed him other than those set out in paragraph 1.
3. The appointment of the representative shall not in itself constitute the opening of a branch for the purpose of Article 145.
4. Where the insurance undertaking has failed to appoint a representative, Member States may give their approval to the claims representative appointed in accordance with Article 4 of Directive 2000/26/EC to assume the function of the representative referred to in paragraph 1 of this Article.

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**Section 2A Notification, significant cross-border activities and collaboration platforms**

**Article 152a Notification**

1. Where the supervisory authority of the home Member State intends to authorise an insurance or reinsurance undertaking whose scheme of operations indicates that a part of its activities will be based on the freedom to provide services or the freedom of establishment in another Member State, and that scheme of operations also indicates that those activities are likely to be of relevance with respect to the host Member State's market, the supervisory authority of

the home Member State shall notify EIOPA and the supervisory authority of the relevant host Member State thereof.

2. The supervisory authority of the home Member State shall, ~~in addition to the notification provided for in paragraph 1, also~~ notify EIOPA and the supervisory authority of the relevant host Member State ~~where~~ if it identifies deteriorating financial conditions or other emerging risks ., including those concerning consumer protection,posed by an insurance or reinsurance undertaking carrying out activities which are based on the freedom to provide services or the freedom of establishment and which may have a cross-border effect. The supervisory authority of the host Member State may also notify EIOPA and the supervisory authority of the relevant home Member State where it has serious and reasoned concerns with regard to consumer protection. The supervisory authorities may refer the matter to EIOPA and request its assistance in cases where no bilateral solution can be found.
3. The notifications referred to in paragraphs 1 and 2 shall be sufficiently detailed to allow for a proper assessment.
4. The notifications referred to in paragraphs 1 and 2 are without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.

**Article 152aa Significant cross-border activities**

1. For the purpose of this Section, 'significant cross-border activities' means insurance and reinsurance activities carried out in a given host Member State under the freedom of establishment or freedom to provide services by an insurance or reinsurance undertaking which is not classified as small and non-complex undertaking, and which meets any of the following requirements:
   (a) the total annual gross written premium income corresponding to the activities carried out by the undertaking in that host Member State under the freedom of establishment and under the freedom to provide services exceeds EUR 15 000 000;
   (b) the activities carried out under the freedom of establishment or under the freedom to provide services are considered by the supervisory authority of the host Member State as being of relevance with respect to the host Member State's market.
2. For the purpose of point (b), EIOPA shall adopt draft regulatory technical standards in accordance with Articles 10-15 of Regulation (EU) 1094/2010 to further specify the conditions and criteria to be used when determining which insurance or reinsurance undertakings are of relevance with respect to the host Member State's market.
3. For the purpose of point (b), in case the supervisory authority of the host Member State considers the activities carried out under the freedom of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market, it shall notify the supervisory authority of the home Member State stating the reasons thereof.
4. EIOPA shall submit those draft regulatory technical standards to the Commission by [PO please add 12 months after entry into force of this Directive].
   Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 2 in accordance with Articles 10-15 of Regulation (EU) No. 1094/2010.
   In case the supervisory authority of the home Member State disagrees on the relevance of the activities carried out under the freedom of establishment or under the freedom to provide services, it shall notify the supervisory authority of the host Member State within one month, stating the reasons thereof. In case of a disagreement on the relevance of the activities carried out under the freedom of establishment or under the freedom to provide services, the supervisory authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred by that Article.

**Article 152ab Enhanced supervisory cooperation and information exchange between home and host supervisory authorities in relation to significant-cross-border activities**

1. In the event of significant cross-border activities, the supervisory authority of the home Member State and the supervisory authority of the host Member State shall cooperate with each other to assess whether the undertaking has a clear understanding and a sound management of the risks that it faces, or may face, in the host Member State.
   This cooperation shall be commensurate to the risks entailed by the significant cross-border activities and shall cover at least the following aspects:

(a) the system of governance including the ability of the administrative, management or supervisory body to understand the cross-border market specificities, risk management tools, internal controls in place and compliance procedures for the cross-border business;
(b) outsourcing and distribution partnerships;
(c) business strategy and claims handling;
(d) consumer protection.

2. The supervisory authority of the home Member State shall, in a timely manner, inform the supervisory authority of the host Member State about the outcome of its supervisory review process related to the significant cross-border activity where potential issues of compliance with the provisions applicable in the host or the home Member State or material issues related to the aspects referred to in paragraph 1, second subparagraph have been identified, and such issues affect or are likely to affect the exercise of activities in the host Member State.

The supervisory authority of the home Member State shall provide at least annually or more frequently in case of a request by the supervisory authority of the host Member State where the undertaking carries out significant cross-border activities the following information:
(a) the Solvency Capital Requirement and the Minimum Capital Requirement, as reported by the insurance or reinsurance undertaking;
(b) the amounts of eligible own funds to cover the Solvency Capital Requirement and the Minimum Capital Requirement, respectively, as reported by the insurance or reinsurance undertaking;
(c) an indication of potential concerns by the supervisory authority of the home Member State regarding the calculation by the insurance or reinsurance undertaking of technical provisions, as well as the items referred to in points (a) and (b).

The supervisory authority of the home Member State shall inform the supervisory authority of the host Member State where the undertaking carries out significant cross-border activities without delay where it identifies deteriorating financial conditions or a risk of non-compliance with the Solvency Capital Requirement or Minimum Capital Requirement within the next three months.

The supervisory authority of a host Member State where an undertaking carries out significant cross-border activities may address a duly justified request to the supervisory authority of the home Member State of that undertaking for receiving information other than that mentioned in the first, second and third subparagraphs, provided that it is related to the solvency, the system of governance or the business model of the insurance or reinsurance undertaking. The supervisory authority of the home Member State shall provide such information in a timely manner.

2a. Where the supervisory authority of the home Member State does not provide in a timely manner the information referred to in paragraph 2, the supervisory authority of the host Member State concerned may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

3. Where an insurance or reinsurance undertaking carrying out significant cross-border activities does not comply with or is likely not to comply with the Solvency Capital Requirement or the Minimum Capital Requirement in the following three months, the supervisory authority of the host Member State in which that undertaking has significant cross-border activities, may request the supervisory authority of the home Member State to carry out jointly an on-site inspection of the insurance or reinsurance undertaking, explaining the reasons for such a request.

The supervisory authority of the home Member State shall accept or refuse the request referred to in the first subparagraph within one month of its receipt.

4. Where the supervisory authority of the home Member State accepts to carry out a joint on-site inspection, it shall invite EIOPA to participate in the joint on-site inspection.

After the conclusion of the joint on-site inspection, the supervisory authorities concerned shall reach joint conclusions, including on most appropriate supervisory actions, within two months. The supervisory authority of the home Member State shall take into account such joint conclusions when deciding on the adequate supervisory responses.

Where the supervisory authorities disagree on the conclusions of the joint on-site inspection, either of them may, within two month following the expiry of the period referred to in the second subparagraph , and without prejudice to the supervisory actions and powers to be taken by the supervisory authority of the home Member State to address the non-compliance with the Solvency Capital Requirement or the non-compliance or likely non-compliance with the Minimum Capital Requirement, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. The matter shall not be referred to EIOPA after

the expiry of the two-month period referred to in this subparagraph nor after an agreement on joint conclusions has been reached between supervisory authorities in accordance with the second subparagraph.

If, within the two-month period referred to in the third subparagraph, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the supervisory authority of the home Member State shall defer the adoption of the final conclusions of the joint on-site inspection and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall adopt the conclusions in conformity with EIOPA's decision. All supervisory authorities concerned shall recognise those conclusions as determinative.

5. Where the supervisory authority of the home Member State refuses to carry out a joint on-site inspection, it shall explain in writing the reasons for such refusal to the requesting supervisory authority.

Where supervisory authorities disagree with the reasons for refusal, they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within one month after notification of the decision by the supervisory authority of the home Member State. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

**Article 152b Collaboration platforms**

1. EIOPA may, in the case of justified concerns about negative effects on policy holders, on its own initiative or at the request of one or more of the relevant supervisory authorities, set up and coordinate a collaboration platform to strengthen the exchange of information and to enhance collaboration between the relevant supervisory authorities where an insurance or reinsurance undertaking carries out, or intends to carry out, activities which are based on the freedom to provide services or the freedom of establishment and where:
   (a) such activities are of relevance with respect to the host Member State's market;
   (b) a notification by the supervisory authority of the home Member State has been made under Article 152a(2) of deteriorating financial conditions or other emerging risks; or
   (c) the matter has been referred to EIOPA under Article 152a(2).
2. Paragraph 1 is without prejudice to the right of the relevant supervisory authorities to set up a collaboration platform where they all agree to do so.
3. The setting up of a collaboration platform pursuant to paragraphs 1 and 2 is without prejudice to the supervisory mandate of the supervisory authorities of the home Member State and host Member State provided for in this Directive.
4. Without prejudice to Article 35 of Regulation (EU) No 1094/2010, at the request of EIOPA or any supervisory authority, the relevant supervisory authorities shall provide all necessary information in a timely manner to allow for the proper functioning of the collaboration platform.
5. Where two or more relevant authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, in relation to an insurance or reinsurance undertaking, and where there are serious concerns about negative effects on policyholders, EIOPA may, at the request of any relevant authority or on its own initiative, assist the authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1094/2010.

   Where there are serious concerns about negative effects on policy holders in other Member States and indication of serious deficiencies in an insurance or reinsurance undertaking for which no or insufficient remedial action was taken by the competent supervisory authority, EIOPA may call for the supervisory authority of the home Member State to carry out an on-site inspection of the insurance and reinsurance undertaking. The supervisory authority of the home Member State shall launch the on-site inspection without delay and shall invite EIOPA and other supervisory authorities concerned to participate to it. Article 152ab, paragraph 4, second, third and fourth subparagraphs, as well as paragraph 5 shall apply.
6. Where two or more relevant authorities of a collaboration platform face a disagreement about information sharing pursuant to paragraphs 4 or 4a, EIOPA may assist them in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1094/2010 at the request of any relevant authority.

6a. EIOPA may, where it deems it appropriate in light of the interest of policyholder protection or for financial stability purposes, publish information on findings, recommendations or measures stemming from supervisory work in the context of the collaboration platform.

   Where EIOPA intends to publish the name of the undertaking concerned, it shall immediately notify that undertaking of its intention to publish and grant sufficient time for that undertaking

to provide written comments and to present any relevant information or arguments to EIOPA and other supervisory authorities of the collaboration platform. EIOPA shall duly assess the position of the undertaking concerned and shall take it duly into account when deciding on the publication of the name of the undertaking. EIOPA shall not publish the name of the undertaking where publication would jeopardise an ongoing investigation or would cause, insofar as it can be determined, disproportionate damage to the undertaking concerned.

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**Section 3 Competencies of the supervisory authorities of the host member state**

**Subsection 1 Insurance**

**Article 153 Timeframe and language of information requests**

~~The supervisory authorities of the host Member State may require the information which they are authorised to request with regard to the business of insurance undertakings operating in the territory of that Member State to be supplied to them in the official language or languages of that State.~~

1. The supervisory authority of the host Member State may require the information which it is entitled to request with regard to the business of an insurance or reinsurance undertaking operating in the territory of that Member State from the supervisory authority of the home Member State of that undertaking. That information shall be supplied within twenty working days from the date of receipt of the request, in the official language or languages of the host Member State, or in another language accepted by the supervisory authority of the host Member State. By way of derogation from the first subparagraph, in duly justified cases, where the information requested is not readily available to the supervisory authority of the home Member State and is complex to collect, the deadline referred to in the first subparagraph may be extended by twenty additional working days.
2. Where the supervisory authority of the home Member State fails to provide the information within the relevant timeline referred to in paragraph 1, the supervisory authority of the host Member State may address the request to the insurance or reinsurance undertaking directly. In that case, it shall inform the supervisory authority of the home Member State about the information request before addressing the request to the undertaking. The insurance and reinsurance shall be required to provide that information without delay.

**Article 154 Prior notification and prior approval**

1. The host Member State shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or, in the case of life insurance, the technical bases used in particular for calculating scales of premiums and technical provisions, or the forms and other documents which an insurance undertaking intends to use in its dealings with policy holders.
2. The host Member State shall only require an insurance undertaking that proposes to pursue insurance business within its territory to effect non-systematic notification of policy conditions and other documents for the purpose of verifying compliance with its national provisions concerning insurance contracts, and that requirement shall not constitute a prior condition for an insurance undertaking to pursue its business.
3. The host Member State shall not retain or introduce a requirement for prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

**Article 155 Insurance undertakings not complying with the legal provisions**

1. Where the supervisory authorities of a host Member State establish that an insurance undertaking with a branch or pursuing business under the freedom to provide services in its territory is not complying with the legal provisions applicable to it in that Member State, they shall require the insurance undertaking concerned to remedy such irregularity.
2. Where the insurance undertaking concerned fails to take the necessary action, the supervisory authorities of the Member State concerned shall inform the supervisory authorities of the home Member State accordingly.

   The supervisory authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the insurance undertaking concerned remedies that irregular situation.

   The supervisory authorities of the home Member State shall inform the supervisory authorities of the host Member State of the measures taken.

3. Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking in that Member State, the insurance undertaking persists in violating the legal provisions in force in the host Member State, the supervisory authorities of the host Member State may, after informing the supervisory authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new insurance contracts within the territory of the host Member State.

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In addition, the supervisory authority of the home or the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

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Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on insurance undertakings.

4. Paragraphs 1, 2 and 3 shall not affect the power of the Member States concerned to take appropriate emergency measures to prevent or penalise irregularities within their territories. That power shall include the possibility of preventing insurance undertakings from continuing to conclude new insurance contracts within their territories.
5. Paragraphs 1, 2 and 3 shall not affect the power of the Member States to penalise infringements within their territories.
6. Where an insurance undertaking which has committed an infringement has an establishment or possesses property in the Member State concerned, the supervisory authorities of that Member State may, in accordance with national law, apply the national administrative penalties prescribed for that infringement by way of enforcement against that establishment or property.
7. Any measure adopted under paragraphs 2 to 6 involving restrictions on the conduct of insurance business must be properly reasoned and communicated to the insurance undertaking concerned.
8. Insurance undertakings shall submit to the supervisory authorities of the host Member State at their request all documents requested of them for the purposes of paragraphs 1 to 7 to the extent that insurance undertakings the head office of which is in that Member State are also obliged to do so.

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9. Member States shall inform the Commission and EIOPA of the number and types of cases which led to refusals under Articles 146 and 148 or in which measures have been taken under paragraphs 3 and 4 of this Article.

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**Article 156 Advertising**

Insurance undertakings with head offices in Member States may advertise their services, through all available means of communication, in the host Member State, subject to the rules governing the form and content of such advertising adopted in the interest of the general good.

**Article 157 Taxes on premiums**

1. Without prejudice to any subsequent harmonisation, every insurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated or the Member State of the commitment For the purposes of the first subparagraph, movable property contained in a building situated within the territory of a Member State, except for goods in commercial transit, shall be considered as a risk situated in that Member State, even where the building and its contents are not covered by the same insurance policy.

   In the case of Spain, an insurance contract shall also be subject to the surcharges legally established in favour of the Spanish 'Consorcio de Compensación de Seguros' for the performance of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.
2. The law applicable to the contract under Article 178 of this Directive and under Regulation (EC) No 593/2008 shall not affect the fiscal arrangements applicable.
3. Each Member State shall apply its own national provisions to those insurance undertakings which cover risks or commitments situated within its territory for measures to ensure the collection of indirect taxes and parafiscal charges due under paragraph 1.

**Subsection 2 Reinsurance**

**Article 158 Reinsurance undertakings not complying with the legal provisions**

1. Where the supervisory authorities of a Member State establish that a reinsurance undertaking with a branch or pursuing business under the freedom to provide services within its territory is not complying with the legal provisions applicable to it in that Member State, they shall require the reinsurance undertaking concerned to remedy that irregular situation. At the same time, they shall refer those findings to the supervisory authority of the home Member State.
2. Where, despite the measures taken by the home Member State or because such measures prove inadequate, the reinsurance undertaking persists in violating the legal provisions applicable to it in the host Member State, the supervisory authorities of the host Member State may, after informing the supervisory authority of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing that reinsurance undertaking from continuing to conclude new reinsurance contracts within the territory of the host Member State.

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In addition, the supervisory authority of the home or the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

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Member States shall ensure that within their territories it is possible to serve the legal documents necessary for such measures on reinsurance undertakings.

3. Any measure adopted under paragraphs 1 and 2 involving sanctions or restrictions on the conduct of reinsurance business shall state the reasons and shall be communicated to the reinsurance undertaking concerned.

**Section 4 Statistical information**

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**Article 159 Statistical information on cross-border activities**

Every insurance undertaking shall inform the competent supervisory authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commissions, without deduction of reinsurance, by Member State and as follows:

(a) for non-life insurance, by lines of business in accordance with the relevant delegated act;

(b) for life insurance, by lines of business in accordance with the relevant delegated act.

As regards class 10 in Part A of Annex I, excluding carrier's liability, the undertaking concerned shall also inform that supervisory authority of the frequency and average cost of claims.

The supervisory authority of the home Member State shall submit the information referred to in the first and second subparagraphs within reasonable time and in aggregate form to the supervisory authorities of each of the Member States concerned, upon their request.

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**Section 5 Treatment of contracts of branches in winding-up proceedings**

**Article 160 Winding-up of insurance undertakings**

Where an insurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other insurance contracts of that undertaking, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

**Article 161 Winding-up of reinsurance undertakings**

Where a reinsurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other reinsurance contracts of that undertaking.

**CHAPTER IX Branches established within the community and belonging to insurance or reinsurance undertakings with head offices situated outside the community**

## Section 1 Taking-up of business

### Article 162 Principle of authorisation and conditions

1. Member States shall make access to the business referred to in the first subparagraph of Article 2(1) by any undertaking with a head office outside the Community subject to an authorisation.
2. A Member State may grant an authorisation where the undertaking fulfils at least the following conditions:
   (a) it is entitled to pursue insurance business under its national law;
   (b) it establishes a branch in the territory of the Member State in which authorisation is sought;
   (c) it undertakes to set up at the place of management of the branch accounts specific to the business which it pursues there, and to keep there all the records relating to the business transacted;
   (d) it designates a general representative, to be approved by the supervisory authorities;
   (e) it possesses in the Member State in which authorisation is sought assets of an amount equal to at least one half of the absolute floor prescribed in Article 129(1)(d) in respect of the Minimum Capital Requirement and deposits one fourth of that absolute floor as security;
   (f) it undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the requirements referred to in Articles 100 and 128;
   (g) it communicates the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought where the risks to be covered are classified under class 10 of Part A of Annex I, other than carrier's liability;
   (h) it submits a scheme of operations in accordance with the provisions in Article 163;
   (i) it fulfils the governance requirements laid down in Chapter IV, Section 2.
3. For the purposes of this Chapter, 'branch' means a permanent presence in the territory of a Member State of an undertaking referred to in paragraph 1, which receives authorisation in that Member State and which pursues insurance business.

### Article 163 Scheme of operations of the branch

1. The scheme of operations of the branch referred to in Article 162(2)(h) shall set out the following:
   (a) the nature of the risks or commitments which the undertaking proposes to cover;
   (b) the guiding principles as to reinsurance;
   (c) estimates of the future Solvency Capital Requirement, as laid down in Chapter VI, Section 4, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;
   (d) estimates of the future Minimum Capital Requirement, as laid down in Chapter VI, Section 5, on the basis of a forecast balance sheet, as well as the calculation method used to derive those estimates;
   (e) the state of the eligible own funds and eligible basic own funds of the undertaking with respect to the Solvency Capital Requirement and Minimum Capital Requirement as referred to in Chapter VI, Sections 4 and 5;
   (f) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, where the risks to be covered are classified under class 18 in Part A of Annex I, the resources available for the provision of the assistance;
   (g) information on the structure of the system of governance.
2. In addition to the requirements set out in paragraph 1, the scheme of operations shall include the following, for the first three financial years:
   (a) a forecast balance sheet;
   (b) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement,
   (c) for non-life insurance:
      (i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
      (ii) estimates of premiums or contributions and claims;

(d) for life insurance, a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

3. In regard to life insurance, Member States may require insurance undertakings to submit systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for a life insurance undertaking to pursue its business.

**Article 164 Transfer of portfolio**

1. Under the conditions laid down by national law, Member States shall authorise branches set up within their territory and covered by this Chapter to transfer all or part of their portfolios of contracts to an accepting undertaking established in the same Member State where the supervisory authorities of that Member State or, where appropriate, of the Member State referred to in Article 167, certify that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in the first paragraph of Article 100.
2. Under the conditions laid down by national law, Member States shall authorise branches set up within their territory and covered by this Chapter to transfer all or part of their portfolios of contracts to an insurance undertaking with a head office in another Member State where the supervisory authorities of that Member State certify that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in the first paragraph of Article 100.
3. Where under the conditions laid down by national law, a Member State authorises branches set up within its territory and covered by this Chapter to transfer all or part of their portfolios of contracts to a branch covered by this Chapter and set up within the territory of another Member State, it shall ensure that the supervisory authorities of the Member State of the accepting undertaking or, if appropriate, of the Member State referred to in Article 167 certify that:
   (a) after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement;
   (b) the law of the Member State of the accepting undertaking permits such a transfer; and
   (c) that Member State has agreed to the transfer.
4. In the circumstances referred to in paragraphs 1 to 3, the Member State in which the transferring branch is situated shall authorise the transfer after obtaining the agreement of the supervisory authorities of the Member State in which the risks are situated, or the Member State of the commitment, where different from the Member State in which the transferring branch is situated.
5. The supervisory authorities of the Member States consulted shall give their opinion or consent to the supervisory authorities of the home Member State of the transferring branch within three months of receiving a request. The absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.
6. A transfer authorised in accordance with paragraphs 1 to 5 shall be published as laid down by national law in the Member State in which the risk is situated or the Member State of the commitment.

   Such transfers shall automatically be valid against policy holders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

**Article 165 Technical provisions**

Member States shall require undertakings to establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in their territories calculated in accordance with Chapter VI, Section 2. Member States shall require undertakings to value assets and liabilities in accordance with Chapter VI, Section 1 and determine own funds in accordance with Chapter VI, Section 3.

**Article 166 Solvency Capital Requirement and Minimum Capital Requirement**

1. Each Member State shall require for branches which are set up in its territory an amount of eligible own funds consisting of the items referred to in Article 98(3).

   The Solvency Capital Requirement and the Minimum Capital Requirement shall be calculated in accordance with the provisions of Chapter VI, Sections 4 and 5.

   However, for the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement, both for life and non-life insurance, account shall be taken only of the operations effected by the branch concerned.

2. The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement shall be constituted in accordance with Article 98(4).
3. The eligible amount of basic own funds shall not be less than half of the absolute floor required under Article 129(1)(d).
   The deposit lodged in accordance with Article 162(2)(e) shall be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.
4. The assets representing the Solvency Capital Requirement must be kept within the Member State where the activities are pursued up to the amount of the Minimum Capital Requirement and the excess within the Community.

**Article 167 Advantages to undertakings authorised in more than one Member State**

1. Any undertaking which has requested or obtained authorisation from more than one Member State may apply for the following advantages which may be granted only jointly:
   (a) the Solvency Capital Requirement referred to in Article 166 shall be calculated in relation to the entire business which it pursues within the Community;
   (b) the deposit required under Article 162(2)(e) shall be lodged in only one of those Member States;
   (c) the assets representing the Minimum Capital Requirement shall be localised, in accordance with Article 134, in any one of the Member States in which it pursues its activities.

   In the cases referred to in point (a) of the first subparagraph, account shall be taken only of the operations effected by all the branches established within the Community for the purposes of this calculation.
2. Application to benefit from the advantages provided for in paragraph 1 shall be made to the supervisory authorities of the Member States concerned. The application shall state the authority of the Member State which in future is to supervise the solvency of the entire business of the branches established within the Community. Reasons must be given for the choice of authority made by the undertaking.
   The deposit referred to in Article 162(2)(e) shall be lodged with that Member State.
3. The advantages provided for in paragraph 1 may be granted only where the supervisory authorities of all Member States in which an application has been made agree to them.
   Those advantages shall take effect from the time when the selected supervisory authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the branches within the Community.
   The supervisory authority selected shall obtain from the other Member States the information necessary for the supervision of the overall solvency of the branches established in their territory.
4. At the request of one or more of the Member States concerned, the advantages granted under paragraphs 1, 2 and 3 shall be withdrawn simultaneously by all Member States concerned.

**Article 168 Accounting, prudential and statistical information and undertakings in difficulty**

For the purposes of this Section, Article 34, Article 139(3) and Articles 140 and 141 shall apply.
As regards the application of Articles 137 to 139, where an undertaking qualifies for the advantages provided for in Article 167(1), (2) and (3), the supervisory authority responsible for verifying the solvency of branches established within the Community with respect to their entire business shall be treated in the same way as the supervisory authority of the Member State in the territory of which the head office of an undertaking established in the Community.

**Article 169 Separation of non-life and life business**

1. Branches referred to in this Section shall not simultaneously pursue life and non-life insurance activities in the same Member State.
2. By way of derogation from paragraph 1 Member States may provide that branches referred to in this Section which, on the relevant date referred to in the first subparagraph of Article 73(5), pursued both activities simultaneously in a Member State may continue to do so there provided that each activity is separately managed in accordance with Article 74.
3. Any Member State which under the second subparagraph of Article 73(5) requires undertakings established in its territory to cease the simultaneous pursuit of the activities in which they were engaged on the relevant date referred to in the first subparagraph of Article 73(5) must also impose this requirement on branches referred to in this Section which are established in its territory and simultaneously pursue both activities there.

Member States may provide that branches referred to in this Section whose head office simultaneously pursues both activities and which on the dates referred to in the first subparagraph of Article 73(5) pursued in the territory of a Member State solely life insurance activity may continue their activity there. Where the undertaking wishes to pursue non-life insurance activity in that territory it may only pursue life insurance activity through a subsidiary.

**Article 170 Withdrawal of authorisation for undertakings authorised in more than one Member State**

In the case of a withdrawal of authorisation by the authority referred to in Article 167(2) that authority shall notify the supervisory authorities of the other Member States where the undertaking operates and those authorities shall take the appropriate measures.

Where the reason for that withdrawal is the inadequacy of the overall state of solvency as fixed by the Member States which agreed to the request referred to in Article 167, the Member States which gave their approval shall also withdraw their authorisations.

**Article 171 Agreements with third countries**

The Community may, by means of agreements concluded pursuant to the Treaty with one or more third countries, agree to the application of provisions different to those provided for in this Section, for the purpose of ensuring, under conditions of reciprocity, adequate protection for policy holders and insured persons in the Member States.

**Section 2 Reinsurance**

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**Article 172 Equivalence in relation to reinsurance undertakings**

1. The Commission shall adopt delegated acts in accordance with Article 301a specifying the criteria for assessing whether the solvency regime of a third country that applies to reinsurance activities of undertakings with their head office in that third country is equivalent to that laid down in Title I.
2. If the criteria adopted in accordance with paragraph 1 have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the solvency regime of that third country that applies to reinsurance activities of undertakings with the head office in that third country is equivalent to that laid down in Title I of this Directive.

   Those delegated acts shall be regularly reviewed, to take into account any significant changes to the supervisory regime laid down in Title I, and to the supervisory regime in the third country.

   EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.
3. Where, in accordance with paragraph 2, the solvency regime of a third country has been deemed to be equivalent to that laid down in this Directive, reinsurance contracts concluded with undertakings having their head office in that third country shall be treated in the same manner as reinsurance contracts concluded with undertakings authorised in accordance with this Directive.
4. By way of derogation from paragraph 2, and even if the criteria specified in accordance with paragraph 1 have not been fulfilled, the Commission may, for a limited period, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the solvency regime of a third country applied to reinsurance activities of undertakings with the head office in that third country is temporarily equivalent to that laid down in Title I, if that third country has complied with at least the following criteria:
   (a) it has given a commitment to the Union to adopt and apply a solvency regime that is capable of being assessed equivalent in accordance with paragraph 2, before the end of that limited period and to engage in the equivalence assessment process;
   (b) it has established a work programme to fulfil the commitment referred to in point (a);
   (c) it has allocated sufficient resources to fulfil the commitment referred to in point (a);
   (d) it has a solvency regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency;
   (e) it has entered into written arrangements to cooperate and exchange confidential supervisory information with EIOPA and supervisory authorities;

(f) it has an independent system of supervision; and
(g) it has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities, in particular on the exchange of information with EIOPA and supervisory authorities.

Any delegated acts on temporary equivalence shall take into account the reports by the Commission in accordance with Article 177(2). Those delegated acts shall be regularly reviewed on the basis of progress reports by the relevant third country, which are presented to and assessed by the Commission annually. EIOPA shall assist the Commission in the assessment of those progress reports.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

The Commission may adopt delegated acts in accordance with Article 301a further specifying the conditions laid down in the first subparagraph.

5. The limited period referred to in the first subparagraph of paragraph 4 shall end on 31 December 2020 or on the date on which, in accordance with paragraph 2, the supervisory regime of that third country has been deemed to be equivalent to that laid down in Title I, whichever is the earlier.

   That period may be extended by up to one year where necessary for EIOPA and the Commission to carry out the assessment of equivalence for the purposes of paragraph 2.

6. Reinsurance contracts concluded with undertakings having their head office in a third country, the supervisory regime of which has been deemed to be temporarily equivalent in accordance with paragraph 4, shall be accorded the same treatment as that set out in paragraph 3. Article 173 shall also apply to reinsurance undertakings having their head office in a third country, the supervisory regime of which has been deemed temporarily equivalent in accordance with paragraph 4.

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**Article 173 Prohibition of pledging of assets**

Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions where the reinsurer is a third-country insurance or reinsurance undertaking, situated in a country whose solvency regime is deemed to be equivalent to that laid down in this Directive in accordance with Article 172.

**Article 174 Principle and conditions for conducting reinsurance activity**

A Member State shall not apply to third-country reinsurance undertakings taking-up or pursuing reinsurance activity in its territory provisions which result in a more favourable treatment than that granted to reinsurance undertakings which have their head office in that Member State.

**Article 175 Agreements with third countries**

1. The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising supervision over the following:
   (a) third-country reinsurance undertakings which conduct reinsurance business in the Community;
   (b) Community reinsurance undertakings which conduct reinsurance business in the territory of a third country.
2. The agreements referred to in paragraph 1 shall in particular seek to ensure, under conditions of equivalence of prudential regulation, effective market access for reinsurance undertakings in the territory of each contracting party and provide for mutual recognition of supervisory rules and practices on reinsurance. They shall also seek to ensure the following:
   (a) that the supervisory authorities of the Member States are able to obtain the information necessary for the supervision of reinsurance undertakings which have their head offices situated in the Community and conduct business in the territory of third countries concerned;
   (b) that the supervisory authorities of third countries are able to obtain the information necessary for the supervision of reinsurance undertakings which have their head offices situated within their territories and conduct business in the Community.
3. Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall with the assistance of the European Insurance and Occupational Pensions Committee examine the outcome of the negotiations referred to in paragraph 1 of this Article and the resulting situation.

## CHAPTER X Subsidiaries of insurance and reinsurance undertakings governed by the laws of a third country and acquisitions of holdings by such undertakings

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### Article 176 Information from Member States to the Commission and EIOPA

The supervisory authorities of the Member States shall inform the Commission, EIOPA and the supervisory authorities of the other Member States of any authorisation of a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the law of a third country.

That information shall also contain an indication of the structure of the group concerned.

Where an undertaking governed by the law of a third country acquires a holding in an insurance or reinsurance undertaking authorised in the Union which would turn that insurance or reinsurance undertaking into a subsidiary of that third country undertaking, the supervisory authorities of the home Member State shall inform the Commission, EIOPA and the supervisory authorities of the other Member States.

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### Article 177 Third-country treatment of Community insurance and reinsurance undertakings

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1. Member States shall inform the Commission and EIOPA of any general difficulties encountered by their insurance or reinsurance undertakings in establishing themselves and operating in a third country or pursuing activities in a third country.

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2. The Commission shall, periodically, submit a report to the Council examining the treatment accorded, in third countries, to insurance or reinsurance undertakings authorised in the Community, as regards the following:
   (a) the establishment in third countries of insurance or reinsurance undertakings authorised in the Community;
   (b) the acquisition of holdings in third-country insurance or reinsurance undertakings;
   (c) the pursuit of insurance or reinsurance activities by such established undertakings;
   (d) the cross-border provision of insurance or reinsurance activities from the Community to third countries.

   The Commission shall submit those reports to the Council, together with any appropriate proposals or recommendations.

## TITLE II SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE

## CHAPTER I Applicable law and conditions of direct insurance contracts

### Section 1 Applicable law

### Article 178 Applicable Law

Any Member State not subject to the application of Regulation (EC) No 593/2008 shall apply the provisions of that Regulation in order to determine the law applicable to insurance contracts falling within the scope of Article 7 of that Regulation.

### Section 2 Compulsory insurance

### Article 179 Related obligations

1. Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this Article.
2. Where a Member State imposes an obligation to take out insurance, an insurance contract shall not satisfy that obligation unless it complies with the specific provisions relating to that insurance laid down by that Member State.
3. Where a Member State imposes compulsory insurance and the insurance undertaking is required to notify the supervisory authorities of any cessation of cover, such cessation may be invoked against injured third parties only in the circumstances laid down by that Member State.
4. Each Member State shall communicate to the Commission the risks against which insurance is compulsory under its legislation, stating the following:
   (a) the specific legal provisions relating to that insurance;

(b) the particulars which must be given in the certificate which a non-life insurance undertaking must issue to an insured person where that Member State requires proof that the obligation to take out insurance has been complied with.

A Member State may require that the particulars referred to in point (b) of the first subparagraph include a declaration by the insurance undertaking to the effect that the contract complies with the specific provisions relating to that insurance.

The Commission shall publish the particulars referred to in point (b) of the first subparagraph in the Official Journal of the European Union.

**Section 3 General good**

**Article 180 General good**

Neither the Member State in which a risk is situated nor the Member State of the commitment shall prevent a policy holder from concluding a contract with an insurance undertaking authorised under the conditions of Article 14 as long as that conclusion of contract does not conflict with legal provisions protecting the general good in the Member State in which the risk is situated or in the Member State of the commitment.

**Section 4 Conditions of insurance contracts and scales of premiums**

**Article 181 Non-life insurance**

1. Member States shall not require the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policy holders.

   Member States may require non-systematic notification of those policy conditions and other documents only for the purpose of verifying compliance with national provisions concerning insurance contracts. Those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.
2. A Member State which makes insurance compulsory may require that insurance undertakings communicate to its supervisory authority the general and special conditions of such insurance before circulating them.
3. Member States shall not retain or introduce an obligation of prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

**Article 182 Life insurance**

Member States shall not require the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions or forms and other printed documents which a life insurance undertaking intends to use in its dealings with policy holders.

However, the home Member State may, for the sole purpose of verifying compliance with national provisions concerning actuarial principles, require systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions. Those requirements shall not constitute a prior condition for an insurance undertaking to pursue business.

**Section 5 Information for policy holders**

**Subsection 1 Non-life insurance**

**Article 183 General Information for policy holders**

1. Before a non-life insurance contract is concluded the non-life insurance undertaking shall inform the policy holder of the following:
   (a) the law applicable to the contract, where the parties do not have a free choice;
   (b) the fact that the parties are free to choose the law applicable and the law the insurer proposes to choose.

   The insurance undertaking shall also inform the policy holder of the arrangements for handling complaints of policy holders concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the right of the policy holder to take legal proceedings.
2. The obligations referred to in paragraph 1 shall apply only where the policy holder is a natural person.

3. The detailed rules for implementing paragraphs 1 and 2 shall be laid down by the Member State in which the risk is situated.

**Article 184 Additional information in the case of non-life insurance offered under the right of establishment or the freedom to provide services**

1. Where non-life insurance is offered under the right of establishment or the freedom to provide services, the policy holder shall, before any commitment is entered into, be informed of the Member State in which the head office or, where appropriate, the branch with which the contract is to be concluded is situated.
   Any documents issued to the policy holder shall convey the information referred to in the first subparagraph.
   The obligations imposed in the first and second subparagraphs shall not apply to large risks.
2. The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policy holder, shall state the address of the head office or, where appropriate, of the branch of the non-life insurance undertaking which grants the cover.
   The Member States may require that the name and address of the representative of the non-life insurance undertaking referred to in Article 148(2)(a) also appear in the documents referred to in the first subparagraph of this paragraph.

**Subsection 2 Life insurance**

**Article 185 Information for policy holders**

1. Before the life insurance contract is concluded, at least the information set out in paragraphs 2 to 4 shall be communicated to the policy holder.
2. The following information about the life insurance undertaking shall be communicated:
   (a) the name of the undertaking and its legal form;
   (b) the name of the Member State in which the head office and, where appropriate, the branch concluding the contract is situated;
   (c) the address of the head office and, where appropriate, of the branch concluding the contract;
   (d) a concrete reference to the report on the solvency and financial condition as laid down in Article 51, allowing the policy holder easy access to this information.
3. The following information relating to the commitment shall be communicated:
   (a) the definition of each benefit and each option;
   (b) the term of the contract;
   (c) the means of terminating the contract;
   (d) the means of payment of premiums and duration of payments;
   (e) the means of calculation and distribution of bonuses;
   (f) an indication of surrender and paid-up values and the extent to which they are guaranteed;
   (g) information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate;
   (h) for unit-linked policies, the definition of the units to which the benefits are linked;
   (i) an indication of the nature of the underlying assets for unit-linked policies;
   (j) arrangements for application of the cooling-off period;
   (k) general information on the tax arrangements applicable to the type of policy;
   (l) the arrangements for handling complaints concerning contracts by policy holders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings;
   (m) the law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the life insurance undertaking proposes to choose.
4. In addition, specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the policy holder.
5. The policy holder shall be kept informed throughout the term of the contract of any change concerning the following information:
   (a) the policy conditions, both general and special;
   (b) the name of the life insurance undertaking, its legal form or the address of its head office and, where appropriate, of the branch which concluded the contract;

(c) all the information listed in points (d) to (j) of paragraph 3 in the event of a change in the policy conditions or amendment of the law applicable to the contract;
(d) annually, information on the state of bonuses.

Where, in connection with an offer for or conclusion of a life insurance contract, the insurer provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, the insurer shall provide the policy holder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The insurer shall inform the policy holder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policy holder shall not derive any contractual claims from the specimen calculation.

In the case of insurances with profit participation, the insurer shall inform the policy holder annually in writing of the status of the claims of the policy holder, incorporating the profit participation. Furthermore, where the insurer has provided figures about the potential future development of the profit participation, the insurer shall inform the policy holder of differences between the actual development and the initial data.

6. The information referred to in paragraphs 2 to 5 shall be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

   However, such information may be in another language if the policy holder so requests and the law of the Member State so permits or the policy holder is free to choose the law applicable.
7. The Member State of the commitment may require life insurance undertakings to furnish information in addition to that listed in paragraphs 2 to 5 only if it is necessary for a proper understanding by the policy holder of the essential elements of the commitment.
8. The detailed rules for implementing paragraphs 1 to 7 shall be laid down by the Member State of the commitment.

**Article 186 Cancellation period**

1. Member States shall provide for policy holders who conclude individual life insurance contracts to have a period of between 14 and 30 days from the time when they were informed that the contract had been concluded within which to cancel the contract.

   The giving of notice of cancellation by the policy holders shall have the effect of releasing them from any future obligation arising from the contract.

   The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract, notably as regards the arrangements for informing the policy holder that the contract has been concluded.
2. The Member States may opt not to apply paragraph 1 in the following cases:
   (a) where a contract has a duration of six months or less;
   (b) where, because of the status of the policy holder or the circumstances in which the contract is concluded, the policy holder does not need special protection.

   Where Member States make use of the option set out in the first subparagraph they shall specify that fact in their law.

**CHAPTER II Provisions specific to non-life insurance**

**Section 1 General provisions**

**Article 187 Policy Conditions**

General and special policy conditions shall not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

**Article 188 Abolition of monopolies**

Member States shall ensure that monopolies in respect of the taking-up of the business of certain classes of insurance, granted to bodies established within their territories and referred to in Article 8, are abolished.

**Article 189 Participation in national guarantee schemes**

Host Member States may require non-life insurance undertakings to join and participate, on the same terms as non-life insurance undertakings authorised in their territories, in any scheme designed to guarantee the payment of insurance claims to insured persons and injured third parties.

## Section 2 Community co-insurance

### Article 190 Community co-insurance operations

1. This Section shall apply to Community co-insurance operations which shall be those co-insurance operations which relate to one or more risks classified under classes 3 to 16 of Part A of Annex I and which fulfil the following conditions:
   (a) the risk is a large risk;
   (b) the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as co-insurer, one of them being the leading insurance undertaking;
   (c) the risk is situated within the Community;
   (d) for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;
   (e) at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance undertaking;
   (f) the leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.
2. Articles 147 to 152 shall apply only to the leading insurance undertaking.
3. Co-insurance operations which do not satisfy the conditions set out in paragraph 1 shall remain subject to the provisions of this Directive except those of this Section.

### Article 191 Participation in Community co-insurance

The right of insurance undertakings to participate in Community co-insurance shall not be made subject to any provisions other than those of this Section.

### Article 192 Technical provisions

The amount of the technical provisions shall be determined by the different co-insurers according to the rules fixed by their home Member State or, in the absence of such rules, according to customary practice in that State.
However, the technical provisions shall be at least equal to those determined by the leading insurer according to the rules of its home Member State.

### Article 193 Statistical data

Home Member States shall ensure that co-insurers keep statistical data showing the extent of Community co-insurance operations in which they participate and the Member States concerned.

### Article 194 Treatment of co-insurance contracts in winding-up proceedings

In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under the other insurance contracts of that undertaking without distinction as to the nationality of the insured and of the beneficiaries.

### Article 195 Exchange of information between supervisory authorities

For the purposes of the implementation of this Section the supervisory authorities of the Member States shall, in the framework of the cooperation referred to in Title I, Chapter IV, Section 5, provide each other with all necessary information.

### Article 196 Cooperation on implementation

The Commission and the supervisory authorities of the Member States shall cooperate closely for the purposes of examining any difficulties which might arise in implementing this Section.
In the course of that cooperation they shall examine in particular any practices which might indicate that the leading insurance undertaking does not assume the role of the leader in co-insurance practice or that the risks clearly do not require the participation of two or more insurers for their coverage.

## Section 3 Assistance

### Article 197 Activities similar to tourist assistance

Member States may make provision for assistance to persons who get into difficulties in circumstances other than those referred to in Article 2(2) subject to this Directive.

Where a Member State makes such provision, it shall treat such activity as if it were classified under class 18 in Part A of Annex I.
The second paragraph shall in no way affect the possibilities for classification laid down in Annex I for activities which obviously come under other classes.

**Section 4 Legal expenses insurance**

**Article 198 Scope of this Section**

1. This Section shall apply to legal expenses insurance referred to in class 17 in Part A of Annex I whereby an insurance undertaking promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following:
   (a) securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings;
   (b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.
2. This Section shall not apply to any of the following:
   (a) legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels;
   (b) the activity pursued by an insurance undertaking providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings where that activity is at the same time pursued in the own interest of that insurance undertaking under such cover;
   (c) where a Member State so decides, the activity of legal expenses insurance undertaken by an assistance insurer which complies with the following conditions:
      (i) the activity is pursued in a Member State other than that in which the insured person is habitually resident;
      (ii) the activity forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from their home or their habitual residence.

   For the purposes of point (c) of the first subparagraph, the contract shall clearly state that the cover concerned is limited to the circumstances referred to in that point and is ancillary to the assistance.

**Article 199 Separate contracts**

Legal expenses cover shall be the subject of a contract separate from that drawn up for the other classes of insurance or shall be dealt with in a separate section of a single policy in which the nature of the legal expenses cover and, should the Member State so request, the amount of the relevant premium are specified.

**Article 200 Management of claims**

1. The home Member State shall ensure that insurance undertakings adopt, in accordance with the option chosen by the Member State, or at their own choice, where the Member State so agrees, at least one of the methods for the management of claims set out in paragraphs 2, 3 and 4.
   Whichever solution is adopted, the interest of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner under this Section.
2. Insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity in another undertaking having financial, commercial or administrative links with the first insurance undertaking and pursuing one or more of the other classes of insurance set out in Annex I.
   Composite insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof pursues at the same time a similar activity for another class transacted by them.
3. The insurance undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality. That undertaking shall be mentioned in the separate contract or separate section referred to in Article 199.
   Where the undertaking having separate legal personality has links to an insurance undertaking which carries on one or more of the classes of insurance referred to in Part A of Annex I,

members of the staff of the undertaking having separate legal personality who are concerned with the management of claims or with legal advice connected with such management shall not pursue the same or a similar activity in the other insurance undertaking at the same time. Member States may impose the same requirements on the members of the administrative, management or supervisory body.

4. The contract shall provide that the insured persons may instruct a lawyer of their choice or, to the extent that national law so permits, any other appropriately qualified person, from the moment that those insured persons have a claim under that contract.

**Article 201 Free choice of lawyer**

1. Any contract of legal expenses insurance shall expressly provide that:
   (a) where recourse is had to a lawyer or other person appropriately qualified according to national law in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings, that insured person shall be free to choose such lawyer or other person;
   (b) the insured persons shall be free to choose a lawyer or, where they so prefer and to the extent that national law so permits, any other appropriately qualified person, to serve their interests whenever a conflict of interests arises.
2. For the purposes of this Section 'lawyer' means any person entitled to pursue his professional activities under one of the denominations laid down in Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services[32].

**Article 202 Exception to the free choice of lawyer**

1. Member States may provide for exemption from Article 201(1) for legal expenses insurance if all the following conditions are met:
   (a) the insurance is limited to cases arising from the use of road vehicles in the territory of the Member State concerned;
   (b) the insurance is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;
   (c) neither the legal expenses insurance undertaking nor the assistance insurer carries out any class of liability insurance;
   (d) measures are taken so that the legal counsel and representation of each of the parties to a dispute is effected by wholly independent lawyers where those parties are insured for legal expenses by the same insurance undertaking.
2. An exemption granted pursuant to paragraph 1 shall not affect the application of Article 200.

**Article 203 Arbitration**

Member States shall, for the settlement of any dispute between the legal expenses insurance undertaking and the insured and without prejudice to any right of appeal to a judicial body which might be provided for by national law, provide for arbitration or other procedures offering comparable guarantees of objectivity.

The insurance contract shall provide for the right of the insured person to have recourse to such procedures.

**Article 204 Conflict of interest**

Whenever a conflict of interests arises or there is disagreement over the settlement of the dispute, the legal expenses insurer or, where appropriate, the claims settlement office shall inform the person insured of the right referred to in Article 201(1) and of the possibility of having recourse to the procedure referred to in Article 203.

**Article 205 Abolition of specialisation of legal expenses insurance**

Member States shall abolish all provisions which prohibit an insurance undertaking from pursuing within their territory legal expenses insurance and other classes of insurance at the same time.

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32 OJ L 78, 26.3.1977, p. 17.

## Section 5 Health insurance

### Article 206 Health insurance as an alternative to social security

1. Member States in which contracts covering the risks under class 2 in Part A of Annex I may serve as a partial or complete alternative to health cover provided by the statutory social security system may require that:
   (a) those contracts comply with the specific legal provisions adopted by that Member State to protect the general good in that class of insurance;
   (b) the general and special conditions of that insurance be communicated to the supervisory authorities of that Member State before use.
2. Member States may require that the health insurance system referred to in paragraph 1 be operated on a technical basis similar to that of life insurance where all the following conditions are fulfilled:
   (a) the premiums paid are calculated on the basis of sickness tables and other statistical data relevant to the Member State in which the risk is situated in accordance with the mathematical methods used in insurance;
   (b) a reserve is set up for increasing age;
   (c) the insurer may cancel the contract only within a fixed period determined by the Member State in which the risk is situated;
   (d) the contract provides that premiums may be increased or payments reduced, even for current contracts;
   (e) the contract provides that the policy holders may change their existing contract into a new contract complying with paragraph 1, offered by the same insurance undertaking or the same branch and taking account of their acquired rights.

   In the case referred to in point (e) of the first subparagraph, account shall be taken of the reserve for increasing age and a new medical examination may be required only for increased cover.

   The supervisory authorities of the Member State concerned shall publish the sickness tables and other relevant statistical data referred to in point (a) of the first subparagraph and transmit them to the supervisory authorities of the home Member State.

   The premiums must be sufficient, on reasonable actuarial assumptions, for insurance undertakings to be able to meet all their commitments having regard to all aspects of their financial situation. The home Member State shall require the technical basis for the calculation of premiums to be communicated to its supervisory authorities before the product is circulated.

   The third and fourth subparagraphs shall also apply where existing contracts are modified.

## Section 6 Insurance against accidents at work

### Article 207 Compulsory insurance against accidents at work

Member States may require that any insurance undertaking offering, at its own risk, compulsory insurance against accidents at work within their territories comply with the specific provisions of their national law concerning such insurance, except for the provisions concerning financial supervision, which shall be the exclusive responsibility of the home Member State.

## CHAPTER III Provisions specific to life insurance

### Article 208 Prohibition on compulsory ceding of part of underwriting

Member States shall not require life insurance undertakings to cede part of their underwriting of activities listed in Article 2(3) to an organisation or organisations designated by national law.

### Article 209 Premiums for new business

Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable life insurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

For that purpose, all aspects of the financial situation of a life insurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in a way that it may jeopardise the solvency of the undertaking concerned in the long term.

## CHAPTER IV Rules specific to reinsurance

### Article 210 Finite reinsurance

1. Member States shall ensure that insurance and reinsurance undertakings which conclude finite reinsurance contracts or pursue finite reinsurance activities are able to properly identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.

▼M5

2. The Commission may adopt delegated acts in accordance with Article 301a specifying the provisions referred to in paragraph 1 of this Article with respect to the monitoring, management and control of risks arising from finite reinsurance activities.

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3. For the purposes of paragraphs 1 and 2 finite reinsurance means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:
   (a) explicit and material consideration of the time value of money;
   (b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

### Article 211 Special purpose vehicles

1. Member States shall allow the establishment within their territory of special purpose vehicles, subject to prior supervisory approval.

▼M5

2. The Commission shall adopt delegated acts in accordance with Article 301a specifying the following criteria for supervisory approval:
   (a) the scope of authorisation;
   (b) mandatory conditions to be included in all contracts issued;
   (c) fit and proper requirements, as referred to in Article 42, of the persons running the special purpose vehicle;
   (d) fit and proper requirements for shareholders or members having a qualifying holding in the special purpose vehicle;
   (e) sound administrative and accounting procedures, adequate internal control mechanisms and risk-management requirements;
   (f) accounting, prudential and statistical information requirements;
   (g) solvency requirements.

2a. In order to ensure uniform conditions of application of Article 211(1) and (2), EIOPA shall develop draft implementing technical standards on the procedures for granting supervisory approval to establish special purpose vehicles and on the formats and templates to be used for the purposes of point (f) of paragraph 2.

EIOPA shall submit those draft implementing technical standards to the Commission by 31 October 2014.

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

2b. In order to ensure uniform conditions of application of Article 211(1) and (2), EIOPA may develop draft implementing technical standards on the procedures for the cooperation and exchange of information between supervisory authorities, where the special purpose vehicle which assumes risk from an insurance or reinsurance undertaking is established in a Member State which is not the Member State in which the insurance or reinsurance undertaking is authorised.

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

3. Special purpose vehicles authorised before 31 December 2015 shall be subject to the law of the Member State that authorised the special purpose vehicle. However, any new activity commenced by such a special purpose vehicle after that date shall be subject to paragraphs 1, 2 and 2a.

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# TITLE III SUPERVISION OF INSURANCE AND REINSURANCE UNDERTAKINGS IN A GROUP

## CHAPTER I Group supervision: definitions, cases of application, scope and levels

### Section 1 Definitions

#### Article 212 Definitions

1. For the purposes of this Title, the following definitions shall apply:
   (a) 'participating undertaking' means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 22(7) of Directive 2013/34/EU~~Article 12(1) of Directive 83/349/EEC~~;
   (b) 'related undertaking' means either a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Article 22(7) of Directive 2013/34/EU~~Article 12(1) of Directive 83/349/EEC~~;
   (c) 'group' means a group of undertakings that:
      (i) consists of a participating undertaking, its subsidiaries ~~and~~ , the entities in which the participating undertaking or its subsidiaries hold a participation, and undertakings that are managed by the participating undertaking or its subsidiaries jointly with one or more undertakings that are not part of the group, as well as undertakings linked to each other by a relationship as set out in ~~Article 12(1) of Directive 83/349/EEC~~Article 22(7) of Directive 2013/34/EU and their related undertakings; or
      (ii) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:
      — one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and,
      — the establishment and dissolution of such relationships for the purposes of this Title are subject to prior approval by the group supervisor, where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;
      (iii) consists of a combination of points (i) and (ii);
   (d) 'group supervisor' means the supervisory authority responsible for group supervision, determined in accordance with Article 247;

   ▼M5

   (e) 'college of supervisors' means a permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group;

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   (f) 'insurance holding company' means ~~a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking;~~an undertaking fulfilling all of the following conditions: [33]
      (a) the undertaking is a parent undertaking;
      (b) the undertaking is not a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm or an institution for occupational retirement provision;
      (c) the undertaking is not a mixed financial holding company or a financial holding company within the meaning of Article 4, point (20), of Regulation (EU) No 575/2013;
      (d) at least one subsidiary of that undertaking is an insurance or reinsurance undertaking;
      (e) notwithstanding its own stated corporate purpose the main business of the undertaking is any of the following:
         (i) to acquire and hold participations in insurance or reinsurance undertakings;

[33] Four column trilogue document says: "Council text reflects amendments made in the latest banking package."

(ii) to provide ancillary services to the principal activity of one or several related insurance or reinsurance undertakings ;

(iii) to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU, or to pursue one or more of the services or activities listed in Annex I, Section 1 or B, to Directive 2014/65/EU of the European Parliament and of the Council in relation to financial instruments listed in Section C of that Annex to that Directive.

(f) more than 50% of at least one of the following indicators are associated, on a steady basis, with subsidiaries that are insurance or reinsurance undertakings, third-country insurance or reinsurance undertakings, insurance holding companies or mixed financial holding companies, holding companies of third-country insurance and reinsurance undertakings or undertakings which provide services that are ancillary to the principal activity of one or several insurance or reinsurance undertakings of the group, as well as with activities performed by the undertaking itself that are not related to the acquisition or holding of participations in subsidiary undertakings that are insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, when those activities are of the same nature as the ones performed by insurance or reinsurance undertakings:

(i) the undertaking's equity on the basis of its consolidated position;

(ii) the undertaking's assets on the basis of its consolidated position;

(iii) the undertaking's revenues on the basis of its consolidated position;

(iv) the undertaking's personnel on the basis of its consolidated position ;

(v) other indicator considered relevant by the national supervisory authority;

(fa) 'holding company of third-country insurance and reinsurance undertakings' means a parent undertaking other than an insurance holding company or a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly third-country insurance or reinsurance undertakings.

(g) 'mixed-activity insurance holding company' means a parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;

(h) 'mixed financial holding company' means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC.

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2. For the purposes of this Title, the supervisory authorities shall also consider as a parent undertaking any undertaking which, in the opinion of the supervisory authorities, effectively exercises a dominant influence over another undertaking~~.~~, including where this influence is exercised through centralised coordination, over the decisions of the other undertaking.

They shall also consider as a subsidiary undertaking any undertaking over which, in the opinion of the supervisory authorities, a parent undertaking effectively exercises a dominant influence. They shall also consider as participation the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the supervisory authorities, a significant influence is effectively exercised.

3. For the purposes of this Title, the supervisory authorities shall also consider that two or more insurance or reinsurance undertakings form a group within the meaning of paragraph 1, point (c), where in the opinion of the supervisory authorities, those undertakings are managed on a unified basis.

Where not all the undertakings referred to in the first subparagraph have their head office in the same Member State, Member States shall ensure that only the supervisory authority acting as group supervisor in accordance with Article 247 may conclude, after consulting the other supervisory authorities concerned, that such undertakings form a group based on its opinion that those undertakings are managed on a unified basis.

5. When identifying a relationship between at least two undertakings referred to in paragraphs 2 and 3, supervisory authorities shall consider all of the following factors:

(a) control or ability of a natural person or an undertaking to influence decisions, including financial ones, of an insurance or reinsurance undertaking, in particular due to the holding of capital or voting rights, representation in the administrative, management or

supervisory body, or being among the persons who effectively run an insurance or reinsurance undertaking or who have other key, critical or important functions;

(b) strong reliance of an insurance or reinsurance undertaking on another undertaking or legal or natural person, due to the existence of material financial or non-financial transactions or operations, including outsourcing and sharing of staff between undertakings;

(c) evidence of coordination between two or more undertakings of financial or investment decisions, including joint investments in related undertakings;

(d) evidence of coordinated and consistent strategies, operations or processes between two or more undertakings, including in relation to insurance distribution channels, insurance products or brands, communication or marketing.

**Section 2 Cases of application and scope**

**Article 213 Cases of application of group supervision**

1. Member States shall provide for supervision, at the level of the group, of insurance and reinsurance undertakings which are part of a group, in accordance with this Title.

   The provisions of this Directive which lay down the rules for the supervision of insurance and reinsurance undertakings taken individually shall continue to apply to such undertakings, except where otherwise provided under this Title.

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2. Member States shall ensure that supervision at the level of the group applies to the following:
   (a) insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 218 to 258;
   (b) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the Union, in accordance with Articles 218 to 258;
   (c) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking, in accordance with Articles 260 to 263;
   (d) insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 265.
3. In the cases referred to in points (a) and (b) of paragraph 2, where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in the Union is either a related undertaking of, or is itself a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244 of this Directive, the supervision of intra-group transactions referred to in Article 245 of this Directive, or both, at the level of that participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company.
4. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the group supervisor may, after consulting the other supervisory authorities concerned, apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.
5. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2013/36/EU~~Directive 2006/48/EC~~, in particular in terms of risk-based supervision, the group supervisor may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provisions of the Directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.
6. The group supervisor shall inform the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[34] (EBA) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European

[34] OJ L 331, 15.12.2010, p. 12.

Parliament and of the Council (EIOPA)[35] of the decisions taken under paragraphs 4 and 5. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010[36] (ESMA) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of those guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

**Article 213a Use of proportionality measures at the level of the group**

1. Groups within the meaning of Article 212 that are subject to group supervision in accordance with Article 213(2), points (a) and (b), shall be classified as small and non-complex groups by their group supervisor, following the procedure set out in paragraph 2 of this Article where they meet all the following criteria at the level of the group for the last two financial years directly prior to such classification:
   - (a) where at least one insurance or reinsurance undertaking in the scope of the group is not a non-life undertaking, all of the following criteria shall be met:
     - (i) the interest rate risk submodule referred to in Article 105(5), point (a), calculated on the basis of consolidated data, is not higher than 5% of the group consolidated technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, excluding undertakings to which method 2 is applied;
     - (ii) Deleted
     - (iii) the total of the consolidated technical provisions from life insurance activities of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles is not higher than EUR 1 000 000 000;
   - (b) where at least one insurance or reinsurance undertaking in the scope of the group is not a life undertaking, all of the following criteria shall be met:
     - (i) the averaged combined ratio for non-life insurance activities net of reinsurance of the last three financial years is less than 100%;
     - (ii) the annual gross written premium income of the group is not higher than EUR 100 000 000;
     - (iii) the sum of the annual gross written premiums in classes 5 to 7, 11, 12, 14 and 15 of Section A of Annex I is not higher than 30% of total annual written premiums of non-life activities of the group;
   - (c) annual gross written premium income from business underwritten by insurance and reinsurance undertakings in the scope of the group which have their head offices in Member States other than the Member State of the group supervisor is lower than any of the two following thresholds:
     - EUR 20 000 000; or
     - 10% of its total annual gross written premium income;
   - (d) annual gross written premium income from business underwritten by the group in Member States other than the Member State of the group supervisor is lower than any of the two following thresholds:
     - EUR 20 000 000; or
     - 10% of its total annual gross written premium income;
   - (e) the sum of the following is not higher than 20% of total investments calculated on the basis of consolidated data:
     - the gross market risk module referred to in Article 105(5);
     - the part of the counterparty default risk module referred to in Article 105(6), that corresponds to exposures to securitisations, derivatives, receivables from intermediaries and other investment assets which are not covered in the spread risk sub-module;
     - any capital requirement that is applicable to investments in intangible assets that are not covered by the market risk and the counterparty default risk modules;

35 OJ L 331, 15.12.2010, p. 48.
36 OJ L 331, 15.12.2010, p. 84.

(f) the reinsurance accepted by the undertakings of the group does not exceed 50% of the total annual gross written premium income of the group.

(fa) the difference referred to in Article 230(1) where method 1 is used, in Article 233(1) where method 2 is used, or in Article 233a(1) where a combination of methods is used, is positive.

(g) where method 2 or a combination of methods 1 and 2 is used, each undertaking to which method 2 is applied is a small and non-complex undertaking.

- The criteria laid down in points (a) (i) and (e) shall not apply to groups where only method 2 is used.

2. Article 29b shall apply mutatis mutandis at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company.

3. Groups to which group supervision applies in accordance with Article 213(2), points (a) and (b), for less than two years shall take into account only the last financial year when assessing whether they meet the criteria set out in paragraph 1 of this Article.

3a. The following groups shall never be classified as small and non-complex groups:

(a) groups which are financial conglomerates within the meaning of Article 2, point 14 of Directive 2002/87/EC;

(b) groups where at least one subsidiary undertaking is an undertaking referred to in Article 228(1);

3d. groups which use an approved partial or full internal model to calculate their group Solvency Capital Requirement.

6. Articles 29c, 29d and 29e shall apply mutatis mutandis.

7. The Commission shall adopt delegated acts, in accordance with Article 301a, specifying:

(a) the criteria laid down in paragraph 1, including the approach for calculating the sum referred to in point (c) of that paragraph;

(b) the methodology to be used when classifying groups as small and non-complex groups; and

(c) the conditions for granting or withdrawing supervisory approval for proportionality measures to be used by groups not classified a small and non-complex group.

**Article 213b Impediments to group supervision**

1. In the cases referred to in Article 213, paragraph 2, point (b), [the insurance and reinsurance undertaking/the insurance holding company or mixed financial holding company] shall ensure that all of the following conditions are fulfilled:

(a) the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with this Title and, in particular, are effective to:

(i) coordinate all the subsidiary undertakings of the insurance holding company or mixed financial holding company including, where necessary, through an adequate distribution of tasks among those undertakings;

(ii) prevent or manage intra-group conflicts; and

(iii) enforce the group-wide policies set by the parent insurance holding company or parent mixed financial holding company throughout the group;

(b) the structural organisation of the group of which the insurance holding company or mixed financial holding company is part does not obstruct or otherwise prevent the effective supervision of the group and its subsidiary insurance and reinsurance undertakings, taking into account, in particular:

(i) the position of the insurance holding company or mixed financial holding company in a multi-layered group;

(ii) the shareholding structure; and

(iii) the role of the insurance holding company or mixed financial holding company within the group.

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**Article 214 Scope of group supervision**

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1. The exercise of group supervision in accordance with Article 213 shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking, or ~~the insurance holding company,~~ the mixed financial holding company ~~or the mixed-activity insurance holding company~~

taken individually~~, without prejudice to Article 257 as far as insurance holding companies or mixed financial holding companies are concerned.~~.[37]

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2. The group supervisor may decide on a case-by-case basis not to include an undertaking in the group supervision referred to in Article 213 where:
   (a) the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 229;
   (b) the undertaking which should be included is of negligible interest with respect to the objectives of group supervision; or
   (c) the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

   When assessing whether an undertaking is of negligible interest with respect to the objectives of group supervision pursuant to the first subparagraph, point (b), the group supervisor shall ensure that all the following conditions are met:
   (i) the size of the undertaking, in terms of total assets and of technical provisions, is small in comparison with that of other undertakings of the group and the group as a whole;
   (ii) the exclusion of the undertaking from the scope of group supervision would have no material impact on the group solvency;
   (iii) the qualitative and quantitative risks, including those stemming from intragroup transactions, that the undertaking poses or may pose to the whole group, are immaterial.

   However, where several undertakings of the same group, taken individually, may be excluded pursuant to point (b) of the first subparagraph, they must nevertheless be included where, collectively, they are of non-negligible interest.

   Where the group supervisor is of the opinion that an insurance or reinsurance undertaking should not be included in the group supervision under points (b) or (c) of the first subparagraph, it shall consult the other supervisory authorities concerned before taking a decision.

   Where the group supervisor does not include an insurance or reinsurance undertaking in the group supervision under point (b) or (c) of the first subparagraph, the supervisory authorities of the Member State in which that undertaking is situated may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance or reinsurance undertaking concerned.

3. Where the exclusion of one or more undertakings from the scope of group supervision in accordance with paragraph 2 of this Article would result in a case that would not trigger the application of group supervision under Article 213(2), points (a), (b), and (c), the group supervisor shall consult EIOPA and, where applicable, other supervisory authorities concerned before taking the decision on exclusion. Such decision shall only be taken in exceptional circumstances and shall be duly justified to EIOPA and, where applicable, other supervisory authorities concerned. The group supervisor shall reassess at least annually whether its decision remains appropriate. Where that is no longer the case, the group supervisor shall notify EIOPA and, where applicable, other supervisory authorities concerned that it will start exercising group supervision.

   Before excluding the ultimate parent undertaking from group supervision pursuant to paragraph 2, point (b), the group supervisor shall consult EIOPA, and where applicable, other supervisory authorities concerned, and shall assess the impact of exercising group supervision at the level of an intermediate participating undertaking on the solvency position of the group. In particular, such an exclusion shall not be possible if it would result in a material improvement in the solvency position of the group.

ca. In order to enhance a coherent and consistent application of paragraph 3, EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to further specify the exceptional circumstances referred to in the first subparagraph of this paragraph or the cases where it may be justified to exclude the ultimate parent undertaking, including insurance holding companies, from the scope of group supervision.

4. Without prejudice to paragraphs 2 and 3, the scope of the group to which group supervision applies pursuant to Article 213, paragraph 2 shall be identified in accordance with Article 212.
   - Where a group subject to group supervision pursuant to Article 213(2), points (a), (b) and (c), is identified in accordance with Article 212, paragraphs 2 and 3, and where a parent undertaking or a subsidiary undertaking of that group is also the ultimate participating

[37] The four column trilogue document says (Line 636j): EP concern is the reference to 'direct supervision' and that this may imply a general carte blanche over supervision. COM ready to drop 'direct supervision'. “

undertaking of another group within the meaning of paragraph 1, point (c) of that Article, that other group shall be considered as included in the scope of the group identified in accordance with paragraphs 2 and 3 of that Article.

- Supervisory authorities may apply Article 212, paragraphs 2 and 3 to extend the scope of a group within the meaning of Article 212, paragraph 1, point ©.

5. Where a group identified in accordance with Article 212, paragraph 3, is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c), the group shall designate one of the undertakings that are managed on a unified basis as a parent undertaking which shall be responsible for complying with this Title. The other undertakings referred to in Article 212(3), first subparagraph, shall be considered as subsidiary undertakings.

6. Where the designation of the parent undertaking in accordance with paragraph 5 would imply significant obstacles to the exercise of group supervision, in particular in cases where the head office of the undertaking is not established in the territory of the Member State of the supervisory authority acting as the group supervisor in accordance with Article 247, or where the designation would result in the inability of the group to effectively comply with this Title, Member States shall ensure that the supervisory authority acting as the group supervisor has the power to require, after consulting other supervisory authorities concerned, the designation of another parent undertaking. The decision to designate another parent undertaking shall be duly justified by the supervisory authority acting as the group supervisor to the group and to other supervisory authorities concerned.

- Where a group identified in accordance with Article 212, paragraph 3, and which is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c), fails to designate a parent undertaking in accordance with paragraph 5, the supervisory authority acting as the group supervisor in accordance with Article 247 shall designate, after consulting other supervisory authorities concerned, a parent undertaking which is to be responsible for complying with this Title. The other undertakings in such group shall be considered as subsidiary undertakings.
- When designating a parent undertaking in accordance with the first or second subparagraph, the supervisory authority acting as the group supervisor in accordance with Article 247 shall consider the following factors:
  (a) the amount of technical provisions of each undertaking;
  (b) the annual gross written premiums of each undertaking;
  c) the number of related insurance or reinsurance undertakings of each undertaking;
- Supervisory authorities shall assess at least annually whether the designation remains appropriate. Where this is not the case, the supervisory authority acting as the group supervisor in accordance with Article 247 shall designate another parent undertaking after consulting other supervisory authorities concerned. That other parent undertaking shall be responsible for complying with this Title.

**Section 3 Levels**

**Article 215 Ultimate parent undertaking at Community level**

▼M1

1. Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company referred to in Article 213(2)(a) and (b) is itself a subsidiary undertaking of another insurance or reinsurance undertaking or of another insurance holding company or of another mixed financial holding company which has its head office in the Union, Articles 218 to 258 shall apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union.
2. Where the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial holding company which has its head office in the Union, as referred to in paragraph 1, is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244, the supervision of intra-group transactions referred to in Article 245, or both, at the level of that ultimate parent undertaking or company.

▼B

**Article 216 Ultimate parent undertaking at national level**

▼M1

1. Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company which has its head office in the Union, as referred to in Article 213(2)(a) and (b), does not have its head office in the same Member State as the ultimate parent undertaking at Union level referred to in Article 215, Member States may allow their supervisory authorities to decide, after consulting the group supervisor and that ultimate parent undertaking at Union level, to subject the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at national level to group supervision.

▼M5

In such a case, the supervisory authority shall explain its decision to both the group supervisor and the ultimate parent undertaking at Union level. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).

Articles 218 to 258 shall apply mutatis mutandis, subject to paragraphs 2 to 6 of this Article.

▼B

2. The supervisory authority may restrict group supervision of the ultimate parent undertaking at national level to one or several sections of Chapter II.
3. Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, the choice of method made in accordance with Article 220 by the group supervisor in respect of the ultimate parent undertaking at Community level referred to in Article 215 shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.
4. Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, and where the ultimate parent undertaking at Community level referred to in Article 215 has obtained, in accordance with Article 231 or Article 233(5), permission to calculate the group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, that decision shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

   In such a situation, where the supervisory authority considers that the risk profile of the ultimate parent undertaking at national level deviates significantly from the internal model approved at Community level, and as long as that undertaking does not properly address the concerns of the supervisory authority, that supervisory authority may decide to impose a capital add-on to the group Solvency Capital Requirement of that undertaking resulting from the application of such model or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

▼M5

The supervisory authority shall explain such decisions to both the undertaking and the group supervisor. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).

▼B

5. Where the supervisory authority decides to apply Chapter II, Section 1 to the ultimate parent undertaking at national level, that undertaking shall not be permitted to introduce, in accordance with Articles 236 or 243, an application for permission to subject any of its subsidiaries to Articles 238 and 239.
6. Where Member States allow their supervisory authorities to make the decision referred to in paragraph 1, they shall provide that no such decisions can be made or maintained where the ultimate parent undertaking at national level is a subsidiary of the ultimate parent undertaking at Community level referred to in Article 215 and the latter has obtained in accordance with Articles 237 or 243 permission for that subsidiary to be subject to Articles 238 and 239.

▼M5

7. The Commission may adopt delegated acts in accordance with Article 301a specifying the circumstances under which the decision referred to in paragraph 1 of this Article can be made.

▼B

**Article 217 Parent undertaking covering several Member States**

1. Where Member States allow their supervisory authorities to make the decision referred to in Article 216, they shall also allow them to decide to conclude an agreement with supervisory authorities in other Member States where another related ultimate parent undertaking at national level is present, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

   Where the supervisory authorities concerned have concluded an agreement as referred to in the first subparagraph, group supervision shall not be carried out at the level of any ultimate parent undertaking referred to in Article 216 present in Member States other than the Member State where the subgroup referred to in the first subparagraph of this paragraph is located.

▼M5

   In such a case, the supervisory authorities shall explain their agreement to both the group supervisor and the ultimate parent undertaking at Union level. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).

▼B

2. Article 216(2) to (6) shall apply mutatis mutandis.

▼M5

3. The Commission shall adopt delegated acts in accordance with Article 301a specifying the circumstances under which the decision referred to in paragraph 1 of this Article can be made.

▼B

**CHAPTER II Financial position**

**Section 1 Group solvency**

**Subsection 1 General provisions**

**Article 218 Supervision of group solvency**

1. Supervision of the group solvency shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 246 and Chapter III.
2. In the case referred to in Article 213(2)(a), Member States shall require the participating insurance or reinsurance undertakings to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsections 2, 3 and 4.
3. In the case referred to in Article 213(2)(b), Member States shall require insurance and reinsurance undertakings in a group to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsection 5.
4. The requirements referred to in paragraphs 2 and 3 shall be subject to supervisory review by the group supervisor in accordance with Chapter III. Article 136 and Article 138(1) to (4) shall apply mutatis mutandis.
5. As soon as the participating undertaking has observed and informed the group supervisor that the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance in the following three months, the group supervisor shall inform the other supervisory authorities within the college of supervisors, which shall analyse the situation of the group.

▼M1

**Article 219 Frequency of calculation**

1. The group supervisor shall ensure that the calculations referred to in Article 218(2) and (3) are carried out at least annually, by the participating insurance or reinsurance undertaking, by the insurance holding company or by the mixed financial holding company.

   The relevant data for and the results of that calculation shall be submitted to the group supervisor by the participating insurance or reinsurance undertaking or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or the mixed financial holding company or by the undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group itself.
2. The insurance undertaking, reinsurance undertaking, insurance holding company and mixed financial holding company shall monitor the group Solvency Capital Requirement on an

ongoing basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.
Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the group supervisor may require a recalculation of the group Solvency Capital Requirement.

▼B

**Subsection 2 Choice of calculation method and general principles**

**Article 220 Choice of method**

1. The calculation of the solvency at the level of the group of the insurance and reinsurance undertakings referred to in Article 213(2)(a) shall be carried out in accordance with the technical principles and one of the methods set out in Articles 221 to 233a~~Articles 221 to 233~~.
2. Member States shall provide that the calculation of the solvency at the level of the group of insurance and reinsurance undertakings referred to in Article 213(2)(a) shall be carried out in accordance with method 1, which is laid down in Articles 230 to 232.
However, Member States shall allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, after consulting the other supervisory authorities concerned and the group itself, to apply to that group method 2, in accordance with ~~which is laid down in~~ Articles 233 and 234, or~~,~~ where the exclusive application of method 1 would not be appropriate, a combination of methods 1 and 2, ~~where the exclusive application of method 1 would not be appropriate.~~ in accordance with Articles 233a and 234.
3. Without prejudice to the treatment of undertakings referred to in Article 228(1), supervisory authorities may only decide to apply method 2 pursuant to paragraph 2, second subparagraph, of this Article to insurance and reinsurance undertakings, third-country insurance and reinsurance undertakings, insurance holding companies, mixed financial holding companies, and holding companies of third-country insurance and reinsurance undertakings.

**Article 221 Inclusion of proportional share**

1. The calculation of the group solvency shall take account of the proportional share held by the participating undertaking in its related undertakings.
For the purposes of the first subparagraph, the proportional share shall comprise either of the following:
   (a) where method 1 is used, the percentages used for the establishment of the consolidated accounts; or
   (b) where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.
However, regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account.
Where in the opinion of the supervisory authorities, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the group supervisor may nevertheless allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

1a. By way of derogation from paragraph 1 of this Article, for the sole purpose of Article 228, irrespective of whether method 1 or method 2 is used, 'proportional share' means the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking in the related undertaking.

2. The group supervisor shall determine, after consulting the other supervisory authorities concerned and the group itself, the proportional share which shall be taken into account in the following cases:
   (a) where there are no capital ties between some of the undertakings in a group;
   (b) where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking;
   (c) where a supervisory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of that supervisory authority, it effectively exercises a dominant influence over that other undertaking.

(d) where a supervisory authority has determined that two or more insurance or reinsurance undertakings form a group pursuant to Article 212(3) as they are managed on a unified basis.

**Article 222 Elimination of double use of eligible own funds**

1. The double use of own funds eligible for the Solvency Capital Requirement among the different insurance or reinsurance undertakings taken into account in that calculation shall not be allowed.
   For that purpose, when calculating the group solvency and where the methods described in Subsection 4 do not provide for it, the following amounts shall be excluded:
   (a) the value of any asset of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;
   (b) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking;
   (c) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.
2. Without prejudice to paragraph 1, the following may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned:
   (a) surplus funds falling under Article 91(2) arising in a related life insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated;
   (b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.
   However, the following shall in any event be excluded from the calculation:
      (i) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;
      (ii) subscribed but not paid-up capital of the participating insurance or reinsurance undertaking which represents a potential obligation on the part of a related insurance or reinsurance undertaking;
      (iii) subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.
3. Where the supervisory authorities consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in paragraph 2 cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, 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.
4. The sum of the own funds referred to in paragraphs 2 and 3 shall not exceed the contribution of ~~the Solvency Capital Requirement of~~ the related insurance or reinsurance undertaking~~.~~ to the group Solvency Capital Requirement.
5. Any eligible own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the supervisory authority in accordance with Article 90 shall be included in the calculation only in so far as they have been duly authorised by the supervisory authority responsible for the supervision of that related undertaking.
6. For the purposes of Article 230(1), Article 233(2) and Article 233a(1), point (a), an own fund item that is issued by a participating undertaking shall not be considered clear of encumbrances within the meaning of Article 93(2), second subparagraph, point (c), if the repayment

of this item cannot be refused to its holder when a related insurance or reinsurance undertaking which is a subsidiary undertaking is wound up.[38]

**Article 223 Elimination of the intra-group creation of capital**

1. When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following:
   (a) a related undertaking;
   (b) a participating undertaking;
   (c) another related undertaking of any of its participating undertakings.
2. When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.
3. Reciprocal financing shall be deemed to exist at least where an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

**Article 224 Valuation**

The value of the assets and liabilities shall be assessed in accordance with Article 75.

**Subsection 3 Application of the calculation methods**

**Article 225 Related insurance and reinsurance undertakings**

Where the insurance or reinsurance undertaking has more than one related insurance or reinsurance undertaking, the group solvency calculation shall be carried out by including each of those related insurance or reinsurance undertakings.

Member States may provide that where the related insurance or reinsurance undertaking has its head office in a Member State other than that of the insurance or reinsurance undertaking for which the group solvency calculation is carried out, the calculation takes account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other Member State.

▼M1

**Article 226 Intermediate ~~insurance~~ holding companies**

1. When calculating the group solvency of an insurance or reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking, through an insurance holding company or a mixed financial holding company, the situation of such an insurance holding company or mixed financial holding company shall be taken into account.
   For the sole purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I in respect of the Solvency Capital Requirement and were subject to the same conditions as are laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I in respect of own funds eligible for the Solvency Capital Requirement.
2. In cases where an intermediate insurance holding company or intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 98, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Article 98 to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.
   Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company, which would require prior authorisation from the supervisory authority in accordance with Article 90 if they were held by an insurance or reinsurance

[38] The four column trilogue document says (Line 758b): "Compromise text is the deleted part in Council line 806 which should be of general application whichever method used."

undertaking, may be included in the calculation of the group solvency only in so far as they have been duly authorised by the group supervisor.

3. For the purposes of paragraphs 1 and 2, holding companies of third-country insurance and reinsurance undertakings shall also be treated as insurance or reinsurance undertakings.

▼M5

**Article 227 Equivalence concerning related third-country insurance and re-insurance undertakings**

1. When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, in accordance with Article 233 and Article 233a, the third-country insurance or reinsurance undertaking shall, solely for the purposes of that calculation, be treated as a related insurance or reinsurance undertaking.

   However, where the third country in which that undertaking has its head office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that laid down in Title I, Chapter VI, Member States may provide that the calculation take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country concerned.

2. Where no delegated act has been adopted in accordance with paragraph 4 or 5 of this Article, the verification of whether the third-country regime is at least equivalent shall be carried out by the group supervisor at the request of the participating undertaking or on its own initiative. EIOPA shall assist the group supervisor in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

   The group supervisor, assisted by EIOPA, shall consult the other supervisory authorities concerned before taking a decision on equivalence. That decision shall be taken in accordance with the criteria adopted in accordance with paragraph 3. The group supervisor shall not take any decision in relation to a third country that is contradicting any decision taken vis-à-vis that third country previously save where it is necessary to take into account significant changes to the supervisory regime laid down in Title I, Chapter VI and to the supervisory regime in the third country.

   Where supervisory authorities disagree with the decision taken in accordance with subparagraph 2, they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the group supervisor. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

3. The Commission may adopt delegated acts in accordance with Article 301a specifying the criteria for assessing whether the solvency regime of a third country is equivalent to that laid down in Title I, Chapter VI.

4. If the criteria adopted in accordance with paragraph 3 have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the supervisory regime of that third country is equivalent to that laid down in Title I, Chapter VI.

   Those delegated acts shall be regularly reviewed, to take into account any significant changes to the supervisory regime laid down in Title I, Chapter VI, and to the supervisory regime in the third country.

   EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

5. By way of derogation from paragraph 4, and even where the criteria specified in accordance with paragraph 3 have not been fulfilled, the Commission may, for the period referred to in paragraph 6, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the solvency regime of a third country applied to undertakings with the head office in that third country is provisionally equivalent to that laid down in Title I, Chapter VI, where:

   (a) it can be shown that a solvency regime capable of being assessed equivalent in accordance with paragraph 4 is currently in place or may be adopted and applied by the third country;

   (b) the third country has a solvency regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency;

(c) the third country's law, in principle, allows cooperation, and exchange of confidential supervisory information, with EIOPA and supervisory authorities;
(d) the third country has an independent system of supervision; and
(e) the third country has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

6. The initial period of provisional equivalence referred to in paragraph 5 shall be 10 years, unless before the expiry of that period:
(a) that delegated act has been revoked; or
(b) a delegated act has been adopted in accordance with paragraph 4 to the effect that the supervisory regime of that third country has been deemed to be equivalent to that laid down in Title I, Chapter VI.

Provisional equivalence shall be subject to renewals for further periods of 10 years where the criteria referred to in paragraph 5 continue to be met. The Commission shall adopt any such delegated act in accordance with Article 301a and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

Any delegated acts determining provisional equivalence shall take into account the reports by the Commission in accordance with Article 177(2). Such delegated acts shall be reviewed regularly by the Commission. EIOPA shall assist the Commission in the assessment of those decisions. The Commission shall inform the Parliament of any reviews taking place and shall report to the European Parliament on its conclusions.

7. Where, in accordance with paragraph 5, a delegated act determining that the supervisory regime of a third country is provisionally equivalent has been adopted, that third country shall be deemed to be equivalent of the purposes of the second subparagraph of paragraph 1.

▼B

**Article 228 ~~Related credit institutions, investment firms and financial institutions~~ Treatment of specific related undertakings from other financial sectors**

~~When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, Member States shall allow their participating insurance and reinsurance undertakings to apply methods 1 or 2 set out in Annex I to Directive 2002/87/EC mutatis mutandis. However, method 1 set out in that Annex shall be applied only where the group supervisor is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.~~

~~Member States shall however allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, at the request of the participating undertaking or on their own initiative, to deduct any participation as referred to in the first paragraph from the own funds eligible for the group solvency of the participating undertaking.~~

1. Irrespective of the method used in accordance with Article 220 of this Directive, for the purpose of calculating the group solvency, the participating insurance or reinsurance undertaking shall take into account the contribution to the group eligible own funds and to the group Solvency Capital Requirement of the following undertakings:
(a) credit institutions or investment firms within the meaning of Article 4(1), point (1) or (2), of Regulation (EU) No 575/2013;
(b) UCITS management companies within the meaning of Article 2(1), point (b), of Directive 2009/65/EC and investment companies authorised pursuant to Article 27 of that Directive provided that they have not designated a management company pursuant to that Directive;
(c) alternative investment fund managers within the meaning of Article 4(1), point (b), of Directive 2011/61/EU;
(d) undertakings other than regulated undertakings which carry one or more of the activities referred to in Annex I to Directive 2013/36/EU where those activities constitute a significant part of their overall activity;
(e) institutions for occupational retirement provision within the meaning of Article 6, point (1) of Directive (EU) 2016/2341.

2. The contribution to the group eligible own funds of the related undertakings referred to in paragraph 1 of this Article shall be calculated as the sum of the proportional share of the own funds of each undertaking, where those own funds are calculated as follows:[39]
   (a) for each undertaking referred to in paragraph 1, point (a), of this Article in accordance with the relevant sectoral rules, as defined in Article 2, point (7), of Directive 2002/87/EC;
   (b) for each related undertaking referred to in paragraph 1, point (b), of this Article in accordance with Article 2(1), point 1, of Directive 2009/65/EC;
   (c) for each related undertaking referred to in paragraph 1, point (c), of this Article in accordance with Article 4(1), point (ad), of Directive 2011/61/EU;
   (d) for each related undertaking referred to in paragraph 1, point (d), of this Article in accordance with the relevant sector rules as defined in Article 2, point (7), of Directive 2002/87/EC if they were regulated entities within the meaning of Article 2(4) of that Directive;
   (e) for each related undertaking referred to in paragraph 1, point (e), of this Article the available solvency margin calculated in accordance with Article 16 of Directive (EU) 2016/2341.

   For the purpose of the first subparagraph of this paragraph, the amount of own funds of each related undertaking corresponding to non-distributable reserves and other items identified by the group supervisor as having a reduced loss-absorbency capacity, as well as preference shares, subordinated mutual members account, subordinated liabilities, and deferred tax assets, that are included in the own funds in excess to the capital requirements calculated in accordance with paragraph 3, shall not be taken into account, unless the participating insurance or reinsurance undertaking is able to justify, to the satisfaction of the group supervisor, that those items can be made available to cover the group Solvency Capital Requirement. When determining the composition of the excess own funds, the participating insurance or reinsurance undertaking shall take into account that certain requirements of some related undertakings shall only be met with Common Equity 1 capital or Additional Tier 1 capital within the meaning of Regulation (EU) No 575/2013.

3. The contribution to the group Solvency Capital Requirement of the related undertakings referred to in paragraph 1 shall be calculated as the sum of the proportional share of the capital requirement or notional capital requirement of each related undertaking, where that capital requirement or notional capital requirement is calculated as follows:
   (a) for related undertakings referred to in paragraph 1, point (a), of this Article in accordance with the following:
      (i) for each investment firm which is subject to own fund requirements in accordance with Regulation (EU) 2019/2033, the sum of the requirement laid down in Article 11 of that Regulation, the specific own funds requirements referred to in Article 39(2), point (a), of Directive (EU) 2019/2034, or the local own funds requirements in third countries;
      (ii) for each credit institution, the higher of the following:
         - the sum of the requirement laid down in Article 92(1), point (c), of Regulation (EU) No 575/2013, including measures referred to in Articles 458 and 459 of that Regulation, the specific own funds requirements to address risks other than the risk of excessive leverage referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in Article 128, point (6), of that Directive, or any the local own funds requirements in third countries;
         - the sum of the requirements laid down in Article 92(1), point (d), of Regulation (EU) No 575/2013, including measures referred to in Articles 458 and 459 of that Regulation, the specific own funds requirements to address the risk of excessive leverage referred to in Article 104 of Directive 2013/36/EU, the leverage ratio buffer requirement laid down in Article 92(1a) of Regulation (EU) No 575/2013, or the local own funds requirements in third countries insofar as those requirements are to be met by Tier 1 capital;
   (d) for each related undertaking referred to in paragraph 1, point (b), of this Article, in accordance with Article 7(1), point (a), of Directive 2009/65/EC;
   (e) for each related undertaking referred to in paragraph 1, point (c), of this Article, in accordance with Article 9 of Directive 2011/61/EU;

[39] The four column trilogue document says (Line 776a): "Where the excess of own funds in the banking sector is small, i.e. less than 1%, that excess can be fully taken into account without fungibility assessment."

(f) for each related undertaking referred to in paragraph 1, point (d), of this Article, the capital requirement with which the related undertaking would have to comply under the relevant sector rules as defined in Article 2, point (7), of Directive 2002/87/EC if it was a regulated entity within the meaning of Article 2, point (4), of that Directive;

(g) for each related undertaking referred to in paragraph 1, point (e), of this Article, the higher of the required solvency margin calculated in accordance with Article 17 of Directive (EU) 2016/2341 and any capital requirements imposed under national law of the Member States where the related undertaking is registered or authorised.

4. Where several related undertakings referred to in paragraph 1 form a subgroup which is subject to a capital requirement on a consolidated basis in accordance with one of the Directives or Regulations referred to in paragraph 3, or where a financial holding company within the meaning of Article 4(1), point (20) of Regulation (EU) No 575/2013, or a mixed financial holding company is a subsidiary undertaking of the group, the group supervisor may require calculating the contribution of those related undertakings to the group eligible own funds as the proportional share of that subgroup's own funds instead of applying paragraph 2, points (a) to (e), to each individual undertaking belonging to that subgroup. In that case, the participating insurance or reinsurance undertaking shall also calculate the contribution of those related undertakings to the group Solvency Capital Requirement as the proportional share of that subgroup's capital requirement, instead of applying paragraph 3, points (a) to €, to each individual undertaking belonging to that subgroup. All financial institutions within the meaning of Article 4(1), point (26) of Regulation (EU) No 575/2013, as well as ancillary services undertakings within the meaning of point (18) of that Article, which are in the scope of the subgroup, shall be included in the calculation of the subgroup's own funds and capital requirement.[40]

For the purposes of the first subparagraph of this paragraph, paragraphs 2 and 3, shall apply to the specific subgroup, on the basis of its consolidated situation within the meaning of either Article 4(1), point 47 of Regulation (EU) No 575/2013 or Article 4(1), point 11, of Regulation (EU) 2019/2033, or on the basis of its consolidated position, as appropriate.

5. Notwithstanding paragraphs 1 to 4, Member States shall allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, at the request of the participating undertaking or on their own initiative, to deduct any participation as referred to in paragraph 1, points (a) to (d) from the own funds eligible for the group solvency of the participating undertaking.

**Article 229 Non-availability of the necessary information**

Where the information necessary for calculating the group solvency of an insurance or reinsurance undertaking, concerning a related undertaking with its head office in a Member State or a third country, is not available to the supervisory authorities concerned, the book value of that undertaking in the participating insurance or reinsurance undertaking shall be deducted from the own funds eligible for the group solvency.

In that case, the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

Where the deduction referred to in the first paragraph improves the solvency position of the group compared to the position where the undertaking is kept in the scope of the group solvency calculation, the deduction shall not be applied.

**Article 229a Simplified calculations**

1. For the purposes of Article 230, the group supervisor, after consulting the other supervisory authorities concerned, may allow the participating insurance or reinsurance undertaking to apply a simplified approach to participations in related undertakings that are immaterial.

The application of the simplified approach, referred to in the first subparagraph, to one or several related undertakings shall be duly justified by the participating undertaking to the group supervisor, considering the nature, scale and complexity of the risks of the related undertaking or undertakings.

Member States shall require the participating undertaking to assess, on an annual basis, whether the use of the simplified approach is still justified, and to publicly disclose, in its group solvency and financial condition report, the list and size of the related undertakings subject to that simplified approach.

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40 The four column trialogue document says (Line 787): "This is to capture banking sub-holding which are headed by an insurance holding or a financial conglomerate."

2. For the purpose of paragraph 1, the participating insurance and reinsurance undertaking shall demonstrate, to the satisfaction of the group supervisor, that the application of the simplified approach to participations in one or several related undertakings is sufficiently prudent to avoid an underestimation of risks stemming from that undertaking or from those undertakings when calculating the group solvency.
When applied to a third-country insurance or reinsurance undertaking which has its head office in a country that is not equivalent or provisionally equivalent within the meaning of Article 227, the simplified approach shall not result in a contribution of the related undertaking to the group Solvency Capital Requirement that is lower than the capital requirement of that undertaking, as laid down by the third country concerned.
The simplified approach shall not be applied to a related third-country insurance or reinsurance undertaking, where the participating insurance or reinsurance undertaking has no reliable information on the capital requirement as laid down in that third country.
3. For the purposes of paragraph 1, related undertakings shall be deemed immaterial where the book value of each of them represents less than 0,2% of the group's assets calculated on the basis of consolidated data and the sum of the book values of all such undertakings represents less than 0,5% of the group's assets calculated on the basis of consolidated data.

**Subsection 4 Calculation methods**

**Article 230 Method 1 (Default method): Accounting consolidation-based method**

1. The calculation of the group solvency of the participating insurance or reinsurance undertaking shall be carried out on the basis of the consolidated accounts.
The group solvency of the participating insurance or reinsurance undertaking is the difference between the following:
(a) the sum of the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data~~;~~, and the contribution to the group eligible own funds of related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(2) or (4);
(b) the sum of the Solvency Capital Requirement at group level calculated on the basis of consolidated data~~.~~ and the contribution to the group Solvency Capital Requirement of the related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(3) or (4).
For the purposes of the second subparagraph, holdings in related undertakings referred to in Article 228(1) shall not be included in the consolidated data.
~~The rules laid down in~~ Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 and in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.
2. The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in Title I, Chapter VI, Section 4, Subsections 1 and 2 and Title I, Chapter VI, Section 4, Subsections 1 and 3, respectively.
The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:
(a) the Minimum Capital Requirement as referred to in Article 129 of the participating insurance or reinsurance undertaking;
(b) the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.
(c) the proportional share of the local capital requirements, at which the authorisation would be withdrawn, for related third-country insurance and reinsurance undertakings;
(d) Where the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data, exceed the Solvency Capital Requirement at group level calculated on the basis of consolidated data, and the minimum consolidated group Solvency Capital Requirement is not complied with, Article 138 (1) to (4) shall apply mutatis mutandis, whereas Article 139 (1) and (2) shall not apply. For the purpose of this

subparagraph, the reference to 'Solvency Capital Requirement', in Article 138 shall be read as a reference to 'minimum consolidated group Solvency Capital Requirement'.[41]

That minimum shall be covered by eligible basic own funds as determined in Article 98(4).

For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 221 to 229 shall apply mutatis mutandis. Article 139(1) and (2) shall apply mutatis mutandis.

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**Article 231 Group internal model**

1. In the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, the supervisory authorities concerned shall cooperate to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.

   An application as referred to in the first subparagraph shall be submitted to the group supervisor.

▼M9

   The group supervisor shall inform the other members of the college of supervisors, including EIOPA, of the receipt of the application and shall forward the complete application, including the documentation submitted by the undertaking, to those members, without delay. Upon the request of one or more supervisory authorities concerned, EIOPA may provide technical assistance, pursuant to point (b) of Article 8(1) of Regulation (EU) No 1094/2010, to the supervisory authority or authorities which requested the assistance, with respect to the decision on the application.

▼M5

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor.
3. If, within the six-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

   EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the six-month period or after a joint decision has been reached.

►M9

   Where EIOPA does not take a decision as referred to in the second subparagraph of this paragraph in accordance with Article 19(3) of Regulation (EU) No 1094/2010, the group supervisor shall take the final decision. ◄ That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The six-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

4. EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.

   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.
5. Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the group supervisor shall provide the applicant with a document setting out the full reasons.
6. In the absence of the adoption of a joint decision within six months from the date of receipt of the complete application by the group, the group supervisor shall make its own decision on the application.

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41 The four column trialogue document says (Linie 812): "To clarify, that the contribution from related undertakings, that are not insurance or reinsurance undertakings to eligible own funds and SCR , should not be taken into account in the case the minimum consolidated SCR (which excludes these related undertakings) is not complied with. Consistent metrics."

The group supervisor shall duly take into account any views and reservations of the other supervisory authorities concerned expressed during that six-month period.

The group supervisor shall provide the applicant and the other supervisory authorities concerned with a document setting out its fully reasoned decision.

That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

7. Where any of the supervisory authorities concerned considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the supervisory authority, that authority may, in accordance with Article 37, impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model. In exceptional circumstances, where such capital add-on would not be appropriate, the supervisory authority may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Title I, Chapter VI, Section 4, Subsections 1 and 2. In accordance with Article 37(1)(a) and (c), the supervisory authority may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula.

   The supervisory authority shall explain any decision referred to in the first and second subparagraphs to both the insurance or reinsurance undertaking and the other members of the college of supervisors.

   EIOPA may issue guidelines to ensure consistent and coherent application of this paragraph.

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**Article 232 Group capital add-on**

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In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the group supervisor shall pay particular attention to any case where the circumstances referred to in Article 37(1), points (a) to (e) ~~Article 37(1)(a) to (d)~~ may arise at group level, in particular where:

▼B

(a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;

(b) a capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is imposed by the supervisory authorities concerned, in accordance with Articles 37 and 231(7).

Where the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed.

▼M5

Article 37(1) to (5), together with the delegated acts and implementing technical standards taken in accordance with Article 37(6), (7) and (8) shall apply mutatis mutandis.

▼B

**Article 233 Method 2 (Alternative method): Deduction and aggregation method**

1. The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:
   (a) the aggregated group eligible own funds, as provided for in paragraph 2;
   (b) the value in the participating insurance or reinsurance undertaking of ~~the~~ related insurance or reinsurance undertakings referred to in Article 220(3) and in Article 228(1) and the aggregated group Solvency Capital Requirement, as provided for in paragraph 3.
2. The aggregated group eligible own funds are the sum of the following:
   (a) the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;
   (b) the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of each individual ~~the~~ related insurance or reinsurance undertakings.
   (c) the contribution to the group eligible own funds of related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(2) or Article 228(4)
3. The aggregated group Solvency Capital Requirement is the sum of the following:

(a) the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;

(b) the proportional share of the Solvency Capital Requirement of each individual ~~the~~ related insurance or reinsurance undertakings.

(c) the contribution to the group Solvency Capital Requirement of related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(3) or Article 228(4).

4. Where the participation in the related insurance or reinsurance undertakings consists, wholly or in part, of an indirect ownership, the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and the items referred to in paragraph 2(b) and paragraph 3(b) shall include the corresponding proportional shares, respectively, of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

▼M1

5. In the case of an application for permission to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or mixed financial holding company, Article 231 shall apply mutatis mutandis.

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6. In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in paragraph 3, appropriately reflects the risk profile of the group, the supervisory authorities concerned shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify.

Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, a capital add-on to the aggregated group Solvency Capital Requirement may be imposed.

▼M5

Article 37(1) to (5), together with the delegated acts and implementing technical standards taken in accordance with Article 37(6), (7) and (8), shall apply mutatis mutandis.

**Article 233a Combination of methods 1 and 2**

1. The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:

(a) the sum of the following:

(i) for undertakings to which method 1 is applied, the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;

(ii) for each related insurance or reinsurance undertaking to which method 2 is applied, the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for its Solvency Capital Requirement;

(iii) the contribution of related undertakings referred to in Article 228(1), calculated in accordance with Article 228(2) or Article 228(4); and

(b) the sum of the following:

(i) for undertakings to which method 1 is applied, the consolidated group Solvency Capital Requirement, calculated in accordance with Article 230(2) on the basis of consolidated data;

(ii) for each related insurance or reinsurance undertaking to which method 2 is applied, the proportional share of its Solvency Capital Requirement;

(iii) the contribution of related undertakings referred to in Article 228(1), calculated in accordance with Article 228(3) or Article 228(4).

2. For the purposes of paragraph 1, point (a) (i), and paragraph 1, point (b) (i) of this Article, holdings in related undertakings referred to in Article 228(1) shall not be included in the consolidated data.

3. For the purposes of paragraph 1, point (a) (i), and paragraph 1, point (b)t (i) of this Article, holdings in related undertakings referred to in Article 220(3) to which method 2 is applied shall not be included in the consolidated data.

For the purposes of paragraph 1, point (b) (i), of this Article, the value of holdings in undertakings referred to in Article 220(3) to which method 2 is applied, in excess of the proportional

share of their own Solvency Capital Requirement, shall be included in the consolidated data when calculating the sensitivity of assets and liabilities to changes in the level or in the volatility of currency exchange rates ('currency risk'). However, the value of those holdings shall not be assumed to be sensitive to changes in the level or in the volatility of market prices of equities ('equity risk').

4. Article 233(4) shall apply mutatis mutandis for the purpose of paragraph 1, points (a)(ii) and (b)(ii), of this Article.

5. Article 231 shall apply mutatis mutandis in the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company.

6. The minimum consolidated group Solvency Capital Requirement shall be calculated in accordance with Article 230(2).

The minimum consolidated group Solvency Capital Requirement shall be covered by eligible basic own funds as determined in accordance with Article 98(4), calculated on the basis of consolidated data. For the purpose of that calculation, holdings in related undertakings referred to in Article 228(1) shall not be included in the consolidated data.

For the purpose of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 221 to 229a shall apply mutatis mutandis. Article 139(1) and (2) shall apply mutatis mutandis.

Where the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data, exceed the Solvency Capital Requirement at group level calculated on the basis of consolidated data, and the minimum consolidated group Solvency Capital Requirement is not complied with, Article 138 (1) to (4) shall apply mutatis mutandis, whereas Article 139 (1) and (2) shall not apply. For the purpose of this subparagraph, the reference to 'Solvency Capital Requirement' in Article 138 shall be read as a reference to 'minimum consolidated group Solvency Capital Requirement'.

7. In determining whether the amount calculated in paragraph 1, point (b)(ii), of this Article appropriately reflects the risk profile of the group with regard to undertakings referred to in Article 220(3) to which Method 2 is applied, the supervisory authorities concerned shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered because they are difficult to quantify.

Where the risk profile of the group with regard to undertakings referred to in Article 220(3) to which Method 2 is applied deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement referred to in Article 233(3), a capital add-on to the amount calculated in paragraph 1, point (b)(ii), of this Article may be imposed.

Article 37(1) to (5), together with the delegated acts and implementing technical standards adopted in accordance with Article 37(6), (7) and (8), shall apply mutatis mutandis.

**Article 233b Long-term equities at group level**

Where method 1 or a combination of methods is used, participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies shall be allowed to apply Article 105a to a sub-set of equity investments.

The Commission shall adopt delegated acts in accordance with Article 301a specifying the following:

a) the approach to be used when assessing compliance with the conditions referred to Article 105a(1) and when calculating the amount of equities that are treated as long-term equity investments where method 1 or a combination of methods is used;

b) the information to be included in the group solvency and financial condition report or the single solvency and financial condition report, and in the group regular supervisory report or the single regular supervisory report.

**Article 234 Delegated acts for technical principles and methods in ~~concerning~~ Articles 220 to 229, ~~the~~ the simplified approach in Article 229a, and the application of Articles 230 to ~~233~~233a**

The Commission shall adopt delegated acts in accordance with Article 301a specifying ~~the technical principles and methods set out in Articles 220 to 229 and the application of Articles 230 to 233, reflecting the economic nature of specific legal structures.~~the following:

(a) the technical principles and methods set out in Articles 220 to 229;

(b) the technical details to the simplified approach set out in Article 229a(1), as well as the criteria based on which supervisory authorities may approve the use of the simplified approach;
(c) the application of Articles 230 to 233a, reflecting the economic nature of specific legal structures.
The Commission may adopt delegated acts in accordance with Article 301a specifying the criteria based on which the group supervisor may approve the application of the simplified approach set out in Article 229a(2).

▼B
**Subsection 5 ▼M1 Supervision of group solvency for insurance and reinsurance undertakings that are subsidiaries of an insurance holding company or a mixed financial holding company**

**Article 235 Group solvency of an insurance holding company or a mixed financial holding company**
1. Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company or mixed financial holding company, the group supervisor shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or mixed financial holding company applying Article 220(2) to Article 233.
2. For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I as regards the Solvency Capital Requirement and subject to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I as regards the own funds eligible for the Solvency Capital Requirement.

▼B
**Subsection 6 Supervision of group solvency for groups with centralised risk management**

**Article 236 Subsidiaries of an insurance or reinsurance undertaking: conditions**
Member States shall provide that the rules laid down in Articles 238 and 239 shall apply to any insurance or reinsurance undertaking which is the subsidiary of an insurance or reinsurance undertaking where all of the following conditions are satisfied:
(a) the subsidiary, in relation to which the group supervisor has not made a decision under Article 214(2), is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with this Title;
(b) the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;
(c) the parent undertaking has received the agreement referred to in the third subparagraph of Article 246(4);
(d) the parent undertaking has received the agreement referred to in Article 256(2);
(e) an application for permission to be subject to Articles 238 and 239 has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 237.

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**Article 237 Subsidiaries of an insurance or reinsurance undertaking: decision on the application**
1. In the case of applications for permission to be subject to the rules laid down in Articles 238 and 239, the supervisory authorities concerned shall work together within the college of supervisors, in full cooperation, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.
An application as referred to in the first subparagraph shall be submitted only to the supervisory authority having authorised the subsidiary. That supervisory authority shall inform the other members of the college of supervisors and forward the complete application to them, without delay.
2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college of supervisors.

3. If, within the three-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

   EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached.

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   Where EIOPA does not take a decision as referred to in the second subparagraph of this paragraph in accordance with Article 19(3) of Regulation (EU) No 1094/2010, the group supervisor shall take the final decision. ◄ That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

4. EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.

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

5. Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the supervisory authority having authorised the subsidiary shall provide the applicant with the decision stating the full reasons. The joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

6. In the absence of a joint decision of the supervisory authorities concerned within the three-month period set out in paragraph 2, the group supervisor shall take its own decision with regard to the application.

   During that period the group supervisor shall duly consider the following:

   (a) any views and reservations of the supervisory authorities concerned;

   (b) any reservations of the other supervisory authorities within the college of supervisors.

   The decision shall state the full reasons and shall contain an explanation of any significant deviation from the reservations of the other supervisory authorities concerned. The group supervisor shall provide the applicant and the other supervisory authorities concerned with a copy of the decision. The decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

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**Article 238 Subsidiaries of an insurance or reinsurance undertaking: determination of the Solvency Capital Requirement**

1. Without prejudice to Article 231, the Solvency Capital Requirement of the subsidiary shall be calculated as set out in paragraphs 2, 4, and 5 of this Article.

2. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 231 and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose to set a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The supervisory authority shall discuss its proposal within the college of supervisors and communicate the grounds for such proposals to both the subsidiary and the college of supervisors.

3. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in exceptional circumstances, propose that the undertaking replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Article 110, or in the cases referred to in Article 37, to set a capital add-on to the Solvency Capital Requirement of that subsidiary.

The supervisory authority shall discuss its proposal within the college of supervisors and communicate the grounds for such proposal to both the subsidiary and the college of supervisors.

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4. The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority having authorised the subsidiary or on other possible measures.

   That agreement shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

5. Where the supervisory authority and the group supervisor disagree, either supervisor may, within one month from the proposal of the supervisory authority, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within one month of such referral. The one-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation. The matter shall not be referred to EIOPA after the end of the one-month period referred to in this subparagraph or after an agreement has been reached within the college in accordance with paragraph 4 of this Article.

   The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19 of that Regulation, and shall take its decision in conformity with EIOPA's decision.

   That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

   The decision shall state the full reasons on which it is based.

   The decision shall be submitted to the subsidiary and to the college of supervisors.

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**Article 239 Subsidiaries of an insurance or reinsurance undertaking: non-compliance with the Solvency and Minimum Capital Requirements**

1. In the event of non-compliance with the Solvency Capital Requirement and without prejudice to Article 138, the supervisory authority having authorised the subsidiary shall, without delay, forward to the college of supervisors the recovery plan submitted by the subsidiary in order to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

   The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority regarding the approval of the recovery plan within four months from the date on which non-compliance with the Solvency Capital Requirement was first observed.

   In the absence of such agreement, the supervisory authority having authorised the subsidiary shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

2. Where the supervisory authority having authorised the subsidiary identifies, in accordance with Article 136, deteriorating financial conditions, it shall notify the college of supervisors without delay of the proposed measures to be taken. Save in emergency situations, the measures to be taken shall be discussed within the college of supervisors.

   The college of supervisors shall do everything within its power to reach an agreement on the proposed measures to be taken within one month of notification.

   In the absence of such agreement, the supervisory authority having authorised the subsidiary shall decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

3. In the event of non-compliance with the Minimum Capital Requirement and without prejudice to Article 139, the supervisory authority having authorised the subsidiary shall, without delay, forward to the college of supervisors the short-term finance scheme submitted by the subsidiary in order to achieve, within three months from the date on which non-compliance with the Minimum Capital Requirement was first observed, the reestablishment of the level of eligible own funds covering the Minimum Capital Requirement or the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement. The college of supervisors shall also be informed of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

▼M5

4. The supervisory authority or the group supervisor may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 where they disagree regarding either of the following:
   (a) on the approval of the recovery plan, including any extension of the recovery period, within the four-month period referred to in paragraph 1; or
   (b) on the approval of the proposed measures, within the one-month period referred to in paragraph 2.

   In those cases, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within one month of such referral.

   The matter shall not be referred to EIOPA:
   (a) after the end of the four-month or the one-month period respectively referred to in the first subparagraph;
   (b) after an agreement has been reached within the college in accordance with the second subparagraph of paragraph 1 or the second subparagraph of paragraph 2;
   (c) in the case of emergency situations as referred to in paragraph 2.

   The four-month or the one-month period respectively shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

   The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that regulation, and shall take its final decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

   The decision shall state the full reasons on which it is based.

   The decision shall be submitted to the subsidiary and to the college of supervisors.

▼B

**Article 240 Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary**

1. The rules provided for in Articles 238 and 239 shall cease to apply where:
   (a) the condition referred to in Article 236(a) is no longer complied with;
   (b) the condition referred to in Article 236(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time;
   (c) the conditions referred to in Article 236(c) and (d) are no longer complied with.

   In the case referred to in point (a) of the first subparagraph, where the group supervisor decides, after consulting the college of supervisors, no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the supervisory authority concerned and the parent undertaking.

   For the purposes of Article 236(b), (c) and (d), the parent undertaking shall be responsible for ensuring that the conditions are complied with on an ongoing basis. In the event of non-compliance, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

   Without prejudice to the third subparagraph, the group supervisor shall verify at least annually, on its own initiative, that the conditions referred to in Article 236(b), (c) and (d) continue to be complied with. The group supervisor shall also perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions.

   Where the verification performed identifies weaknesses, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

   Where, after consulting the college of supervisors, the group supervisor determines that the plan referred to in the third or fifth subparagraph is insufficient or subsequently that it is not being implemented within the agreed period of time, the group supervisor shall conclude that the conditions referred to in Article 236(b), (c) and (d) are no longer complied with and it shall immediately inform the supervisory authority concerned.
2. The regime provided for in Articles 238 and 239 shall be applicable again where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Article 237.

▼M5

**Article 241 Subsidiaries of an insurance or reinsurance undertaking: delegated acts**

The Commission shall adopt delegated acts in accordance with Article 301a specifying:

(a) the criteria for assessing whether the conditions stated in Article 236 are satisfied;

(b) the criteria for assessing what should be considered an emergency situation under Article 239(2);

(c) the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties in accordance with Articles 237 to 240.

▼B

**Article 242 Review**

▼M5

1. By 31 December 2017, the Commission shall make an assessment of the application of Title III, in particular as regards the cooperation of supervisory authorities within, and functionality of, the college of supervisors and the supervisory practices concerning setting the capital add-ons, and shall present a report to the European Parliament and to the Council accompanied, where appropriate, by proposals for the amendment of this Directive.

▼B

2. By ►M5 31 December 2018 ◄ , the Commission shall make an assessment of the benefit of enhancing group supervision and capital management within a group of insurance or reinsurance undertakings including a reference to COM(2008)0119 and the report of the Committee on Economic and Monetary Affairs of the European Parliament on this proposal of 16 October 2008 (A6-0413/2008). That assessment shall include possible measures to enhance a sound cross-border management of insurance groups notably of risks and asset management. In its assessment, the Commission shall, inter alia, take into account new developments and progress concerning:

   (a) a harmonised framework on early intervention;

   (b) practices in centralised group risk management and functioning of group internal models including stress testing;

   (c) intra-group transactions and risk concentrations;

   (d) the behaviour of diversification and concentration effects over time;

   (e) a legally binding framework for the mediation of supervisory disputes;

   (f) a harmonised framework on asset transferability, insolvency and winding-up procedures which eliminates the relevant national company or corporate law barriers to asset transferability;

   (g) an equivalent level of protection of policy holders and beneficiaries of the undertakings of the same group particularly in crisis situations;

   (h) a harmonised and adequately funded EU-wide solution for insurance guarantee schemes;

   (i) a harmonised and legally binding framework between competent authorities, central banks and ministries of finance concerning crisis management, resolution and fiscal burden-sharing which aligns supervisory powers with fiscal responsibilities.

   The Commission shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals for the amendment of this Directive.

▼M1

**Article 243 Subsidiaries of an insurance holding company and mixed financial holding company**

Articles 236 to 242 shall apply mutatis mutandis to insurance and reinsurance undertakings which are the subsidiary of an insurance holding company or mixed financial holding company.

▼B

**Section 2 Risk concentration and intra-group transactions**

**Article 244 Supervision of risk concentration**

1. Supervision of the risk concentration at group level shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 246 and Chapter III.

▼M1

2. Member States shall require insurance and reinsurance undertakings or insurance holding companies or mixed financial holding companies to report on a regular basis and at least

annually to the group supervisor any significant risk concentration at the level of the group, unless Article 215(2) applies.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by a insurance or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The risk concentrations referred to in the first subparagraph shall be subject to supervisory review by the group supervisor.

▼B

3. The group supervisor, after consulting the other supervisory authorities concerned and the group, shall identify the type of risks insurance and reinsurance undertakings in a particular group shall report in all circumstances.

When defining or giving their opinion about the type of risks, the group supervisor and the other supervisory authorities concerned shall take into account the specific group and risk-management structure of the group.

In order to identify significant risk concentration to be reported, the group supervisor, after consulting the other supervisory authorities concerned and the group, shall impose appropriate thresholds based on Solvency~~solvency~~ ~~capital~~Capital ~~requirements~~Requirements, technical provisions, ~~or both.~~eligible own funds, other quantitative or qualitative risk-based criteria deemed appropriate or a combination thereof.

When reviewing the risk concentrations, the group supervisor shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

▼M5

4. The Commission shall adopt delegated acts in accordance with Article 301a as regards the definition of a significant risk concentration for the purposes of paragraphs 2 and 3 of this Article.

5. In order to ensure consistent harmonisation in relation to supervision of risk concentration, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the identification of a significant risk concentration and the determination of appropriate thresholds for the purposes of paragraph 3.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

6. In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the forms and templates for reporting on such risk concentrations for the purposes of paragraph 2.

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

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

▼B

**Article 245 Supervision of intra-group transactions**

1. Supervision of intra-group transactions shall be exercised in accordance with paragraphs 2, 3 and 3a~~paragraphs 2 and 3~~ of this Article, Article 246 and Chapter III.

▼M1

2. Member States shall require insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to report on a regular basis and at least annually to the group supervisor all significant intra-group transactions by insurance and reinsurance undertakings within a group, including those performed with a natural person with close links to an undertaking in the group, unless Article 215(2) applies.

In addition, Member States shall require reporting of very significant intra-group transactions as soon as practicable.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The intra-group transactions shall be subject to supervisory review by the group supervisor.

▼B

3. The group supervisor, after consulting the other supervisory authorities concerned and the group, shall identify the type of intra-group transactions insurance and reinsurance undertakings in a particular group must report in all circumstances. Article 244(3) shall apply mutatis mutandis.

3a. In addition to intragroup transactions within the meaning of Article 13, point (19), for the purpose of paragraphs 2 and 3 of this Article, where justified, supervisory authorities may require groups to also report intragroup transactions that involve undertakings other than insurance and reinsurance undertakings, third-country insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies.

▼M5

4. The Commission shall adopt delegated acts in accordance with Article 301a as regards the definition of a significant intra-group transaction for the purposes of paragraphs 2 and 3 of this Article.

5. In order to ensure consistent harmonisation in relation to supervision of intra-group transactions, EIOPA may develop draft regulatory technical standards to specify the identification of a significant intra-group transaction for the purposes of paragraph 3.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

6. In order to ensure uniform conditions of application of this Article, EIOPA may develop draft implementing technical standards on the procedures, forms and templates for the reporting on such intra-group transactions for the purposes of paragraph 2.

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

▼B

**Section 3 Risk management and internal control**

**Article 246 Supervision of the system of governance**

~~1.~~ The requirements set out in Title I, Chapter IV, Section 2 shall apply mutatis mutandis at the level of the group. The system of governance of the group shall cover participating insurance or reinsurance undertakings, parent insurance holding companies or parent mixed financial holding companies, as well as to all related undertakings in the scope of the group within the meaning of Article 212 which is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c). The system of governance of the group shall also cover all undertakings that are managed by the participating undertaking or its subsidiaries jointly with one or more undertakings that are not part of the same group.

Without prejudice to the first subparagraph of this paragraph, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to ~~Article 213(2)(a) and (b)~~ Article 213(2), points (a) and (b), so that those systems and reporting procedures can be controlled at the level of the group.

The risk management system shall cover at least all insurance and reinsurance activities conducted within the group, as well as material non-insurance activities. It shall also cover the risks stemming from those activities to which the group is or could be exposed, and their interdependencies.

2. Without prejudice to paragraph 1, the group internal control mechanisms shall include at least the following:

(a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;

(b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall regularly monitor the activities of its related undertakings, including related undertakings referred to in Article 228(1) and non-regulated undertakings. That monitoring shall be commensurate with the nature, scale and complexity of the risks that the related undertakings generate or could generate at the level of the group.

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall have written policies at the level of the group, and shall

ensure consistency with the group policies of the written policies of all regulated undertakings in the scope of the group. It shall also ensure that group policies are implemented in a consistent manner by all regulated undertakings in the scope of the group.

3. The systems and reporting procedures referred to in paragraphs 1 and 2 shall be subject to supervisory review by the group supervisor, in accordance with the rules laid down in Chapter III.

▼M1

4. Member States shall require the participating insurance undertaking or reinsurance undertaking, the insurance holding company or the mixed financial holding company to undertake at the level of the group the assessment required by Article 45. The own-risk and solvency assessment conducted at group level shall cover at least all insurance and reinsurance activities conducted within the group, as well as material non-insurance activities. It shall also cover the risks stemming from those activities to which the group is or could be exposed, and their interdependencies. It shall be subject to supervisory review by the group supervisor in accordance with Chapter III.

Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, as referred to in Article 230, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company may, subject to the agreement of the group supervisor, undertake any assessments required pursuant to Article 45 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.

▼B

Before granting an agreement in accordance with the third subparagraph, the group supervisor shall consult the members of the college of supervisors and duly take into account their views or reservations.

Where the group exercises the option provided in the third subparagraph, it shall submit the document to all supervisory authorities concerned at the same time. The exercise of that option shall not exempt the subsidiaries concerned from the obligation to ensure that the requirements of Article 45 are met.

5. Member States shall require the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company to ensure that the group has robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility and segregation of duties within the group. The system of governance of the group shall endeavour to prevent conflicts of interest, or where this is not possible, shall manage them.

Member States shall require an participating insurance or reinsurance undertaking, an insurance holding company or the mixed financial holding company to identify the persons responsible for other key functions within the insurance or reinsurance group that is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c). The administrative, management or supervisory body referred to in paragraph 1, third subparagraph, of this Article shall be responsible for the activities carried out by those persons.

Where the persons who effectively run an insurance or reinsurance group or are responsible for other key functions are also the persons who effectively run one or several insurance or reinsurance undertakings or other related undertakings, or are responsible for other key functions within any of those undertakings, the participating undertaking shall ensure that the roles and responsibilities at group level are clearly segregated from those applicable at the level of each individual undertaking.

## CHAPTER IIA Macroprudential rules at group level

### Article 246a Liquidity Risk Management at group level

1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to draw up and keep up to date a liquidity risk management plan at the level of the group covering liquidity analysis over the

short term and when requested by the group supervisor to cover also liquidity analysis over medium and long-term. Article 144a shall apply mutatis mutandis

2. By way of derogation from Article 144a, Member States shall ensure that insurance or reinsurance subsidiaries which are in the scope of group supervision in accordance with Article 213(2), points (a) and (b), are exempted from the drawing up and keeping up to date a liquidity risk management plan at individual level whenever the liquidity risk management plan pursuant to paragraph 1 of this Article covers the liquidity management and liquidity needs of the subsidiaries concerned.

   Member States shall require each individual insurance or reinsurance undertaking benefiting from the exemption pursuant to first subparagraph to submit the parts of the liquidity risk management plan covering the situation of the whole group and their own situation to its supervisory authority.

3. Notwithstanding paragraph 2, supervisory authorities may require an insurance or reinsurance subsidiary to draw up and keep up to date a liquidity risk management plan at individual level whenever they detect a specific liquidity vulnerability or the liquidity management plan at group level does not include appropriate information which the supervisory authority having authorised the subsidiary requires comparable undertakings to provide for the purpose of monitoring their liquidity position.

4. In order to ensure consistent application of this Article, EIOPA shall develop regulatory technical standards to further specify the content and frequency of update of the liquidity risk management framework plan at group level.

   EIOPA shall submit those draft regulatory technical standards to the Commission by [PO please add date = 12 months after entry into force].

   Power is conferred on the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

**Article 246b Other macroprudential rules**

Articles 144b and 144c shall apply mutatis mutandis at the level of the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company.

**CHAPTER III Measures to facilitate group supervision**

**Article 247 Group Supervisor**

1. A single supervisor, responsible for coordination and exercise of group supervision (group supervisor), shall be designated from among the supervisory authorities of the Member States concerned.
2. Where the same supervisory authority is competent for all insurance and reinsurance undertakings in a group, the task of group supervisor shall be exercised by that supervisory authority. In all other cases and subject to paragraph 3, the task of group supervisor shall be exercised:
   (a) where a group is headed by an insurance or reinsurance undertaking, by the supervisory authority which has authorised that undertaking;
   ▼M1
   (b) where a group is not headed by an insurance or reinsurance undertaking, by the following supervisory authority:
      (i) where the parent of an insurance or reinsurance undertaking is an insurance holding company or mixed financial holding company, the supervisory authority which has authorised that insurance or reinsurance undertaking,
      (ii) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or mixed financial holding company, and one of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority of the insurance or reinsurance undertaking authorised in that Member State,
      (iii) where the group is headed by more than one insurance holding company or mixed financial holding company which have their head offices in different Member States and there is an insurance or reinsurance undertaking in each of those Member States, the supervisory authority of the insurance or reinsurance undertaking with the largest balance sheet total,
      (iv) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or

mixed financial holding company and none of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total, or

(v) where the group is a group without a parent undertaking, or in any circumstances not referred to in points (i) to (iv), the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total.

▼M5

3. In particular cases, the supervisory authorities concerned may, at the request of any of the other supervisory authorities, take a joint decision to derogate from the criteria set out in paragraph 2 where their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings' activities in different countries, and designate a different supervisory authority as group supervisor.

   For that purpose, any of the supervisory authorities concerned may request that a discussion be opened on whether the criteria referred to in paragraph 2 are appropriate. Such a discussion shall not take place more often than annually.

   The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months from the request for discussion. Before taking their decision, the supervisory authorities concerned shall give the group an opportunity to state its opinion.

   The designated group supervisor shall submit the joint decision to the group stating the full reasons.

4. If, within the three-month period referred to in the third subparagraph of paragraph 3, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the supervisory authorities concerned shall defer their joint decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take their joint decision in conformity with EIOPA's decision. That joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.
5. EIOPA shall take its decision within one month of a referral under paragraph 4. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached. The designated group supervisor shall submit the joint decision to the group and to the college of supervisors stating the full reasons.
6. In the absence of a joint decision, the task of group supervisor shall be exercised by the supervisory authority identified in accordance with paragraph 2 of this Article.
7. EIOPA shall inform the European Parliament, the Council and the Commission of any major difficulties with the application of paragraphs 2, 3 and 6 on at least an annual basis.

   In the event that any major difficulties arise from the application of the criteria set out in paragraphs 2 and 3 of this Article, the Commission shall adopt delegated acts in accordance with Article 301a further specifying those criteria.

▼B

8. Where a Member State has more than one supervisory authority for the prudential supervision of insurance and reinsurance undertakings, such Member State shall take the necessary measures to ensure coordination between those authorities.

**Article 248 Rights and duties of the group supervisor and the other supervisors College of supervisors**

1. The rights and duties assigned to the group supervisor with regard to group supervision shall comprise the following:
   (a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;
   (b) supervisory review and assessment of the financial situation of the group;
   (c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 218 to 245;
   (d) assessment of the system of governance of the group, as set out in Article 246, and of whether the members of the administrative, management or supervisory body of the participating undertaking fulfil the requirements set out in Articles 42 and 257;

(e) planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

(f) other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 231 and 233 and leading the process for permitting the application of the regime established in Articles 237 to 240.

2. In order to facilitate the exercise of the group supervision tasks referred to in paragraph 1, a college of supervisors, chaired by the group supervisor, shall be established.

The college of supervisors shall ensure that cooperation, exchange of information and consultation processes among the supervisory authorities that are members of the college of supervisors, are effectively applied in accordance with Title III, with a view to promoting the convergence of their respective decisions and activities.

▼M5

Where the group supervisor fails to carry out the tasks referred to in paragraph 1 or where the members of the college of supervisors do not cooperate to the extent required in this paragraph, any of the supervisory authorities concerned may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

▼M5

3. The membership of the college of supervisors shall include the group supervisor, the supervisory authorities of all the Member States in which the head offices of all subsidiary undertakings are situated, and EIOPA in accordance with Article 21 of Regulation (EU) No 1094/2010.

▼B

The supervisory authorities of significant branches and related undertakings shall also be allowed to participate in the college of supervisors. However, their participation shall be limited to achieving the objective of an efficient exchange of information.

The effective functioning of the college of supervisors may require that some activities be carried out by a reduced number of supervisory authorities therein.

4. Without prejudice to any measure adopted pursuant to this Directive, the establishment and functioning of the college of supervisors shall be based on coordination arrangements concluded by the group supervisor and the other supervisory authorities concerned.

▼M5

Where diverging views concerning the coordination arrangements arise, any member of the college of supervisors may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article. The group supervisor shall take its final decision in conformity with EIOPA's decision. The group supervisor shall transmit the decision to the other supervisory authorities concerned.

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5. Without prejudice to any measure adopted pursuant to this Directive, the coordination arrangements referred to in paragraph 4 shall specify the procedures for:

(a) the decision-making process among the supervisory authorities concerned in accordance with Articles 231, 232 and 247;

(b) consultation under paragraph 4 of this Article and under Article 218(5).

▼M5

Without prejudice to the rights and duties allocated by this Directive to the group supervisor and to other supervisory authorities, the coordination arrangements may entrust additional tasks to the group supervisor, the other supervisory authorities or EIOPA where this would result in the more efficient supervision of the group and would not impair the supervisory activities of the members of the college of supervisors in respect of their individual responsibilities.

▼B

In addition, the coordination arrangements may set out procedures for:

(a) consultation among the supervisory authorities concerned, in particular as referred to in Articles 213 to 217, 219 to 221, 227, 244 to 246, 250, 256, 260 and 262;

(b) cooperation with other supervisory authorities.

▼M5

6. EIOPA shall issue guidelines for the operational functioning of colleges of supervisors on the basis of comprehensive reviews of their work in order to assess the level of convergence between them. Such reviews shall be carried out at least every three years. Member States shall ensure that the group supervisor transmits to EIOPA the information on the functioning of the colleges of supervisors and on any difficulties encountered that are relevant for those reviews. In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA may develop draft regulatory technical standards to specify the operational functioning of colleges of supervisors based on the guidelines referred to in the first subparagraph.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

7. In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the coordination of group supervision for the purposes of paragraphs 1 to 6.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

8. The Commission shall adopt delegated acts in accordance with Article 301a in regard to the definition of 'significant branch'.

▼B

**Article 249 Cooperation and exchange of information between supervisory authorities**

1. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.

▼M5

   With the objective of ensuring that the supervisory authorities, including the group supervisor, have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and irrespective of whether they are established in the same Member State, they shall provide one another with such information in order to allow and facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In that regard, the supervisory authorities concerned and the group supervisor shall communicate to one another without delay all relevant information as soon as it becomes available, or exchange information on request. The information referred to in this subparagraph includes, but is not limited to, information about actions of the group and supervisory authorities, and information provided by the group.

▼M1

   The group supervisor shall provide the supervisory authorities concerned and EIOPA with information regarding the group, in accordance with Article 19, Article 51(1) and Article 254(2), in particular regarding the legal structure and the governance and organisational structure of the group.

▼M5

1a. Where a supervisory authority has not communicated relevant information or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within two weeks, the supervisory authorities may refer the matter to EIOPA.

   Where the matter is referred to it, EIOPA may, without prejudice to Article 258 TFEU, act in accordance with the powers conferred on it by Article 19 of Regulation (EU) No 1094/2010.

▼B

2. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall each call immediately for a meeting of all supervisory authorities involved in group supervision in at least the following circumstances:
   (a) where they become aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking;
   (b) where they become aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used in accordance with Title III, Chapter II, Section 1, Subsection 4;
   (c) where other exceptional circumstances are occurring or have occurred.

▼M5

3. In order to ensure consistent harmonisation in relation to the coordination and exchange of information between supervisory authorities, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify:
   (a) the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned;
   (b) the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.
4. In order to ensure uniform conditions of application in relation to the coordination and exchange of information between supervisory authorities, EIOPA shall develop draft implementing technical standards on the procedures and templates for the submission of information to the group supervisor as well as the procedure for the cooperation and the exchange of information between supervisory authorities as laid down in this Article.

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

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

**Article 250 Consultation between supervisory authorities**

1. Without prejudice to Article 248, the supervisory authorities concerned shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other in the college of supervisors with regard to the following:
   (a) changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group, which require the approval or authorisation of supervisory authorities;
   (b) the decision on the extension of the recovery period under Article 138(3) and (4);
   (c) major sanctions or exceptional measures taken by supervisory authorities, including the imposition of a capital add-on to the Solvency Capital Requirement under Article 37 and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under Title I, Chapter VI, Section 4, Subsection 3.

   For the purposes of points (b) and (c) of the first subparagraph, the group supervisor shall always be consulted.

   In addition, the supervisory authorities concerned shall, where a decision is based on information received from other supervisory authorities, consult each other prior to that decision.
2. Without prejudice to Article 248, a supervisory authority may decide not to consult other supervisory authorities in cases of urgency or where such consultation could jeopardise the effectiveness of the decision. In that case, the supervisory authority shall, without delay, inform the other supervisory authorities concerned.

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**Article 251 Requests from the group supervisor to other supervisory authorities**

The group supervisor may invite the supervisory authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the group supervision pursuant to Article 247, to request from the parent undertaking any information which would be relevant for the exercise of its coordination rights and duties as laid down in Article 248, and to transmit that information to the group supervisor.

The group supervisor shall, when it needs information referred to in Article 254(2) which has already been given to another supervisory authority, contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

**Article 252 Cooperation with authorities responsible for credit institutions and investment firms**

Where an insurance or reinsurance undertaking and either a credit institution as defined in Regulation (EU) No 575/2013 ~~Directive 2006/48/EC~~ or an investment firm as defined in ~~Directive 2004/39/EC~~Directive 2014/65/EU, or both, are directly or indirectly related or have a common participating undertaking, the supervisory authorities concerned and the authorities responsible for the supervision of those other undertakings shall cooperate closely.

Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular as set out in this Title.

**Article 253 Professional secrecy and confidentiality**

Member States shall authorise the exchange of information between their supervisory authorities and between their supervisory authorities and other authorities, as referred to in Articles 249 to 252. Information received in the framework of group supervision, and in particular any exchange of information between supervisory authorities and between supervisory authorities and other authorities which is provided for in this Title, shall be subject to the provisions of Article 295.

**Article 254 Access to information**

1. Member States shall ensure that the natural and legal persons included within the scope of group supervision, and their related undertakings and participating undertakings, are able to exchange any information which could be relevant for the purposes of group supervision.

▼M5

2. Member States shall provide that their authorities responsible for exercising group supervision have access to any information relevant for the purpose of that supervision regardless of the nature of the undertaking concerned. Article 35(1) to (5) shall apply mutatis mutandis.

   The group supervisor may limit regular supervisory reporting with a frequency shorter than one year at the level of the group where all insurance or reinsurance undertakings within the group benefit from the limitation in accordance with Article 35(6) taking into account the nature, scale and complexity of the risks inherent in the business of the group.

   The group supervisor may exempt from reporting on an item-by-item basis at the level of the group where all insurance or reinsurance undertakings within the group benefit from the exemption in accordance with Article 35(7), taking into account the nature, scale and complexity of the risks inherent in the business of the group and the objective of financial stability.

▼B

   The supervisory authorities concerned may address the undertakings in the group directly to obtain the necessary information, only where such information has been requested from the insurance undertaking or reinsurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time.

3. The participating insurance and reinsurance undertaking, the insurance holding company and the mixed financial holding company shall submit to the group supervisor the information referred to in this Article on an annual basis within 22 weeks after the undertaking's financial year end, and, when the information referred to in this Article is required on quarterly basis, within 11 weeks after the end of each quarter.

**Article 255 Verification of information**

1. Member States shall ensure that their supervisory authorities may carry out within their territory, either directly or through the intermediary of persons whom they appoint for that purpose, on-site verification of the information referred to in Article 254 on the premises of any of the following:
   (a) the insurance or reinsurance undertaking subject to group supervision;
   (b) related undertakings of that insurance or reinsurance undertaking;
   (c) parent undertakings of that insurance or reinsurance undertaking;
   (d) related undertakings of a parent undertaking of that insurance or reinsurance undertaking.
2. Where supervisory authorities wish in specific cases to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in another Member State, they shall ask the supervisory authorities of that other Member State to have the verification carried out.

   The authorities which receive such a request shall, within the framework of their competences, act upon that request either by carrying out the verification directly, by allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself. The group supervisor shall be informed of the action taken.

   The supervisory authority which made the request may, where it so wishes, participate in the verification when it does not carry out the verification directly.

▼M5

   Where the request to another supervisory authority to have a verification carried out in accordance with this paragraph has not been acted upon within two weeks, or where the supervisory authority is unable in practice to exercise its right to participate in accordance with the third

subparagraph, the requesting authority may refer the matter to EIOPA and may request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

In accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site examinations where they are carried out jointly by two or more supervisory authorities.

▼B

**Article 256 Group solvency and financial condition report**

▼M1

1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group. This report shall contain information about the group addressed to other market participants, as referred to in Article 51(1b). Articles 51, 53, 54 and 55 shall apply mutatis mutandis~~.~~.

   Member States shall ensure that the participating insurance and reinsurance undertakings, the insurance holding company or the mixed financial holding company disclose the information referred to in this Article within 24 weeks after the undertaking's financial year end.

2. A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the agreement of the group supervisor, provide a single report on its solvency and financial condition which shall comprise the following:
   (a) the information at the level of the group to be disclosed in accordance with paragraph 1;
   (b) the information for any of the subsidiaries within the group, which information must be individually identifiable including both parts of the solvency and financial condition report, and must be disclosed in accordance with Articles 51, 53, 54 and 55.

   Before granting the agreement in accordance with the first subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors.

▼B

3. Where the report referred to in paragraph 2 fails to include information which the supervisory authority having authorised a subsidiary within the group requires comparable undertakings to provide, and where the omission is material, the supervisory authority concerned shall have the power to require the subsidiary concerned to disclose the necessary additional information.

▼M5

4. The Commission shall adopt delegated acts in accordance with Article 301a further specifying the information which must be disclosed in the single solvency and financial condition report referred to in paragraph 2 of this Article and the solvency and financial condition report at the level of the group referred to in paragraph 1 of this Article.

   ~~and the deadlines for the annual disclosure of the information as regards the single solvency and financial condition report in accordance with paragraph 2 and the report on the solvency and financial condition report at the level of the group in accordance with paragraph 1.~~

▼M5

5. In order to ensure uniform conditions of application in relation to the single and group solvency and financial condition report, EIOPA shall develop draft implementing technical standards on the procedures and templates for, and the means of, disclosure of the single and group solvency and financial report as laid down in this Article.

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

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

**Article 256a Group structure**

Member States shall require insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, at the level of the group, on an annual basis, the legal structure and the governance and organisational structure, including a description of all subsidiaries, material related undertakings and significant branches belonging to the group.

**Article 256b Group regular supervisory report**

1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to submit to the supervisory

authorities, on an annual basis, a regular supervisory report at the level of the group. Article 35(5a) shall apply mutatis mutandis.

Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in this Article on an annual or less frequent basis in 24 weeks after the undertaking's financial year end.

2. A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the agreement of the supervisory authorities concerned, provide a single regular supervisory report which shall comprise the following:
   (a) the information at the level of the group which shall be reported in accordance with paragraph 1;
   (b) the information for any of the subsidiaries within the group, which shall be individually identifiable, shall be reported in accordance with Article 35(5a) and it shall not result in less information than the information that would be provided by insurance and reinsurance undertakings submitting regular supervisory report in accordance with Article 35(5a).

   Before granting the agreement in accordance with the first subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors. The non-agreement by the national supervisory authorities concerned shall be duly justified. If the single regular supervisory report in accordance with paragraph 2 is approved by the college of supervisors, each individual insurance and reinsurance undertaking shall submit the single regular supervisory report to its supervisory authority. Each supervisory authority shall have the power to supervise the specific part of the single regular supervisory report to the relevant subsidiary.
3. If the single regular supervisory report submitted is not satisfactory for the national supervisory authorities, such approval can be withdrawn.
4. Where the report referred to in paragraph 2 fails to include information which the supervisory authority that authorised a subsidiary within the group requires comparable undertakings to provide, and where the omission is material, the supervisory authority concerned shall have the power to require the subsidiary concerned to report the necessary additional information.
5. Where the supervisory authority having authorised a subsidiary within the group identifies any non-compliance with Article 35(5a) or requests any amendment or clarification regarding the single regular supervisory report it shall also inform the college of supervisors and the group supervisor shall submit to the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company the same request.
6. The Commission shall adopt delegated acts in accordance with Article 301a further specifying the information which shall be reported.

**Article 256c Solvency and financial condition report: Audit requirement**

1. Member States shall ensure that a participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company of a group, is subject to an audit requirement for the group balance sheet disclosed as part of the group solvency and financial condition report or as part of the single solvency and financial condition report.
2. A separate report, including the identification of the type of assurance as well as the results of the audit, prepared by the audit firm shall be submitted to the group supervisory authority together with the solvency and financial condition report or the single solvency and financial condition report by the participating insurance or reinsurance undertakings, the insurance holding company or the mixed financial holding company.
3. Where there is a single solvency and financial condition report, the audit requirements imposed on a related insurance or reinsurance undertaking shall be complied with and the report referred to in Article 51a(4) shall be submitted to the supervisory authority of that undertaking by the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company.
4. Article 51a shall apply mutatis mutandis.

▼M1

**Article 257 Fit and proper requirements for persons who effectively run an ~~Administrative, management or supervisory body of~~ insurance holding ~~companies~~ company ~~and~~ or a mixed financial holding ~~companies~~ company or who have other key functions**

Member States shall require that ~~all persons~~those who effectively run the insurance holding company or the mixed financial holding company and where applicable, the persons who are responsible for other key functions, ~~are~~ to be fit and proper to perform their duties.

Article 42 shall apply mutatis mutandis.

▼B

**Article 258 Enforcement measures**

▼M1

1. Where the insurance or reinsurance undertakings in a group do not comply with the requirements provided for in Articles 218 to 246 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance or reinsurance undertakings, measures necessary to rectify the situation as soon as possible shall be adopted by:
   (a) the group supervisor with respect to insurance holding companies and mixed financial holding companies;
   (b) the supervisory authorities with respect to insurance and reinsurance undertakings.

   Where, in the case referred to in point (a) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance holding company or mixed financial holding company has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

   Where, in the case referred to in point (b) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance or reinsurance undertaking has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

   Without prejudice to paragraph 2, Member States shall determine the measures which may be taken by their supervisory authorities with respect to insurance holding companies and mixed financial holding companies.

   The supervisory authorities concerned, including the group supervisor, shall, where appropriate, coordinate their measures.
2. Supervisory authorities shall be given all supervisory powers to take measures in relation to insurance holding companies and mixed financial holding companies– that are necessary to ensure that groups to which group supervision is applied in accordance with Article 213(2), points (a), (b) and (c), comply with all the requirements laid down in this Title. Those powers shall include the general supervisory powers referred to in Article 34.

   Without prejudice to their provisions on criminal law, Member States shall impose sanctions on, or adopt measures relating to, insurance holding companies and mixed financial holding companies which infringe laws, regulations or administrative provisions brought into force to transpose this Title, or in relation to the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such sanctions or measures are effective, in particular where the central administration or main establishment of an insurance holding company or mixed financial holding company is not located in the same Member State as its head office.

2b. For the purposes of paragraphs 1 and 2a of this Article, Member States shall ensure that the supervisory measures which may be applied to insurance holding companies and mixed financial holding companies include, at least, the following:
   (a) suspending the exercise of voting rights attached to the shares of the subsidiary insurance or reinsurance undertaking held by the insurance holding company or mixed financial holding company;
   (b) issuing injunctions, sanctions or penalties against the insurance holding company, the mixed financial holding company or the members of the administrative, management or supervisory body of those companies;
   (c) giving instructions or directions to the insurance holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiary insurance and reinsurance undertakings;
   (d) designating on a temporary basis another insurance holding company, mixed financial holding company or insurance or reinsurance undertaking within the group as responsible for ensuring compliance with the requirements set out in this Title;
   (e) restricting or prohibiting distributions or interest payments to shareholders;
   (f) requiring insurance holding companies or mixed financial holding companies to divest from or reduce holdings in insurance or reinsurance undertakings or other related undertakings referred to in Article 228(1);

(g) requiring insurance holding companies or mixed financial holding companies to submit a plan on return, without delay, to compliance.

The group supervisor shall consult other supervisory authorities concerned and EIOPA before taking any of the measures referred to in the first subparagraph, where those measures affect undertakings which have their head offices in more than one Member State.

▼M5

3. The Commission may adopt delegated acts in accordance with Article 301a for the coordination of enforcement measures referred to in paragraphs 1 and 2 of this Article.

**Article 259 Reporting of EIOPA**

1. EIOPA shall report to the European Parliament annually in accordance with Article 50 of Regulation (EU) No 1094/2010.
2. EIOPA shall report, inter alia, on all relevant and significant experiences of the supervisory activities and cooperation between supervisors in the framework of Title III, and, in particular:
   (a) the process of the nomination of the group supervisor, the number of group supervisors and their geographical spread;
   (b) the working of the college of supervisors, in particular the involvement and commitment of supervisory authorities where they are not the group supervisor.
3. EIOPA may, for the purposes of paragraph 1 of this Article, also report on the main lessons drawn from the reviews referred to in Article 248(6), where appropriate.

▼B

**CHAPTER IV Third countries**

▼M5

**Article 260 Parent undertakings outside the Union: verification of equivalence**

1. In the case referred to in Article 213(2)(c), the supervisory authorities concerned shall verify whether the insurance and reinsurance undertakings, the parent undertaking of which has its head office outside the Union, are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by this Title on the supervision at the level of the group of insurance and reinsurance undertakings referred to in Article 213(2)(a) and (b).

   Where no delegated act has been adopted in accordance with paragraph 2, 3 or 5 of this Article, the verification shall be carried out by the supervisory authority, which would be the group supervisor if the criteria set out in Article 247(2) were to apply (the 'acting group supervisor'), at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Union or on its own initiative. EIOPA shall assist the acting group supervisor in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

   In so doing, that acting group supervisor shall, assisted by EIOPA, consult the other supervisory authorities concerned, before taking a decision on equivalence. That decision shall be taken in accordance with the criteria adopted in accordance with paragraph 2. The acting group supervisor shall not take any decision in relation to a third country that is in opposition to any previous decision taken vis-à-vis that third country, save where it is necessary to take into account significant changes to the supervisory regime laid down in Title I and to the supervisory regime in the third country.

   Where supervisory authorities disagree with the decision taken in accordance with the third subparagraph, they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the acting group supervisor. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.
2. The Commission may adopt delegated acts in accordance with Article 301a specifying the criteria for assessing whether the prudential regime in a third country for the supervision of groups is equivalent to that laid down in this Title.
3. If the criteria adopted in accordance with paragraph 2 of this Article have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the prudential regime of that third country is equivalent to that laid down in this Title.

   Such a delegated act shall be regularly reviewed to take into account any changes to the prudential regime for the supervision of groups laid down in this Title, and to the prudential regime in the third country for the supervision of groups, and to any other change in regulation that may affect the decision on equivalence.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

4. In the absence of a delegated act adopted by the Commission in accordance with paragraph 3 or 5 of this Article, Article 262 shall apply.
5. By way of derogation from paragraph 3, and even if the criteria specified in paragraph 2 have not been fulfilled, the Commission may, for a limited period and in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the prudential regime of a third country applied to undertakings the parent undertaking of which has its head office outside the Union on 1 January 2014 is temporarily equivalent to that laid down in Title I, if that third country has complied with at least the following criteria:
   (a) it has given a commitment to the Union to adopt and apply a prudential regime that is capable of being assessed equivalent in accordance with paragraph 3, before the end of that limited period and to engage in the equivalence assessment process;
   (b) it has established a work programme to fulfil the commitment under point (a);
   (c) it has allocated sufficient resources to fulfil the commitment under point (a);
   (d) it has a prudential regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency and to the supervision of groups;
   (e) it has entered into written arrangements to cooperate and exchange confidential supervisory information with EIOPA and supervisory authorities as defined in Article 13(10);
   (f) it has an independent system of supervision;
   (g) it has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities, in particular on the exchange of information with EIOPA and supervisory authorities as defined in Article 13(10).

   Any delegated acts on temporary equivalence shall take into account the reports by the Commission in accordance with Article 177(2). Those delegated acts shall be regularly reviewed, on the basis of progress reports by the relevant third country, which are presented to and assessed by the Commission annually. EIOPA shall assist the Commission in the assessment of those progress reports.

   EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

   The Commission may adopt delegated acts in accordance with Article 301a further specifying the conditions laid down in the first subparagraph. Delegated acts may also cover powers for supervisory authorities to impose additional supervisory reporting requirements during the period of temporary equivalence.
6. The limited period referred to in paragraph 5 shall end on 31 December 2020 or on the date on which, in accordance with paragraph 3, the prudential regime of that third country has been deemed to be equivalent to that laid down in this Title, whichever is the earlier.

   That period may be extended by a maximum of one more year, where such time is necessary for EIOPA and the Commission to carry out the assessment of equivalence for the purposes of paragraph 3.
7. Where a delegated act determining that the prudential regime of a third country is temporarily equivalent is adopted in accordance with paragraph 5, Member States shall apply Article 261, unless there is an insurance or reinsurance undertaking situated in a Member State which has a balance sheet total that exceeds the balance sheet total of the parent undertaking situated outside the Union. In that case, the task of the group supervisor shall be exercised by the acting group supervisor.

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**Article 261 Parent undertakings outside the Community: equivalence**

1. In the event of equivalent supervision referred to in Article 260, Member States shall rely on the equivalent group supervision exercised by the third-country supervisory authorities, in accordance with paragraph 2.
2. Articles 247 to 258 shall apply mutatis mutandis to the cooperation with third-country supervisory authorities.

▼M1

**Article 262 Parent undertakings registered in a third country: absence of equivalence**

▼M5

1. In the absence of equivalent supervision referred to in Article 260, or where a Member State does not apply Article 261 in the event of temporary equivalence in accordance with Article 260(7), that Member State shall apply either of the following to insurance and reinsurance undertakings~~:~~ that are part of a group within the meaning of Article 212, and to which group supervision applies in accordance with Article 213(2), point (c):

   (a) Articles 218 to 235, and Articles 244 to 258, mutatis mutandis;

   (b) one of the methods set out in paragraph ~~2~~3.

▼M1

The general principles and methods set out in Articles 218 to 258 shall apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking.

For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I as regards the own funds eligible for the Solvency Capital Requirement, and to either of the following:

(a) a Solvency Capital Requirement determined in accordance with the principles of Article 226 where it is an insurance holding company or mixed financial holding company;

(b) a Solvency Capital Requirement determined in accordance with the principles of Article 227, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

The methods referred to in the first subparagraph shall allow the objectives of the group supervision as specified in this Title to be achieved. Those objectives shall include the following:

(a) preserving the capital allocation and the composition of own funds of insurance and reinsurance undertakings and preventing material intra-group creation of capital where such intra-group capital creation is financed out of the proceeds of debt or other financial instruments that do not qualify as own funds items by the parent company;

(b) assessing and monitoring the risks stemming from undertakings both inside and outside the Union, and limiting the risk of contagion from those undertakings and from other non-regulated undertakings to insurance and reinsurance undertakings within the group, and to the subgroup the ultimate parent undertaking of which is an insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company that has its head office in the Union, as referred to in Article 215, where such a subgroup exists.

The methods referred to in the first subparagraph shall be appropriately justified, documented, and notified to the other supervisory authorities concerned, EIOPA and the Commission.

2. Member States shall allow their supervisory authorities to apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings ~~in~~ that are part of a group within the meaning of Article 212, and to which group supervision applies in accordance with Article 213(2), point (c). Those methods shall be agreed by the group supervisor, identified in accordance with Article 247, after consulting the other supervisory authorities concerned.

The supervisory authorities may in particular require the establishment of an insurance holding company which has its head office in the Union, or a mixed financial holding company which has its head office in the Union and apply this Title to the insurance and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.

The methods chosen shall allow the objectives of the group supervision as defined in this Title to be achieved and shall be notified to the other supervisory authorities concerned and the Commission.

3. For the purposes of paragraph 2 of this Article, the supervisory authorities concerned may in particular apply one or several of the following methods to insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies that are part of a group which is subject to group supervision in accordance with Article 213(2), point (c):

   (a) designating one insurance or reinsurance undertaking that shall be responsible for compliance with the requirements set out in this Title, where the insurance and reinsurance undertakings that are part of the group do not have a common parent undertaking in the Union;

(b) requiring the establishment of an insurance holding company which has its head office in the Union, or a mixed financial holding company which has its head office in the Union where the insurance and reinsurance undertakings that are part of the group do not have a common parent undertaking in the Union, and applying this Title to the insurance and (reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company;

(c) where several insurance and reinsurance undertakings that are part of the group form a subgroup whose parent undertaking has its head office in the Union, in addition to applying this Title to this subgroup, taking additional measures or imposing additional requirements, including requirements referred to in points (d), (e), and (f) of this subparagraph and enhanced supervision of risk concentration within the meaning of Article 244 and of intragroup transactions within the meaning of Article 245, with the aim of achieving the objective referred to in paragraph 2, second subparagraph, point (b), of this Article;

(d) requiring the members of the administrative, management or supervisory body of the ultimate parent undertaking in the Union to be independent from the ultimate parent undertaking outside the Union;

(e) prohibiting, limiting, restricting, monitoring or requiring prior notification of transactions, including dividend distributions and coupon payments on subordinated debt, where such transactions are or could be a threat to the financial or solvency position of insurance and reinsurance undertakings within the group, and involve, on the one hand, an insurance or reinsurance undertaking, an insurance holding company which has its head office in the Union or mixed financial holding company which has their head office in the Union, and, on the other hand, an undertaking belonging to the group which has its head office outside the Union; where the group supervisor in the Union is not one of the supervisory authorities of the Member State in which a related insurance or reinsurance undertaking has its head office, the group supervisor in the Union shall inform those supervisory authorities of its findings with a view to enabling them to take the appropriate measures;

(f) requiring information on the solvency and financial position, the risk profile, and the risk tolerance limits of parent undertakings which have their head office outside the Union, including, where applicable, reports on those topics which are submitted to the administrative, management or supervisory body or the supervisory authorities of those third-country parent undertakings.

▼B

**Article 263 Parent undertakings outside the Community: levels**

▼M1

Where the parent undertaking referred to in Article 260 is itself a subsidiary of an insurance holding company or a mixed financial holding company which has its head office in a third country or of a third-country insurance or reinsurance undertaking, Member States shall apply the verification provided for in Article 260 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

Supervisory authorities may, however, in the absence of equivalent supervision referred to in Article 260, carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

▼B

In such a case, the supervisory authority referred to in the second subparagraph of Article 260(1) shall explain its decision to the group.

Article 262 shall apply mutatis mutandis.

**Article 264 Cooperation with third-country supervisory authorities**

1. The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising group supervision over:
   (a) insurance or reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 213 which have their head office situated in a third country; and

(b) third-country insurance undertakings or third-country reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 213 which have their head office in the Community.

2. The agreements referred to in paragraph 1 shall, in particular, seek to ensure that:
   (a) the supervisory authorities of the Member States are able to obtain the information necessary for the supervision at the level of the group of insurance and reinsurance undertakings which have their head office in the Community and which have subsidiaries or hold participations in undertakings outside the Community; and
   (b) the supervisory authorities of third countries are able to obtain the information necessary for the supervision at the level of the group of third-country insurance and reinsurance undertakings which have their head office in their territories and which have subsidiaries or hold participations in undertakings in one or more Member States.
3. Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Insurance and Occupational Pensions Committee, examine the outcome of the negotiations referred to in paragraph 1.

**CHAPTER V Mixed-activity insurance holding companies**

**Article 265 Intra-group transactions**

1. Member States shall ensure that, where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company, the supervisory authorities responsible for the supervision of those insurance or reinsurance undertakings exercise general supervision over transactions between those insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.

1a. Member States shall in particular ensure that, where the parent undertaking of one or more insurance or reinsurance undertakings is a credit institution, an investment firm, a financial institution, a UCITS management company, an alternative investment fund manager, an institution for occupational retirement provision or a non-regulated undertaking which carries one or more of the activities referred to in Annex I to Directive 2013/36/EU where those activities constitute a significant part of its overall activity, the supervisory authorities responsible for the supervision of those insurance or reinsurance undertakings exercise general supervision over transactions between those insurance or reinsurance undertakings and the parent undertaking and its related undertakings.

2. Articles 245, 249 to 255 and 258 shall apply mutatis mutandis.

**Article 266 Cooperation with third countries**

As concerns cooperation with third countries, Article 264 shall apply mutatis mutandis.

**TITLE IV REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS**

**CHAPTER I Scope and definitions**

**Article 267 Scope of this Title**

This Title shall apply to reorganisation measures and winding-up proceedings concerning the following:

(a) insurance undertakings;
(b) branches situated in the territory of the Community of third-country insurance undertakings.

**Article 268 Definitions**

1. For the purpose of this Title the following definitions shall apply:
   (a) ‘competent authorities’ means the administrative or judicial authorities of the Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;
   (b) ‘branch’ means a permanent presence of an insurance undertaking in the territory of a Member State other than the home Member State which pursues insurance activities;
   (c) ‘reorganisation measures’ means measures involving any intervention by the competent authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

(d) ‘winding-up proceedings’ means collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the competent authorities, including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;
(e) ‘administrator’ means a person or body appointed by the competent authorities for the purpose of administering reorganisation measures;
(f) ‘liquidator’ means a person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking for the purpose of administering winding-up proceedings;
(g) ‘insurance claim’ means an amount which is owed by an insurance undertaking to insured persons, policy holders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in Article 2(3)(b) and (c) in direct insurance business, including an amount set aside for those persons, when some elements of the debt are not yet known.

The premium owed by an insurance undertaking as a result of the non-conclusion or cancellation of an insurance contract or operation referred to in point (g) of the first subparagraph in accordance with the law applicable to such a contract or operation before the opening of the winding-up proceedings shall also be considered an insurance claim.

2. For the purpose of applying this Title to reorganisation measures and winding-up proceedings concerning a branch situated in a Member State of a third-country insurance undertaking the following definitions shall apply:
(a) ‘home Member State’ means the Member State in which the branch was granted authorisation in accordance with Articles 145 to 149;
(b) ‘supervisory authorities’ means the supervisory authorities of the home Member State;
(c) ‘competent authorities’ means the competent authorities of the home Member State.

## CHAPTER II Reorganisation measures

### Article 269 Adoption of reorganisation measures applicable law

1. Only the competent authorities of the home Member State shall be entitled to decide on the reorganisation measures with respect to an insurance undertaking, including its branches.
2. The reorganisation measures shall not preclude the opening of winding-up proceedings by the home Member State.
3. The reorganisation measures shall be governed by the laws, regulations and procedures applicable in the home Member State, unless otherwise provided in Articles 285 to 292.
4. Reorganisation measures taken in accordance with the legislation of the home Member State shall be fully effective throughout the Community without any further formalities, including against third parties in other Member States, even where the legislation of those other Member States does not provide for such reorganisation measures or alternatively makes their implementation subject to conditions which are not fulfilled.
5. The reorganisation measures shall be effective throughout the Community once they become effective in the home Member State.

### Article 270 Information to the supervisory authorities

The competent authorities of the home Member State shall inform as a matter or urgency the supervisory authorities of that Member State of their decision on any reorganisation measure, where possible before the adoption of such a measure and failing that immediately thereafter.

The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to adopt reorganisation measures including the possible practical effects of such measures.

### Article 271 Publication of decisions on reorganisation measures

1. Where an appeal is possible in the home Member State against a reorganisation measure, the competent authorities of the home Member State, the administrator or any person entitled to do so in the home Member State shall make public the decision on a reorganisation measure in accordance with the publication procedures provided for in the home Member State and,

furthermore, publish in the Official Journal of the European Union at the earliest opportunity an extract from the document establishing the reorganisation measure.
The supervisory authorities of the other Member States which have been informed of the decision on a reorganisation measure pursuant to Article 270 may ensure the publication of such decision within their territory in the manner they consider appropriate.

2. The publications provided for in paragraph 1 shall specify the competent authority of the home Member State, the applicable law as provided in Article 269(3) and the administrator appointed, if any. They shall be made in the official language or in one of the official languages of the Member State in which the information is published.
3. The reorganisation measures shall apply regardless of the provisions concerning publication set out in paragraphs 1 and 2 and shall be fully effective as against creditors, unless the competent authorities of the home Member State or the law of that Member State provide otherwise.
4. Where reorganisation measures affect exclusively the rights of shareholders, members or employees of an insurance undertaking, considered in those capacities, paragraphs 1, 2 and 3 shall not apply unless the law applicable to the reorganisation measures provides otherwise.
The competent authorities shall determine the manner in which the parties referred to in the first subparagraph are to be informed in accordance with the applicable law.

**Article 272 Information to known creditors right to lodge claims**

1. Where the law of the home Member State requires a claim to be lodged in order for it to be recognised or provides for compulsory notification of a reorganisation measure to creditors whose habitual residence, domicile or head office is situated in that Member State, the competent authorities of the home Member State or the administrator shall also inform known creditors whose habitual residence, domicile or head office is situated in another Member State, in accordance with Article 281 and Article 283(1).
2. Where the law of the home Member State provides for the right of creditors whose habitual residence, domicile or head office is situated in that Member State to lodge claims or to submit observations concerning their claims, creditors whose habitual residence, domicile or head office is situated in another Member State shall have the same right in accordance with Article 282 and Article 283(2).

**CHAPTER III Winding-up proceedings**

**Article 273 Opening of winding-up proceedings information to the supervisory authorities**

1. Only the competent authorities of the home Member State shall be entitled to take a decision concerning the opening of winding-up proceedings with regard to an insurance undertaking, including its branches in other Member States. This decision may be taken in the absence, or following the adoption, of reorganisation measures.
2. A decision concerning the opening of winding-up proceedings of an insurance undertaking, including its branches in other Member States, adopted in accordance with the legislation of the home Member State shall be recognised without further formality throughout the Community and shall be effective there as soon as the decision is effective in the Member State in which the proceedings are opened.
3. The competent authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of that Member State of the decision to open winding-up proceedings, where possible before the proceedings are opened and failing that immediately thereafter.
The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to open winding-up proceedings including the possible practical effects of such proceedings.

**Article 274 Applicable law**

1. The decision to open winding-up proceedings with regard to an insurance undertaking, the winding-up proceedings and their effects shall be governed by the law applicable in the home Member State unless otherwise provided in Articles 285 to 292.
2. The law of the home Member State shall determine at least the following:
   (a) the assets which form part of the estate and the treatment of assets acquired by, or devolving to, the insurance undertaking after the opening of the winding-up proceedings;
   (b) the respective powers of the insurance undertaking and the liquidator;
   (c) the conditions under which set-off may be invoked;

(d) the effects of the winding-up proceedings on current contracts to which the insurance undertaking is party;
(e) the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending referred to in Article 292;
(f) the claims which are to be lodged against the estate of the insurance undertaking and the treatment of claims arising after the opening of winding-up proceedings;
(g) the rules governing the lodging, verification and admission of claims;
(h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right in rem or through a set-off;
(i) the conditions for and the effects of closure of winding-up proceedings, in particular by composition;
(j) rights of the creditors after the closure of winding-up proceedings;
(k) the party who is to bear the cost and expenses incurred in the winding-up proceedings; and
(l) the rules relating to the nullity, voidability or unenforceability of legal acts detrimental to all the creditors.

**Article 275 Treatment of insurance claims**

1. Member States shall ensure that insurance claims take precedence over other claims against the insurance undertaking in one or both of the following ways:
   (a) with regard to assets representing the technical provisions, insurance claims shall take absolute precedence over any other claim on the insurance undertaking; or
   (b) with regard to the whole of the assets of the insurance undertaking, insurance claims shall take precedence over any other claim on the insurance undertaking with the only possible exception of the following:
      (i) claims by employees arising from employment contracts and employment relationships;
      (ii) claims by public bodies on taxes;
      (iii) claims by social security systems;
      (iv) claims on assets subject to rights in rem.
2. Without prejudice to paragraph 1, Member States may provide that the whole or part of the expenses arising from the winding-up procedure, as determined by their national law, shall take precedence over insurance claims.
3. Member States which have chosen the option provided for in paragraph 1(a) shall require insurance undertakings to establish and keep up to date a special register in accordance with Article 276.

**Article 276 Special register**

1. Every insurance undertaking shall keep at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with the law of the home Member State.
2. Where an insurance undertaking carries on both life and non-life insurance activities, it shall keep at its head office separate registers for each type of business.
   However, where a Member State authorises insurance undertakings to cover life and the risks listed in classes 1 and 2 of Part A of Annex I, it may provide that those insurance undertakings must keep a single register for the whole of their activities.
3. The total value of the assets entered, valued in accordance with the law applicable in the home Member State, shall at no time be less than the value of the technical provisions.
4. Where an asset entered in the register is subject to a right in rem in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact shall be recorded in the register and the amount not available shall not be included in the total value referred to in paragraph 3.
5. The treatment of an asset in the case of the winding-up of the insurance undertaking with respect to the option provided for in Article 275(1)(a) shall be determined by the legislation of the home Member State, except where Articles 286, 287 or 288 apply to that asset where:
   (a) the asset used to cover technical provisions is subject to a right in rem in favour of a creditor or a third party, without meeting the conditions set out in paragraph 4;
   (b) such an asset is subject to a reservation of title in favour of a creditor or of a third party; or

(c) a creditor has a right to demand the set-off of his claim against the claim of the insurance undertaking.

6. Once winding-up proceedings have been opened, the composition of the assets entered in the register in accordance with paragraphs 1 to 5 shall not be changed and no alteration other than the correction of purely clerical errors shall be made in the registers, except with the authorisation of the competent authority.
   However, the liquidators shall add to those assets the yield therefrom and the value of the pure premiums received in respect of the class of insurance concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.
7. Where the product of the realisation of assets is less than their estimated value in the registers, the liquidators shall justify this to the supervisory authorities of the home Member States.

**Article 277 Subrogation to a guarantee scheme**

The home Member State may provide that, where the rights of insurance creditors have been subrogated to a guarantee scheme established in that Member State, claims by that scheme shall not benefit from the provisions of Article 275(1).

**Article 278 Representation of preferential claims by assets**

Member States which choose the option set out in Article 275(1)(b) shall require every insurance undertaking to ensure that the claims which may take precedence over insurance claims pursuant to Article 275(1)(b) and which are registered in the insurance undertaking's accounts are represented, at any moment and independently of a possible winding-up, by assets.

**Article 279 Withdrawal of the authorisation**

1. Where the opening of winding-up proceedings is decided in respect of an insurance undertaking, the authorisation of that undertaking shall be withdrawn in accordance with the procedure laid down in Article 144, except to the extent necessary for the purposes of paragraph 2.
2. The withdrawal of authorisation pursuant to paragraph 1 shall not prevent the liquidator or any other person appointed by the competent authorities from pursuing some of the activities of the insurance undertaking in so far as that is necessary or appropriate for the purposes of winding-up.
   The home Member State may provide that such activities shall be pursued with the consent and under the supervision of the supervisory authorities of that Member State.

**Article 280 Publication of decisions on winding-up proceedings**

1. The competent authority, the liquidator or any person appointed for that purpose by the competent authority shall publish the decision to open winding-up proceedings in accordance with the publication procedures provided for in the home Member State and also publish an extract from the winding-up decision in the Official Journal of the European Union.
   The supervisory authorities of all other Member States which have been informed of the decision to open winding-up proceedings in accordance with Article 273(3) may ensure the publication of such decision within their territories in the manner they consider appropriate.
2. The publication referred to in paragraph 1 shall specify the competent authority of the home Member State, the applicable law and the liquidator appointed. It shall be in the official language or in one of the official languages of the Member State in which the information is published.

**Article 281 Information to known creditors**

1. When winding-up proceedings are opened, the competent authorities of the home Member State, the liquidator or any person appointed for that purpose by the competent authorities shall without delay individually inform by written notice each known creditor whose habitual residence, domicile or head office is situated in another Member State.
2. The notice referred to in paragraph 1 shall cover time-limits, the sanctions laid down with regard to those time-limits, the body or authority empowered to accept the lodging of claims or observations relating to claims and any other measures.
   The notice shall also indicate whether creditors whose claims are preferential or secured in rem need to lodge their claims.
   In the case of insurance claims, the notice shall further indicate the general effects of the winding-up proceedings on the insurance contracts, in particular, the date on which the insurance

contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

**Article 282 Right to lodge claims**

1. Any creditor, including public authorities of Member States, whose habitual residence, domicile or head office is situated in a Member State other than the home Member State shall have the right to lodge claims or to submit written observations relating to claims.
2. The claims of all creditors referred to in paragraph 1 shall be treated in the same way and given the same ranking as claims of an equivalent nature which may be lodged by creditors whose habitual residence, domicile or head office is situated in the home Member State. Competent authorities shall therefore operate without discrimination at Community level.
3. Except in cases where the law of the home Member State otherwise allows, a creditor shall send to the competent authority copies of any supporting documents and shall indicate the following:
   (a) the nature and the amount of the claim;
   (b) the date on which the claim arose;
   (c) whether he alleges preference, security in rem or reservation of title in respect of the claim;
   (d) where appropriate, what assets are covered by his security.

   The precedence granted to insurance claims by Article 275 need not be indicated.

**Article 283 Languages and form**

1. The information in the notice referred to in Article 281(1) shall be provided in the official language or one of the official languages of the home Member State.

   For that purpose a form shall be used bearing either of the following headings in all the official languages of the European Union:
   (a) 'Invitation to lodge a claim; time-limits to be observed'; or
   (b) where the law of the home Member State provides for the submission of observations relating to claims, 'Invitation to submit observations relating to a claim; time-limits to be observed'.

   However, where a known creditor is the holder of an insurance claim, the information in the notice referred to in Article 281(1) shall be provided in the official language or one of the official languages of the Member State in which the habitual residence, domicile or head office of the creditor is situated.
2. Creditors whose habitual residence, domicile or head office is situated in a Member State other than the home Member State may lodge their claims or submit observations relating to claims in the official language or one of the official languages of that other Member State.

   However, in that case, the lodging of their claims or the submission of observations on their claims, as appropriate, shall bear the heading 'Lodgement of claim' or 'Submission of observations relating to claims', as appropriate, in the official language or in one of the official languages of the home Member State.

**Article 284 Regular information to the creditors**

1. Liquidators shall, in an appropriate manner, keep creditors regularly informed on the progress of the winding-up.
2. The supervisory authorities of the Member States may request information on developments in the winding-up procedure from the supervisory authorities of the home Member State.

**CHAPTER IV Common provisions**

**Article 285 Effects on certain contracts and rights**

By way of derogation from Articles 269 and 274, the effects of the opening of reorganisation measures or of winding-up proceedings shall be governed as follows:

(a) in regard to employment contracts and employment relationships, exclusively by the law of the Member State applicable to the employment contract or employment relationship;
(b) in regard to contracts conferring the right to make use of or acquire immovable property, exclusively by the law of the Member State where the immovable property is situated; and
(c) in regard to rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register, exclusively by the law of the Member State under the authority of which the register is kept.

**Article 286 Rights in rem of third parties**

1. The opening of reorganisation measures or winding-up proceedings shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets – both specific assets and collections of indefinite assets as a whole which change from time to time – which belong to the insurance undertaking and which are situated within the territory of another Member State at the time of the opening of such measures or proceedings.
2. The rights referred to in paragraph 1 shall include at least:
   (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;
   (b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;
   (c) the right to demand the assets from or to require restitution by anyone having possession or use of them contrary to the wishes of the party so entitled;
   (d) a right to the beneficial use of assets.
3. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered to be a right in rem.
4. Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 274(2)(l).

**Article 287 Reservation of title**

1. The opening of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the rights of a seller which are based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within the territory of a Member State other than that in which such measures or proceedings were opened.
2. The opening, after delivery of the asset, of reorganisation measures or winding-up proceedings against an insurance undertaking which is selling an asset shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such measures or proceedings the asset sold is situated within the territory of a Member State other than that in which such measures or proceedings were opened.
3. Paragraphs 1 and 2 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 274(2)(l).

**Article 288 Set-off**

1. The opening of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking, where such a set-off is permitted by the law applicable to the claim of the insurance undertaking.
2. Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in Article 274(2)(l).

**Article 289 Regulated markets**

1. Without prejudice to Article 286 the effects of a reorganisation measure or the opening of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law applicable to that market.
2. Paragraph 1 shall not preclude actions for nullity, voidability, or unenforceability referred to in Article 274(2)(l) which may be taken to set aside payments or transactions under the law applicable to that market.

**Article 290 Detrimental acts**

Article 274(2)(l) shall not apply where a person who has benefited from a legal act which is detrimental to all the creditors provides proof of that act being subject to the law of a Member State other than the home Member State, and proof that that law does not allow any means of challenging that act in the relevant case.

**Article 291 Protection of third-party purchasers**

The following law shall be applicable where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, an insurance undertaking disposes, for consideration, of any of the following:

(a) in regard to immovable assets, the law of the Member State where the immovable property is situated;

(b) in regard to ships or aircraft subject to registration in a public register, the law of the Member State under the authority of which the register is kept;

(c) in regard to transferable or other securities, the existence or transfer of which presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State, the law of the Member State under the authority of which the register, account or system is kept.

**Article 292 Lawsuits pending**

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

**Article 293 Administrators and liquidators**

1. The appointment of the administrator or the liquidator shall be evidenced by a certified copy of the original decision of appointment or by any other certificate issued by the competent authorities of the home Member State.

   The Member State in which the administrator or liquidator wishes to act may require a translation into the official language or one of the official languages of that Member State. No formal authentication of that translation or other similar formality shall be required.

2. Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State.

   Persons to assist or represent administrators and liquidators may be appointed, in accordance with the law of the home Member State, in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in that State.

3. In exercising their powers according to the law of the home Member State, administrators or liquidators shall comply with the law of the Member States within which they wish to take action, in particular with regard to procedures for the realisation of assets and the informing of employees.

   Those powers shall not include the use of force or the right to rule on legal proceedings or disputes.

**Article 294 Registration in a public register**

1. The administrator, liquidator or any other authority or person duly empowered in the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in any relevant public register kept in the other Member States.

   However, where a Member State provides for mandatory registration, the authority or person referred to in the first subparagraph shall take all the measures necessary to ensure such registration.

2. The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

**Article 295 Professional secrecy**

All persons required to receive or divulge information in connection with the procedures laid down in Articles 270, 273 and 296 shall be bound by the provisions on professional secrecy, as laid down in Articles 64 to 69, with the exception of any judicial authorities to which existing national provisions apply.

**Article 296 Treatment of branches of third-country insurance undertakings**

Where a third-country insurance undertaking has branches established in more than one Member State, each branch shall be treated independently with regard to the application of this Title.

The competent authorities and the supervisory authorities of those Member States shall endeavour to coordinate their actions.

Any administrators or liquidators shall likewise endeavour to coordinate their actions.

## TITLE V OTHER PROVISIONS

**Article 297 Right to apply to the courts**

Member States shall ensure that decisions taken in respect of an insurance or a reinsurance undertaking under laws, regulations and administrative provisions implementing this Directive are subject to the right to apply to the courts.

**Article 298 Cooperation between the Member States and the Commission**

1. The Member States shall cooperate with each other for the purpose of facilitating the supervision of insurance and reinsurance within the Community and the application of this Directive.
2. The Commission and the supervisory authorities of the Member States shall collaborate closely with each other for the purpose of facilitating the supervision of insurance and reinsurance within the Community and of examining any difficulties which may arise in the application of this Directive.
3. Member States shall inform the Commission of any major difficulties to which the application of this Directive gives rise.
   The Commission and the supervisory authorities of the Member States concerned shall examine those difficulties as quickly as possible in order to find an appropriate solution.

**Article 299 Euro**

Where this Directive makes reference to the euro, the exchange value in national currencies to be used with effect from 31 December of each year shall be the value which applies on the last day of the preceding October for which exchange values for the euro are available in all Community currencies.

**Article 300 Revision of amounts expressed in euro**

▼M5

The amounts expressed in euro in this Directive shall be revised every five years, by increasing the base amount in euro by the percentage change in the Harmonised Indices of Consumer Prices of all Member States as published by the Commission (Eurostat) starting from 31 December 2015 until the date of revision and rounded up to a multiple of EUR 100 000 .

▼B

If the percentage change since the previous revision is less than 5%, the amounts will not be revised.

The Commission shall publish the revised amounts in the Official Journal of the European Union.

The revised amounts shall be implemented by Member States within 12 months of the publication in the Official Journal of the European Union.

▼M5

**Article 301 Committee procedure**

1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC[42] . That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.
3. Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 4 thereof, shall apply.

**Article 301a Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 29, 35b and 256b256b and 304c ~~17, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 258, 260 and 308b~~ shall be conferred on the Commission for a period of four years from ~~23 May 2014~~[OP please insert date = entry into force of this amending Directive].

[42] Commission Decision 2004/9/EC of 5 November 2003 establishing the European Insurance and Occupational Pensions Committee (OJ L 3, 7.1.2004, p. 34).

~~The Commission shall draw up a report in respect of the delegated power by six months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.~~The delegation of power referred to in the first and second subparagraphs shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

The Commission shall draw up a report in respect of the delegated power by six months before the end of every four-year period.

3. The delegation of power referred to in Articles 17, 29, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 256b, 258, 260, 304c and 308b may be revoked at any time by the European Parliament or by the Council.

   A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 17, 29, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 256b, 258, 260 or 308b shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

5a. A delegated act adopted pursuant to Article 304c shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of one month of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.

**Article 301b Sunrise provision for regulatory technical standards**

1. Until 24 May 2016, the Commission shall, when adopting for a first time the regulatory technical standards provided for in Articles 50, 58, 75, 86, 92, 97, 111, 135, 143, 244, 245, 248 and 249 follow the procedure laid down in Article 301a. Any amendments to such delegated acts or, after the transitional period has expired, any new regulatory technical standards shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

2. The delegation of power referred to in paragraph 1 may be revoked at any time by the European Parliament or by the Council in accordance with Article 12 of Regulation (EU) No 1094/2010.

3. By 24 May 2016, EIOPA may submit draft regulatory technical standards to the Commission to adjust to technical developments on the financial markets the delegated acts provided for in Articles 17, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 258, 260 and 308b.

   Those draft regulatory technical standards shall be limited to the technical aspects of the delegated acts referred to in the first subparagraph, in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

▼B

**Article 302 Notifications submitted prior to entry into force of the laws, regulations and administrative provisions necessary to comply with Articles 57 to 63**

The assessment procedure applied to proposed acquisitions for which notifications referred to in Article 57 have been submitted to the competent authorities prior to the entry into force of the laws, regulations and administrative provisions necessary to comply with Articles 57 to 63, shall be carried out in accordance with the national law of Member States in force at the time of notification.

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**Article 304 Duration-based equity risk sub-module**

1. Member States may authorise life insurance undertakings providing:
   (a) occupational retirement provision business in accordance with Article 4 of Directive 2003/41/EC, or
   (b) retirement benefits paid by reference to reaching, or the expectation of reaching, retirement where the premiums paid for those benefits have a tax deduction which is authorised to policy holders in accordance with the national legislation of the Member State that has authorised the undertaking;

   where
   (i) all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertakings, without any possibility of transfer;
   (ii) the activities of the undertaking related to points (a) and (b), in relation to which the approach referred to in this paragraph is applied, are pursued only in the Member State where the undertaking has been authorised; and
   (iii) the average duration of the liabilities corresponding to the business held by the undertaking exceeds an average of 12 years;

   to apply an equity risk sub-module of the Solvency Capital Requirement, which is calibrated using a Value-at-Risk measure, over a time period, which is consistent with the typical holding period of equity investments for the undertaking concerned, with a confidence level providing the policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101, where the approach provided for in this Article is used only in respect of those assets and liabilities referred in point (i). In the calculation of the Solvency Capital Requirement those assets and liabilities shall be fully considered for the purpose of assessing the diversification effects, without prejudice to the need to safeguard the interests of policy holders and beneficiaries in other Member States.

   Subject to the approval of the supervisory authorities, the approach set out in the first subparagraph shall be used only where the solvency and liquidity position as well as the strategies, processes and reporting procedures of the undertaking concerned with respect to asset–liability management are such as to ensure, on an ongoing basis, that it is able to hold equity investments for a period which is consistent with the typical holding period of equity investments for the undertaking concerned. The undertaking shall be able to demonstrate to the supervisory authority that that condition is verified with the level of confidence necessary to provide policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101.

   Insurance and reinsurance undertakings shall not revert to applying the approach set out in Article 105, except in duly justified circumstances and subject to the approval of the supervisory authorities.

▼M5

2. ~~The Commission shall submit to the European Parliament and to the Council, by 31 December 2020, a report on the application of the approach set out in paragraph 1 and the supervisory authorities' practices adopted pursuant to paragraph 1, accompanied, where appropriate, by adequate proposals. That report shall address, in particular, cross-border effects of the use of that approach with a view to preventing regulatory arbitrage by insurance and reinsurance undertakings.~~As of [OP please insert date = date of application of this amending Directive] life insurance undertakings may continue to apply the approach referred to in paragraph 1 of this Article only in respect of assets and liabilities to which supervisory authorities approved the application of the duration-based equity risk sub-module before [OP please insert date = application date of this amending Directive].

**Article 304a Report as regards sustainability risk**

1. EIOPA, after consulting the ESRB, shall assess, on the basis of available data and the findings of the Platform on Sustainable Finance referred to in Article 20 of Regulation (EU) 2020/852

of the European Parliament and of the Council[43] and the EBA in the context of its work under the mandate set out in Article 501c, point (c), of Regulation (EU) 575/2013 whether a dedicated prudential treatment of exposures related to assets or activities associated substantially with environmental or social objectives would be justified. In particular, EIOPA shall assess the potential effects of a dedicated prudential treatment of exposures related to assets and activities which are associated substantially with environmental and/or social objectives or which are associated substantially with harm to such objectives on the protection of policy holders and financial stability in the Union, including fossil fuel related assets.

EIOPA shall submit a report on its findings to the Commission by 30 September 2024. Where appropriate, the report shall consider a possible risk-based prudential treatment of exposures related to assets and activities which are associated substantially with environmental or social objectives or which are associated substantially with harm to such objectives and be accompanied by an assessment of the impact of the potential changes on insurance and reinsurance undertakings.

2. EIOPA shall review at least every five years, with respect to natural catastrophe risk, the scope and the calibration of the standard parameters of the non-life catastrophe sub-module of the Solvency Capital Requirement referred to in Article 105(2) , third subparagraph, point (b). For the purpose of those reviews, EIOPA shall take into account the latest available relevant evidence on climate science and the relevance of risks in terms of the risks underwritten by insurance and reinsurance companies that use the standard formula for the calculation of the non-life catastrophe sub-module of the Solvency Capital Requirement.

The first review pursuant to the first subparagraph shall be completed by [OP please insert date = two years after entry into force of this Directive].

Where EIOPA finds, during a review pursuant to the first subparagraph, that, due to the scope or the calibration of the standard parameters of the non-life catastrophe risk sub-module, there is a significant discrepancy between the part of the Solvency Capital Requirement relating to natural catastrophes and the actual natural catastrophe risk that insurance and reinsurance undertakings face, EIOPA shall submit an opinion on natural catastrophe risk to the Commission.

An opinion on natural catastrophe risk submitted to the Commission pursuant to the third subparagraph shall consider the scope or the calibration of the standard parameters of the non-life catastrophe sub-module of the Solvency Capital Requirement in order to remedy the discrepancy found and be accompanied by an assessment of the impact of the proposed amendments on insurance and reinsurance undertakings.

2a. EIOPA shall evaluate whether and to what extent insurance and reinsurance undertakings assess their material exposure to risk related to biodiversity loss as part of the assessment referred to in Article 45(1). EIOPA shall subsequently assess which actions should be taken to ensure that insurance and reinsurance undertakings duly consider these risks. EIOPA shall submit a report with its findings to the Commission by 30 June 2025.

EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, develop guidelines to ensure that consistency, long-term considerations and common standards for assessment methodologies are integrated into the stress testing of environmental, social and governance risks. The Joint Committee shall publish those guidelines by ... [XXX ]. EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, explore how social and governance-related risks can be integrated into stress testing.[44]

**Article 304b Review as regards separation of life and non-life activities and capital buffers**

1. EIOPA shall assess whether the requirement on the separation of life and non-life insurance business referred to in Article 73(1) is still justified. In particular, EIOPA shall assess the effects of maintaining and the potential effects of lifting the composite ban at least with respect to policy holder protection, potential cross-subsidisation between life and non-life activities, market efficiency and competitiveness. For the purpose of the assessment, EIOPA shall take into

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43 Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).

44 The four columns trilogue text says (Line 984c): “Text should be in compliance with the text agreed in CRD. The second sentence of the Council text was deleted in CRD. Exact date of publication to be aligned with CRD.”

account the supervisory experiences with composite undertakings. EIOPA shall submit a report with its findings to the Commission by [one year after the entry into application of this amending Directive].

2. EIOPA shall monitor until [5 years after date of application] the contribution to group Solvency Capital Requirements referred to in Article 228(3)(a)(ii) of this Directive of the combined buffer requirement of related credit institutions, as defined in Article 128, point 6 of Directive No 2013/36/EU. For this purpose, EIOPA shall liaise with the EBA and report to the Commission on any findings. [45]

**Article 304c Extension of deadlines in exceptional circumstances**

Where an exceptional sanitary emergency, natural catastrophe or other extreme event affects materially the operational capabilities of insurance and reinsurance undertakings preventing them from submitting information within the deadlines set out in Article 35b paragraphs 1 to 3, Article 51(7), Article 254(3), Article 256(1) and Article 256b(1), those deadlines may be extended by a Commission delegated act adopted in accordance with paragraph 2.

In case of a sanitary emergency, natural catastrophe or other extreme event, EIOPA, on its own initiative or upon request from one or several supervisory authorities or from the Commission, shall assess whether a sanitary emergency, natural catastrophe or other extreme event is such as to affect materially the operational capabilities of insurance and reinsurance undertakings preventing them from submitting information within the deadlines set out in Article 35b paragraphs 1 to 3, Article 51(7), Article 254(3), Article 256(1) and Article 256b(1). During the assessment, EIOPA shall cooperate closely with the relevant supervisory authorities to determine the potential impact of the extreme event on the ability to report in accordance with this Article.

EIOPA shall submit its assessment to the Commission as soon as concluded and no later than one week after receipt of a request.

Where EIOPA considers that an exceptional sanitary emergency, natural catastrophe or other extreme event affects materially the operational capabilities of insurance and reinsurance undertakings preventing them from submitting information within the deadlines set out in Article 35b paragraphs 1 to 3, Article 51(7), Article 254(3), Article 256(1) and Article 256b(1), it shall publish this information. The relevant supervisory authorities shall also publish this information on their website.

In order to ensure a level playing field in relation to the application of paragraph 1, the Commission may adopt delegated acts for individual extreme events, which:

- define the scope of application of deadlines extension taking into account the insurance and reinsurance undertakings affected by the event;
- set out exceptional extended deadlines for reporting, which may be up to 10 weeks longer than those provided in Article 35b paragraphs 1 to 3, Article 51(7), Article 254(3), Article 256(1) and Article 256b(1), and
- specify which information referred to in Article 35b paragraphs 1 to 3, Article 51(7), Article 254(3), Article 256(1) and Article 256b(1) shall be reported under such extended deadlines.

Where EIOPA did not submit an assessment in accordance with paragraph 1, the Commission shall obtain the views of EIOPA, as appropriate, before adopting a delegated act in accordance with this Article.

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**Article 304b Accessibility of information on the European single access point**

1. From 10 January 2030, Member States shall ensure that, when making public any information referred to in Articles 51(1) and 256(1) of this Directive, insurance or reinsurance undertakings submit that information at the same time to the relevant collection body referred to in paragraph 3 of this Article for the purpose of making it accessible on European single access point (ESAP) established under Regulation (EU) 2023/2859 of the European Parliament and of the Council[46].

   Member States shall ensure that the information complies with the following requirements:

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[45] The four columns trilogue text says (Line 985a): "Article 228(3) point (a)(ii) as in line 780, 781 and 782 (credit institutions): Deletion of a part of the second sentence could perhaps be moved to the overall FiCOD review (lines 789 a and b)."

[46] Regulation (EU) 2023/2859 of the European Parliament and of the Council of 13 December 2023 establishing a European single access point providing centralised access to publicly available information of relevance to financial services, capital markets and sustainability (OL L, 2023/2859, 20.12.2023, ELI: http://data.europa.eu/eli/reg/2023/2859/oj).

(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859 or, where required by Union law, in a machine-readable format, as defined in Article 2, point (4), of that Regulation;
(b) be accompanied by the following metadata:
(i) all the names of the insurance or reinsurance undertaking to which the information relates;
(ii) the legal entity identifier of the insurance or reinsurance undertaking, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;
(iii) the size of the insurance or reinsurance undertaking by category, as specified pursuant to Article 7(4), point (d), of that Regulation;
(iv) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;
(v) an indication of whether the information contains personal data.

2. For the purposes of paragraph 1, point (b)(ii), Member States shall ensure that insurance or reinsurance undertakings obtain a legal entity identifier.

3. By 9 January 2030, for the purpose of making the information referred to in paragraph 1 of this Article accessible on ESAP, Member States shall designate at least one collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 and notify ESMA thereof.

4. From 10 January 2030, the information referred to in Article 25a of this Directive shall be made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be EIOPA. EIOPA shall draw that information from the information notified by the competent authorities in accordance with Article 25a of this Directive for the establishment of the list referred to in Article 25a of this Directive.
That information shall comply with the following requirements:
(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859;
(b) be accompanied by the following metadata:
(i) all the names of the insurance or reinsurance undertaking to which the information relates;
(ii) where available, the legal entity identifier of the insurance or reinsurance undertaking, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;
(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;
(iv) an indication of whether the information contains personal data.

5. From 10 January 2030, Member States shall ensure that the information referred to in Articles 271(1) and 280(1) of this Directive is made accessible on ESAP. For that purpose, the collection body as defined in Article 2, point (2), of Regulation (EU) 2023/2859 shall be the competent authority.
Member States shall ensure that the information complies with the following requirements:
(a) be submitted in a data extractable format as defined in Article 2, point (3), of Regulation (EU) 2023/2859;
(b) be accompanied by the following metadata:
(i) all the names of the insurance or reinsurance undertaking to which the information relates;
(ii) where available, the legal entity identifier of the insurance or reinsurance undertaking, as specified pursuant to Article 7(4), point (b), of Regulation (EU) 2023/2859;
(iii) the type of information, as classified pursuant to Article 7(4), point (c), of that Regulation;
(iv) an indication of whether the information contains personal data.

6. For the purpose of ensuring the efficient collection and management of information submitted in accordance with paragraph 1, EIOPA shall develop draft implementing technical standards to specify the following:
(a) any other metadata to accompany the information;
(b) the structuring of data in the information;
(c) for which information a machine-readable format is required and, in such cases, which machine-readable format is to be used.
For the purposes of point (c), EIOPA shall assess the advantages and disadvantages of different machine-readable formats and conduct appropriate field tests.
EIOPA shall submit those draft implementing technical standards to the Commission.

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

7. Where necessary, EIOPA shall adopt guidelines to ensure that the metadata submitted in accordance with paragraph 6, first subparagraph, point (a), are correct.

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## TITLE VI TRANSITIONAL AND FINAL PROVISIONS

### CHAPTER I Transitional provisions

#### Section 1 Insurance

**Article 305 Derogations and abolition of restrictive measures**

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

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

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

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

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

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

**Article 306 Rights acquired by existing branches and insurance undertakings**

1. Branches which started business, in accordance with the provisions in force in the Member State where that branch is situated, before 1 July 1994 shall be presumed to have been subject to the procedure laid down in Articles 145 and 146.
2. Articles 147 and 148 shall not affect rights acquired by insurance undertakings carrying on business under the freedom to provide services before 1 July 1994.

#### Section 2 Reinsurance

**Article 307 Transitional period for Articles 57(3) and 60(6) of Directive 2005/68/EC**

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

**Article 308 Right acquired by existing reinsurance undertakings**

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

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

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

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**Section 3 Insurance and reinsurance**

~~**Article 308a Phasing-in**~~

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

~~(a) ancillary own funds in accordance with Article 90;~~

~~(b) the classification of own funds items referred to in the third paragraph of Article 95;~~

~~(c) undertaking specific parameters in accordance with Article 104(7);~~

~~(d) a full or partial internal model in accordance with Articles 112 and 113;~~

~~(e) special purpose vehicles to be established in their territory in accordance with Articles 211;~~

~~(f) ancillary own funds of an intermediate insurance holding company in accordance with Article 226(2);~~

~~(g) a group internal model in accordance with Article 230, Article 231 and Article 233(5);~~

~~(h) the use of the duration-based equity risk sub-module in accordance with Article 304;~~

~~(i) the use of the matching adjustment to the relevant risk-free interest rate term structure in accordance with Articles 77b and 77c;~~

~~(j) where Member States so require, the use of the volatility adjustment to the relevant risk-free interest rate term structure in accordance with Article 77d;~~

~~(k) the use of the transitional measure on the risk-free interest rates in accordance with Article 308c;~~

~~(l) the use of the transitional measure on technical provisions in accordance with Article 308d.~~

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

~~(a) determine the level and scope of group supervision in accordance with Title III, Chapter I, Sections 2 and 3;~~

~~(b) identify the group supervisor in accordance with Article 247;~~

~~(c) establish a college of supervisors in accordance with Article 248.~~

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

~~(a) decide to deduct any participation in accordance with the second subparagraph of Article 228;~~

~~(b) determine the choice of method to calculate group solvency in accordance with Article 220;~~

~~(c) make the determination on equivalence, where appropriate, in accordance with Articles 227 and 260;~~

~~(d) permit insurance and reinsurance undertakings to be subject to Articles 238 and 239, in accordance with Article 236;~~

~~(e) make the determinations referred to in Articles 262 and 263;~~

~~(f) determine, where appropriate, the application of transitional measures in accordance with Article 308b.~~

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

**Article 308b Transitional measures**

1. Without prejudice to Article 12, insurance or reinsurance undertakings which, by 1 January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to Titles I, II and III of this Directive until the dates set out in paragraph 2 where either:
   (a) the undertaking has satisfied the supervisory authority that it will terminate its activity before 1 January 2019; or

(b) the undertaking is subject to reorganisation measures set out in Title IV, Chapter II and an administrator has been appointed.

2. Insurance or reinsurance undertakings falling under:
   (a) paragraph 1(a) shall be subject to Titles I, II and III of this Directive from 1 January 2019 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity;
   (b) paragraph 1(b) shall be subject to Titles I, II and III of this Directive from 1 January 2021 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity.
3. Insurance and reinsurance undertakings shall be subject to the transitional measures in paragraphs 1 and 2 only if the following conditions are met:
   (a) the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conduct new insurance or reinsurance contracts;
   (b) the undertaking shall provide its supervisory authority with an annual report setting out what progress has been made in terminating its activity;
   (c) the undertaking has notified its supervisory authority that it applies the transitional measures.

   Paragraphs 1 and 2 shall not prevent any undertaking from operating in accordance with Titles I, II and III of this Directive.
4. Member States shall draw up a list of the insurance and reinsurance undertakings concerned and communicate that list to all the other Member States.
5. ~~Member States shall ensure that, for a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on an annual or less frequent basis shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.~~
6. ~~For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to disclose the information referred to in Article 51 shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.~~
7. ~~For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on a quarterly basis shall decrease by one week each financial year, starting from no later than eight weeks related to any quarter ending on or after 1 January 2016 but before 1 January 2017, to five weeks related to any quarter ending on or after 1 January 2019 but before 1 January 2020.~~
8. ~~Member States shall ensure that paragraphs 5, 6 and 7 of this Article shall apply mutatis mutandis to participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies at the level of the group pursuant to Articles 254 and 256, whereby the deadlines referred to in paragraphs 5, 6 and 7 shall be extended by six weeks respectively.~~
9. Notwithstanding Article 94, basic own-fund items shall be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items:
   (a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;
   (b) on 31 December 2015 could be used to meet the available solvency margin up to 50% of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC;
   (c) would not otherwise be classified in Tier 1 or Tier 2 in accordance with Article 94.
10. Notwithstanding Article 94, basic own-fund items shall be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items:
   (a) were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;
   (b) on 31 December 2015 could be used to meet the available solvency margin up to 25% of the solvency margin according to the laws, regulations and administrative provisions

which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC.

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12. Notwithstanding Article 100, Article 101(3) and Article 104, ~~the following shall apply:~~Member States shall ensure that the standard parameters to be used when calculating the market risk concentration and the spread risk sub-modules in accordance with the standard formula shall be the same in relation to exposures to Member States' central governments or central banks incurred before 1 January 2023[47] and denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their domestic currency;

~~(a) until 31 December 2017 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be the same in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their domestic currency;~~

~~(b) in 2018 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 80% in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;~~

~~(c) in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 50% in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;~~

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

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

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

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

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

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

    Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.
14. Notwithstanding Article 138(3) and without prejudice to paragraph 4 of that Article, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 16a of Directive 73/239/EEC, Article 28 of Directive 2002/83/EC or Article 37, 38 or

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47 The four column trilogue document says (Line 991): "To cater for the Euro accession of Croatia." Thew Commission proposal was for 1-1-2020 and the EP mandate agreed, but the Council proposed 1-1-2023. Wikipaedia on Croatia and the Euro: Croatia joined ERM II on 10 July 2020. Prime Minister Andrej Plenković stated in November 2020 that Croatia intended to adopt the euro on 1 January 2023, and in December 2020 the Croatian government adopted an action plan for euro adoption.

39 of Directive 2005/68/EC respectively as applicable in the law of the Member State on the day before those Directives are repealed pursuant to Article 310 of this Directive but do not comply with the Solvency Capital Requirement in the first year of application of this Directive, the supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017.

The insurance or reinsurance undertaking concerned shall, every three months, submit a progress report to its supervisory authority setting out the measures taken and the progress made to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

The extension referred to in the first subparagraph shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

▼M6

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

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

(a) a notional solvency capital requirement with respect to their insurance activity, calculated without the occupational retirement provision business under Article 4 of Directive (EU) 2016/2341;

(b) the solvency margin with respect to the occupational retirement provision business, calculated in accordance with the laws, regulations and administrative provisions that have been adopted to comply with Article 28 of Directive 2002/83/EC.

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

▼M5

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

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

Where an insurance or reinsurance group, or any of its subsidiary insurance or reinsurance undertakings is applying the transitional measure on the risk-free interest rates referred to in Article 308c or the transitional measure on technical provisions referred to in Article 308d, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall publicly disclose, as part of its report on the group solvency and financial condition referred to in Article 256, and in addition to the disclosures referred to in Articles 308c(4), point (c), and Article 308d(5), point (c), the quantification of the impact on its financial position of assuming that the own funds stemming from the application of those transitional measures cannot effectively be made available to cover the Solvency Capital Requirement of the participating undertaking for which the group solvency is calculated.

Where an insurance or reinsurance group materially relies on the use of the transitional measures referred to in Articles 308c and 308d in such a manner that it misrepresents the actual solvency position of the group, even where the group Solvency Capital Requirement would be complied with without the use of those transitional measures, the group supervisor

shall have the power to take appropriate measures, including the possibility to reduce the amount of own funds stemming from the use of those transitional measures that may be deemed eligible to cover the group Solvency Capital Requirement.

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

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

(a) the elimination of double use of eligible own funds and of the intra-group creation of capital set out in Articles 222 and 223;
(b) the valuation of assets and liabilities set out in Article 224;
(c) the application of the calculation methods to related insurance and reinsurance undertakings set out in Article 225;
(d) the application of the calculation methods to intermediate insurance holding companies set out in Article 226;
(e) the methods for calculating group solvency set out in Articles 230 and 233;
(f) the calculation of the group Solvency Capital Requirement set out in Articles 231;
(g) the setting of a capital add-on set out in Article 232;
(h) the principles in calculating group solvency of an insurance holding company set out in Article 235.

**Article 308c Transitional measure on the risk-free interest rates**

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

1a. After [OP please insert date = date of application of this amending Directive], supervisory authorities shall only approve a transitional adjustment to the relevant risk-free interest rate term structure in the following cases:

(a) during a period of 18 months preceding the approval, the rules of this Directive applied for the first time to the insurance or reinsurance undertaking requesting the approval after being exempted from the scope of this Directive pursuant to Article 4;
(b) during a period of six months preceding the approval, the insurance or reinsurance undertaking requesting the approval received authorisation to accept a portfolio of insurance or reinsurance contracts, where the transferring insurance or reinsurance undertaking applied the transitional adjustment to the relevant risk-free interest rate term structure with respect to that portfolio of contracts prior to the transfer.

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

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

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

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

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

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

(a) the contracts that give rise to the insurance and reinsurance obligations were concluded before the first date of the application of this Directive, excluding contract renewals on or after that date;
(b) until the last date of the application of Directive 2002/83/EC, technical provisions for the insurance and reinsurance obligations were determined in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 20 of that Directive at the last date of the application thereof;
(c) Article 77b is not applied to the insurance and reinsurance obligations.

4. Insurance and reinsurance undertakings applying paragraph 1 shall:
(a) not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in Article 77d;
(b) not apply Article 308d;
(c) within the ~~as~~ part of their report on their solvency and financial condition ~~referred to in Article 51, publicly disclose that they apply the transitional risk-free interest rate term structure, and the quantification of the impact of not applying this transitional measure on their financial position.~~consisting of information addressed to other market participants referred to in Article 51(1b), publicly disclose all of the following:
(i) the fact that they apply the transitional risk-free interest rate term structure;
(ii) the quantification of the impact of not applying this transitional measure on their financial position;
(iii) where the undertaking would comply with the Solvency Capital Requirement without application of this transitional measure, the reasons for the application of this transitional measure;
(iv) an assessment of the dependency of the undertaking on this transitional measure and, where applicable, a description of the measures taken or planned by the undertaking to reduce or remove the dependency.

**Article 308d Transitional measure on technical provisions**

1. Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional deduction to technical provisions. That deduction may be applied at the level of homogeneous risk groups referred to in Article 80.

1a. After [OP please insert date = date of application of this amending Directive], supervisory authorities shall only approve a transitional deduction to technical provisions in the following cases:
(a) during a period of 18 months preceding the approval, the rules of this Directive applied for the first time to the insurance or reinsurance undertaking requesting the approval after being exempted from the scope of this Directive pursuant to Article 4;
(b) during a period of six months preceding the approval, the insurance or reinsurance undertaking requesting the approval accepted a portfolio of insurance and reinsurance contracts, where the transferring insurance or reinsurance undertaking applied the transitional adjustment to the relevant risk-free interest rate term structure with respect to that portfolio of contracts prior to the transfer.

2. The transitional deduction shall correspond to a portion of the difference between the following two amounts:
(a) the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with Article 76 at the first date of the application of this Directive;
(b) the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 15 of Directive 73/239/EEC, Article 20 of Directive 2002/83/EC and Article 32 of Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of this Directive.

The maximum portion deductible shall decrease linearly at the end of each year from 100% during the year starting from 1 January 2016 to 0% on 1 January 2032.
Where insurance and reinsurance undertakings apply at the first date of the application of this Directive the volatility adjustment referred to in the Article 77d, the amount referred to in point (a) shall be calculated with the volatility adjustment at that date.

3. Subject to prior approval by or on the initiative of the supervisory authority, the amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in paragraph 2(a) and (b) may be recalculated

every 24 months, or more frequently where the risk profile of the undertaking has materially changed.

4. The deduction referred to in paragraph 2 may be limited by the supervisory authority if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of this Directive.

5. Insurance and reinsurance undertakings applying paragraph 1 shall:
   (a) not apply Article 308c;
   (b) when they would not comply with the Solvency Capital Requirement without application of the transitional deduction, submit annually a report to their supervisory authority setting out measures taken and the progress made to re-establish at the end of the transitional period set out in paragraph 2 a level of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement;
   (c) within the ~~as~~ part of their report on their solvency and financial condition ~~referred to in Article 51, publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.~~consisting of information addressed to other market participants referred to in Article 51(1b), publicly disclose all of the following:
      (i) the fact that they apply the transitional deduction to the technical provisions;
      (ii) the quantification of the impact of not applying that transitional deduction on their financial position;
      (iii) where the undertaking would comply with the Solvency Capital Requirement without application of this transitional measures, the reasons for the application of this transitional measure;
      (iv) an assessment of the dependency of the undertaking on this transitional measure and, where applicable, a description of the measures taken or planned by the undertaking to reduce or remove the dependency.

**Article 308e Phasing-in plan on the transitional measures on risk-free interest rates and on technical provisions**

Insurance and reinsurance undertakings that apply the transitional measures ~~set out~~ referred to in Articles [77a(2)], 308c or 308d [Article 111(1) subparagraph 2/Article 111 (2a)] shall inform the supervisory authority as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

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

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

▼B

**CHAPTER II Final provisions**

**Article 309 Transposition**

▼M5

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 4, 10, 13, 14, 18, 23, 26 to 32, 34 to 49, 51 to 55, 67, 68, 71, 72,

74 to 85, 87 to 91, 93 to 96, 98, 100 to 110, 112, 113, 115 to 126, 128, 129, 131 to 134, 136 to 142, 144, 146, 148, 162 to 167, 172, 173, 178, 185, 190, 192, 210 to 233, 235 to 240, 243 to 258, 260 to 263, 265, 266, 303 and 304, and Annexes III and IV by 31 March 2015. They shall forthwith communicate to the Commission the text of those measures.

▼M2

The laws, regulations and administrative provisions referred to in the first subparagraph shall apply from ►M4 1 January 2016 ◄ .

▼B

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

▼M5

~~Notwithstanding the second subparagraph, Member States shall apply the laws, regulations and administrative provisions necessary to comply with Article 308a from 1 April 2015.~~

▼B

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

**Article 310 Repeal**

Directives 64/225/EEC, 73/239/EEC, 73/240/EEC, 76/580/EEC, 78/473/EEC, 84/641/EEC, 87/344/EEC, 88/357/EEC, 92/49/EEC, 98/78/EC, 2001/17/EC, 2002/83/EC and 2005/68/EC, as amended by the acts listed in Part A of Annex VI, are repealed with effect from ►M4 1 January 2016 ◄ , without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Part B of Annex VI.

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

▼M5

**Article 310a Staff and resources of EIOPA**

EIOPA shall asses the staffing and resources needs arising from the assumption of its powers and duties in accordance with this Directive and shall submit a report to the European Parliament, the Council and the Commission in relation thereto.

▼M5

**Article 311 Entry into force**

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

~~Article 308a shall apply from 1 April 2015.~~

Articles 1, 2, 3, 5 to 9, 11, 12, 15, 16, 17, 19 to 22, 24, 25, 33, 57 to 66, 69, 70, 73, 145, 147, 149 to 161, 168 to 171, 174 to 177, 179 to 184, 186 to 189, 191, 193 to 209, 267 to 300, 302, 305 to 308, 308b and Annexes I and II, V, VI and VII shall apply from 1 January 2016.

The Commission may adopt delegated acts and regulatory and implementing technical standards prior to the date referred to in the third paragraph.

▼B

**Article 312 Addressees**

This Directive is addressed to the Member States.

**Annex III is amended in accordance with the Annex to this Directive**

(1) in section A. “Forms of non-life insurance undertaking”, point (27) is deleted;

(2) in section B. “Forms of life insurance undertaking”, point (27) is deleted;

(3) in section C. “Forms of reinsurance undertaking”, point (27) is deleted.

**Article 1a Amendment to Directive 2013/34/EU**

In Article 19a of Directive 2013/34/EU, paragraph 6 is replaced by the following:

6. By way of derogation from paragraphs 2 to 4 of this Article, and without prejudice to paragraphs 9 and 10 of this Article, small and medium-sized undertakings referred to in paragraph 1 of this

Article, small and non-complex institutions defined in point (145) of Article 4(1) of Regulation (EU) No 575/2013, captive insurance undertakings defined in point (2) of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council, captive reinsurance undertakings defined in point (5) of Article 13 of that Directive, and small and non-complex undertakings as defined in point (10a) of that Directive may limit their sustainability reporting to the following information:

(a) a brief description of the undertaking's business model and strategy;

(b) a description of the undertaking's policies in relation to sustainability matters;

(c) the principal actual or potential adverse impacts of the undertaking on sustainability matters, and any actions taken to identify, monitor, prevent, mitigate or remediate such actual or potential adverse impacts;

(d) the principal risks to the undertaking related to sustainability matters and how the undertaking manages those risks;

(e) key indicators necessary for the disclosures referred to in points (a) to (d).

Small and medium-sized undertakings, small and non-complex institutions, captive insurance and reinsurance undertakings and small and non-complex undertakings that rely on the derogation referred to in the first subparagraph shall report in accordance with the sustainability reporting standards for small and medium-sized undertakings referred to in Article 29c.

**Article 2, Transposition**

1. Member States shall adopt and publish, by [OP please insert date = 24 months after entry into force – estimated at mid-2026], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

   They shall apply those measures from [OP please insert date = 24 months and one day after entry into force].

   When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

**Article 3, Entry into force**

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. Estimated at mid-2024.

**Article 4, Addressees**

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament, The President
For the Council, The President