

Directive 2009/138/EC of the European Parliament and of the Council
of 25 November 2009 on the taking-up and pursuit of the business of
Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance)

TITLE I

**GENERAL RULES ON THE TAKING-UP AND PURSUIT OF
DIRECT INSURANCE AND REINSURANCE ACTIVITIES**

CHAPTER I

Subject matter, scope and definitions

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 EUR 5 million;
- 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 EUR 25 million;
- 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 EUR 25 million;
- 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);

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- e the business of the undertaking does not include reinsurance operations exceeding EUR 0,5 million of its gross written premium income or EUR 2,5 million 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.

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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;
- 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), 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

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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

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- (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 ‘Consortio 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.