

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 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:

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- 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 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.