

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 II

SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE

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.

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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/

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EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services⁽¹⁾.

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.

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.

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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.

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(1) [OJ L 78, 26.3.1977, p. 17.](#)