

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 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⁽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

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