

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 VIII

Right of establishment and freedom to provide services

Section 3

Competencies of the supervisory authorities of the host member state

Subsection 1

Insurance

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,

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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.

[^{F1}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.]

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.

[^{F29} 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.]

Textual Amendments

- F1** Inserted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)
- F2** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)