

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 VI

TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I

Transitional provisions

[^{F1}Section 3

Insurance and reinsurance

[^{F1}Article 308b

Transitional measures

- 1 Without prejudice to Article 12, insurance or reinsurance undertakings which, by 1 January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to Titles I, II and III of this Directive until the dates set out in paragraph 2 where either:
 - a the undertaking has satisfied the supervisory authority that it will terminate its activity before 1 January 2019; or
 - b the undertaking is subject to reorganisation measures set out in Title IV, Chapter II and an administrator has been appointed.
- 2 Insurance or reinsurance undertakings falling under:
 - a paragraph 1(a) shall be subject to Titles I, II and III of this Directive from 1 January 2019 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity;
 - b paragraph 1(b) shall be subject to Titles I, II and III of this Directive from 1 January 2021 or from an earlier date where the supervisory authority is not satisfied with the progress that has been made towards terminating the undertaking's activity.
- 3 Insurance and reinsurance undertakings shall be subject to the transitional measures in paragraphs 1 and 2 only if the following conditions are met:
 - a the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conduct new insurance or reinsurance contracts;
 - b the undertaking shall provide its supervisory authority with an annual report setting out what progress has been made in terminating its activity;
 - c the undertaking has notified its supervisory authority that it applies the transitional measures.

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Paragraphs 1 and 2 shall not prevent any undertaking from operating in accordance with Titles I, II and III of this Directive.

4 Member States shall draw up a list of the insurance and reinsurance undertakings concerned and communicate that list to all the other Member States.

5 Member States shall ensure that, for a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on an annual or less frequent basis shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

6 For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to disclose the information referred to in Article 51 shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on or after 30 June 2016 but before 1 January 2017, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on or after 30 June 2019 but before 1 January 2020.

7 For a period not exceeding four years from 1 January 2016, the deadline for insurance and reinsurance undertakings to submit the information referred to in Article 35(1) to (4) on a quarterly basis shall decrease by one week each financial year, starting from no later than eight weeks related to any quarter ending on or after 1 January 2016 but before 1 January 2017, to five weeks related to any quarter ending on or after 1 January 2019 but before 1 January 2020.

8 Member States shall ensure that paragraphs 5, 6 and 7 of this Article shall apply *mutatis mutandis* to participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies at the level of the group pursuant to Articles 254 and 256, whereby the deadlines referred to in paragraphs 5, 6 and 7 shall be extended by six weeks respectively.

9 Notwithstanding Article 94, basic own-fund items shall be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items:

- a were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;
- b on 31 December 2015 could be used to meet the available solvency margin up to 50 % of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC;
- c would not otherwise be classified in Tier 1 or Tier 2 in accordance with Article 94.

10 Notwithstanding Article 94, basic own-fund items shall be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items:

- a were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in Article 97, whichever is the earlier;
- b on 31 December 2015 could be used to meet the available solvency margin up to 25 % of the solvency margin according to the laws, regulations and administrative provisions which are adopted pursuant to Article 16(3) of Directive 73/239/EEC, Article 1 of Directive 2002/13/EC, Article 27(3) of Directive 2002/83/EC and Article 36(3) of Directive 2005/68/EC.

- 12 Notwithstanding Article 100, Article 101(3) and Article 104, the following shall apply:
- a until 31 December 2017 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be the same in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their domestic currency;
 - b in 2018 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 80 % in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;
 - c in 2019 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 50 % in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;
 - d from 1 January 2020 the standard parameters to be used when calculating the concentration risk sub-module and the spread risk sub-module in accordance with the standard formula shall not be reduced in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State.

13 Notwithstanding Article 100, Article 101(3) and Article 104, the standard parameters to be used for equities that the undertaking purchased on or before 1 January 2016, when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 304 shall be calculated as the weighted averages of:

- a the standard parameter to be used when calculating the equity risk sub-module in accordance with Article 304; and
- b the standard parameter to be used when calculating the equity risk sub-module in accordance with the standard formula without the option set out in Article 304.

The weight for the parameter expressed in point (b) of the first subparagraph shall increase at least linearly at the end of each year from 0 % during the year starting on 1 January 2016 to 100 % on 1 January 2023.

The Commission shall adopt delegated acts in accordance with Article 301a further specifying the criteria to be met, including the equities that may be subject to the transitional period.

In order to ensure uniform conditions of application of that transitional period, EIOPA shall develop draft implementing technical standards on the procedures for the application of this paragraph.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

- 14 Notwithstanding Article 138(3) and without prejudice to paragraph 4 of that Article, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 16a of Directive 73/239/EEC, Article 28 of Directive 2002/83/EC or

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Article 37, 38 or 39 of Directive 2005/68/EC respectively as applicable in the law of the Member State on the day before those Directives are repealed pursuant to Article 310 of this Directive but do not comply with the Solvency Capital Requirement in the first year of application of this Directive, the supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve the establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017.

The insurance or reinsurance undertaking concerned shall, every three months, submit a progress report to its supervisory authority setting out the measures taken and the progress made to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

The extension referred to in the first subparagraph shall be withdrawn where that progress report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

[^{F315} Where, on the entry into force of this Directive, home Member States applied provisions referred to in Article 4 of Directive (EU) 2016/2341, those home Member States may continue to apply the laws, regulations and administrative provisions that had been adopted by them with a view to complying with Articles 1 to 19, Articles 27 to 30, Articles 32 to 35 and Articles 37 to 67 of Directive 2002/83/EC as in force on 31 December 2015 for a transitional period expiring on 31 December 2022.

Where a home Member State continues to apply those laws, regulations and administrative provisions, insurance undertakings in that home Member State shall calculate their solvency capital requirement as the sum of the following:

- a a notional solvency capital requirement with respect to their insurance activity, calculated without the occupational retirement provision business under Article 4 of Directive (EU) 2016/2341;
- b the solvency margin with respect to the occupational retirement provision business, calculated in accordance with the laws, regulations and administrative provisions that have been adopted to comply with Article 28 of Directive 2002/83/EC.

By 31 December 2017, the Commission shall submit a report to the European Parliament and to the Council, on whether the period referred to in the first subparagraph should be extended, taking account of changes to Union or national law resulting from this Directive.]

16 Member States may allow the ultimate parent insurance or reinsurance undertaking, during a period until 31 March 2022, to apply for the approval of an internal group model applicable to a part of a group where both the undertaking and the ultimate parent undertaking are located in the same Member State and if this part forms a distinct part having a significantly different risk profile from the rest of the group.

17 Notwithstanding Articles 218(2) and (3), the transitional provisions as referred to in paragraph 8 to 12 and 15 of this Article and Articles 308c, 308d and 308e shall apply *mutatis mutandis* at the level of the group.

Notwithstanding Article 218(2), (3) and (4), the transitional provisions as referred to in paragraph 14 of this Article shall apply *mutatis mutandis* at the level of the group and where the participating insurance or reinsurance undertakings or the insurance and

reinsurance undertakings in a group comply with the Adjusted Solvency referred to in Article 9 of Directive 98/78/EC but do not comply with the group Solvency Capital Requirement.

The Commission shall adopt delegated acts in accordance with Article 301a setting out the changes in the group solvency where the transitional provisions referred to in paragraph 13 of this Article are applicable and which relate to:

- a the elimination of double use of eligible own funds and of the intra-group creation of capital set out in Articles 222 and 223;
- b the valuation of assets and liabilities set out in Article 224;
- c the application of the calculation methods to related insurance and reinsurance undertakings set out in Article 225;
- d the application of the calculation methods to intermediate insurance holding companies set out in Article 226;
- e the methods for calculating group solvency set out in Articles 230 and 233;
- f the calculation of the group Solvency Capital Requirement set out in Articles 231;
- g the setting of a capital add-on set out in Article 232;
- h the principles in calculating group solvency of an insurance holding company set out in Article 235.]

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** Deleted by [Regulation \(EU\) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations \(EC\) No 1060/2009 and \(EU\) No 648/2012.](#)
- F3** Substituted by [Directive \(EU\) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision \(IORPs\) \(recast\) \(Text with EEA relevance\).](#)