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 308d

Transitional measure on technical provisions

1 Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply a transitional deduction to technical provisions. That deduction may be applied at the level of homogeneous risk groups referred to in Article 80.

2 The transitional deduction shall correspond to a portion of the difference between the following two amounts:

a the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with Article 76 at the first date of the application of this Directive;

b the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Article 15 of Directive 73/239/EEC, Article 20 of Directive 2002/83/EC and Article 32 of Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of this Directive.

The maximum portion deductible shall decrease linearly at the end of each year from 100 % during the year starting from 1 January 2016 to 0 % on 1 January 2032.

Where insurance and reinsurance undertakings apply at the first date of the application of this Directive the volatility adjustment referred to in the Article 77d, the amount referred to in point (a) shall be calculated with the volatility adjustment at that date.

3 Subject to prior approval by or on the initiative of the supervisory authority, the amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in paragraph 2(a) and (b) may be recalculated every 24 months, or more frequently where the risk profile of the undertaking has materially changed.

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4 The deduction referred to in paragraph 2 may be limited by the supervisory authority if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the laws, regulations and administrative provisions which are adopted pursuant to Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC on the day before those Directives are repealed pursuant to Article 310 of this Directive.

5 Insurance and reinsurance undertakings applying paragraph 1 shall:

a not apply Article 308c;

b when they would not comply with the Solvency Capital Requirement without application of the transitional deduction, submit annually a report to their supervisory authority setting out measures taken and the progress made to re-establish at the end of the transitional period set out in paragraph 2 a level of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement;

c as part of their report on their solvency and financial condition referred to in Article 51, publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.**]**

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).