

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 VI

**Rules relating to the valuation of assets and liabilities, technical provisions, own funds,  
Solvency Capital Requirement, Minimum Capital Requirement and investment rules**

Section 2

**Rules relating to technical provisions**

*<sup>F1</sup>Article 77b*

**Matching adjustment to the relevant risk-free interest rate term structure**

1 Insurance and reinsurance undertakings may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts subject to prior approval by the supervisory authorities where the following conditions are met:

- a the insurance or reinsurance undertaking has assigned a portfolio of assets, consisting of bonds and other assets with similar cash-flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations and maintains that assignment over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;
- b the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed separately from other activities of the undertakings, and the assigned portfolio of assets cannot be used to cover losses arising from other activities of the undertakings;
- c the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency and any mismatch does not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;
- d the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;
- e the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk and mortality risk;

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- f where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5 % under a mortality risk stress that is calibrated in accordance with Article 101(2) to (5);
- g the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the policy holder or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with Article 75, covering the insurance or reinsurance obligations at the time the surrender option is exercised;
- h the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties;
- i the insurance or reinsurance obligations of an insurance or reinsurance contract are not split into different parts when composing the portfolio of insurance or reinsurance obligations for the purpose of this paragraph.

Notwithstanding point (h) of the first subparagraph, insurance or reinsurance undertakings may use assets where the cash flows are fixed except for a dependence on inflation, provided that those assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation.

In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that the investor receives sufficient compensation to allow it to obtain the same cash flows by re-investing in assets of an equivalent or better credit quality, the right to change the cash flows shall not disqualify the asset for admissibility to the assigned portfolio in accordance with point (h) of the first subparagraph.

2 Insurance or reinsurance undertakings that apply the matching adjustment to a portfolio of insurance or reinsurance obligations shall not revert back to an approach that does not include a matching adjustment. Where an insurance or reinsurance undertaking that applies the matching adjustment is no longer able to comply with the conditions set out in paragraph 1, it shall immediately inform the supervisory authority and take the necessary measures to restore compliance with those conditions. Where the undertaking is not able to restore compliance with those conditions within two months of the date of non-compliance, it shall cease to apply the matching adjustment to any of its insurance or reinsurance obligations and shall not apply the matching adjustment for a period of a further 24 months.

3 The matching adjustment shall not be applied with respect to insurance or reinsurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment under Article 77d or transitional measure on the risk-free interest rates under Article 308c.]

#### 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 \(European Securities and Markets Authority\).](#)