

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 3

Own funds

Subsection 2

Classification of own funds

Article 93

Characteristics and features used to classify own funds into tiers

1 Own-fund items shall be classified into three tiers. The classification of those items shall depend upon whether they are basic own fund or ancillary own-fund items and the extent to which they possess the following characteristics:

- a the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis, as well as in the case of winding-up (permanent availability);
- b in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and reinsurance contracts, have been met (subordination).

2 When assessing the extent to which own-fund items possess the characteristics set out in points (a) and (b) of paragraph 1, currently and in the future, due consideration shall be given to the duration of the item, in particular whether the item is dated or not. Where an own-fund item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the undertaking shall be considered (sufficient duration).

In addition, the following features shall be considered:

- a whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);
- b whether the item is free from mandatory fixed charges (absence of mandatory servicing costs);

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- c whether the item is clear of encumbrances (absence of encumbrances).

Article 94

Main criteria for the classification into tiers

1 Basic own-fund items shall be classified in Tier 1 where they substantially possess the characteristics set out in Article 93(1)(a) and (b), taking into consideration the features set out in Article 93(2).

2 Basic own-fund items shall be classified in Tier 2 where they substantially possess the characteristic set out in Article 93(1)(b), taking into consideration the features set out in Article 93(2).

Ancillary own-fund items shall be classified in Tier 2 where they substantially possess the characteristics set out in Article 93(1)(a) and (b), taking into consideration the features set out in Article 93(2).

3 Any basic and ancillary own-fund items which do not fall under paragraphs 1 and 2 shall be classified in Tier 3.

Article 95

Classification of own funds into tiers

Member States shall ensure that insurance and reinsurance undertakings classify their own-fund items on the basis of the criteria laid down in Article 94.

For that purpose, insurance and reinsurance undertakings shall refer to the list of own-fund items referred to in Article 97(1)(a), where applicable.

Where an own-fund item is not covered by that list, it shall be assessed and classified by insurance and reinsurance undertakings, in accordance with the first paragraph. That classification shall be subject to approval by the supervisory authority.

Article 96

Classification of specific insurance own-fund items

Without prejudice to Article 95 and Article 97(1)(a) for the purposes of this Directive the following classifications shall be applied:

- (1) surplus funds falling under Article 91(2) shall be classified in Tier 1;
- (2) letters of credit and guarantees which are held in trust for the benefit of insurance creditors by an independent trustee and provided by credit institutions authorised in accordance with Directive 2006/48/EC shall be classified in Tier 2;
- (3) any future claims which mutual or mutual-type associations of shipowners with variable contributions solely insuring risks listed in classes 6, 12 and 17 in Part A of Annex I may have against their members by way of a call for supplementary contributions, within the following 12 months, shall be classified in Tier 2.

In accordance with the second subparagraph of Article 94(2), any future claims which mutual or mutual-type associations with variable contributions may have against their members by way of a call for supplementary contributions, within the following 12 months, not falling under point (3) of the first subparagraph shall be classified in Tier 2 where they substantially possess the characteristics set out in Article 93(1)(a) and (b), taking into consideration the features set out in Article 93(2).

[^{F1}Article 97

Delegated acts and regulatory technical standards

1 The Commission shall adopt delegated acts in accordance with Article 301a laying down a list of own-fund items, including those referred to in Article 96, deemed to fulfil the criteria, set out in Article 94, which contains for each own-fund item a precise description of the features which determined its classification.

2 In order to ensure consistent harmonisation in relation to classification of own funds, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the methods to be used by supervisory authorities, when approving the assessment and classification of own-fund items which are not covered by the list referred to in paragraph 1.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

The Commission shall regularly review and, where appropriate, update the list referred to in paragraph 1 in light of market developments.]

Textual Amendments

- F1** 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 \(European Securities and Markets Authority\).](#)