

Commission Delegated Regulation (EU) 2015/35 of 10 October 2014
supplementing Directive 2009/138/EC of the European Parliament
and of the Council on the taking-up and pursuit of the business of
Insurance and Reinsurance (Solvency II) (Text with EEA relevance)

TITLE I

[^{x1}VALUATION AND RISK-BASED CAPITAL REQUIREMENTS
(PILLAR I), ENHANCED GOVERNANCE (PILLAR II)
AND INCREASED TRANSPARENCY (PILLAR III)]

CHAPTER IV

OWN FUNDS

SECTION 1

Determination of own funds

Subsection 1

Supervisory approval of ancillary own funds

Article 62

Assessment of the application

1 Supervisory authorities shall take all of the following into account for the purposes of the assessment referred to in Article 90 (4) of Directive 2009/138/EC:

- a the legal effectiveness and enforceability of the terms of the commitment in all relevant jurisdictions;
- b the contractual terms of the arrangement that the insurance or reinsurance undertaking has entered into, or will enter into, with the counterparties to provide funds;
- c where relevant, the insurance or reinsurance undertaking's memorandum and articles of association or statutes;
- d whether the insurance or reinsurance undertaking has processes in place to inform the supervisory authorities of any future changes, which may have the effect of reducing the loss-absorbency of the ancillary own-fund item, to any of the following:
 - (i) the structure or contractual terms of the arrangement;
 - (ii) the status of the counterparties concerned;
 - (iii) the recoverability of the ancillary own funds item.

Changes to legislation: Commission Delegated Regulation (EU) 2015/35, SECTION 1 is up to date with all changes known to be in force on or before 11 October 2023. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

2 Supervisory authorities shall also assess whether Article 90 of Directive 2009/138/EC is complied with taking into account the range of circumstances under which the item can be called up to absorb losses.

3 Where the insurance or reinsurance undertaking is seeking approval of a method by which to determine the amount of each ancillary own-fund item, the supervisory authorities shall assess whether the undertaking's process for regularly validating the method is appropriate to ensure that the results of the method reflect the loss-absorbency of the item on an ongoing basis.

4 In addition to the requirements set out in paragraphs 1 to 3, supervisory authorities shall assess the application for approval of ancillary own funds on the basis of the criteria set out in Articles 63, 64 and 65.

Article 63

Assessment of the application — Status of the counterparties

1 Supervisory authorities shall take all of the following into account for the purposes of the assessment of the counterparties' ability to pay referred to in Article 90(4)(a) of Directive 2009/138/EC:

- a the risk of default of the counterparties;
- b the risk that default arises from a delay in the counterparties satisfying their commitments under the ancillary own funds item.

2 In relation to paragraph 1(a), the supervisory authorities shall assess the risk of default of the counterparties by examining the probability of default of the counterparties and the loss given default, taking into account all of the following criteria:

- a the credit standing of the counterparties, provided that this appropriately reflects the counterparties' ability to satisfy their commitments under the ancillary own funds item;
- b whether there are any current or foreseeable practical or legal impediments to the counterparties' satisfaction of their commitments under the ancillary own funds item;
- c whether the counterparties are subject to legal or regulatory requirements that reduce the counterparties' ability to satisfy their commitments under the ancillary own funds item;
- d whether the legal form of the counterparties prejudice the counterparties' satisfaction of their commitments under the ancillary own funds item;
- e whether the counterparties are subject to other exposures which reduce the counterparties' ability to satisfy their commitments under the ancillary own funds item;
- f whether, in relation to their commitment under the ancillary own fund item, the contractual terms of the arrangement under any applicable law are such that the counterparties have rights to set-off amounts they owe against any amounts owed to them by the insurance or reinsurance undertaking.

3 In relation to paragraph 1(b), the supervisory authorities shall assess the liquidity position of the counterparties, taking into account all of the following:

- a whether there are any current or foreseeable practical or legal impediments to the counterparties' ability to promptly satisfy their commitments under the ancillary own funds item;
- b whether the counterparties are subject to legal or regulatory requirements that may reduce the counterparties' ability to promptly satisfy their commitments under the ancillary own funds item;
- c whether the legal form of the counterparties prejudices the counterparties' prompt satisfaction of their commitments under the ancillary own funds item.

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4 Supervisory authorities shall take all of the following into account for the purposes of the assessment of the counterparties' willingness to pay referred to in Article 90(4)(a) of Directive 2009/138/EC:

- a the range of circumstances under which the ancillary own funds item can be called up to absorb losses;
- b whether incentives or disincentives exist which may affect the counterparties' willingness to satisfy their commitments under the ancillary own funds item;
- c whether previous transactions between the counterparties and the insurance or reinsurance undertaking, including the counterparties' previous satisfaction of their commitments under ancillary own funds items, give an indication as to the counterparties' willingness to satisfy their current commitments under the ancillary own funds item.

5 The supervisory authorities shall, in assessing the counterparties' ability and willingness to pay, consider any other factors relevant to the status of the counterparties including, where relevant, the insurance or reinsurance undertaking's business model.

6 Where an ancillary own-fund item concerns a group of counterparties, supervisory authorities and insurance and reinsurance undertakings may assess the status of the group of counterparties as though it were a single counterparty provided that all of the following conditions are fulfilled:

- a the counterparties are individually non-material;
- b the counterparties included in that group are sufficiently homogeneous;
- c the assessment of a group of counterparties does not overestimate the ability and willingness to pay of the counterparties included in that group.

7 A counterparty shall be considered as material where the status of that single counterparty is likely to have a significant effect on the assessment of the group of counterparties' ability and willingness to pay.

Article 64

Assessment of the application — Recoverability of the funds

Supervisory authorities shall take all of the following into account for the purposes of the assessment of the recoverability of the funds referred to in Article 90(4)(b) of Directive 2009/138/EC:

- (a) whether the recoverability of the funds is increased as a result of the availability of collateral or an analogous arrangement that complies with Articles 209 to 214;
- (b) whether there is any current or foreseeable practical or legal impediment to the recoverability of the funds;
- (c) whether the recoverability of the funds is subject to legal or regulatory requirements;
- (d) the ability of the insurance or reinsurance undertaking to take action to enforce the counterparties' satisfaction of their commitments under the ancillary own funds item.

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Article 65

Assessment of the application — Information on the outcome of past calls

Supervisory authorities shall take all of the following into account for the purposes of the assessment of the information on the outcome of past calls referred to in Article 90(4)(c) of Directive 2009/138/EC:

- (a) whether the insurance or reinsurance undertaking has made past calls from the same or similar counterparties under the same or similar circumstances;
- (b) whether that information is relevant and reliable as regards the expected outcome of future calls.

Article 66

Specification of amount relating to an unlimited amount of ancillary own funds

1 The supervisory authorities shall not approve an unlimited amount of ancillary own funds.

2 Where the supervisory authorities approve an amount of ancillary own funds, the decision of the supervisory authorities shall specify whether the amount that has been approved is the amount for which the insurance or reinsurance undertaking has applied or a lower amount.

Article 67

Specification of amount and timing relating to the approval of a method

Where the supervisory authorities approve a method to determine the amount of each ancillary own fund item, the supervisory authorities' decision shall set out all of the following:

- (a) the initial amount of the ancillary own funds item that has been calculated using that method at the date the approval is granted;
- (b) the minimum frequency of recalculation of the amount of ancillary own funds item using that method where it is more frequent than annual, and the reasons for that frequency;
- (c) the time period for which the calculation of the ancillary own funds item using that method is granted.

Subsection 2

Own funds treatment of participations

Article 68

Treatment of participations in the determination of basic own funds

1 For the purpose of determining the basic own funds of insurance and reinsurance undertakings, basic own funds as referred to in [^{F1}the Own Funds part of the PRA Rulebook] shall be reduced by the full value of participations, as referred to in [^{F2}paragraph 6], in a financial and credit institution that exceeds 10 % of items included in points (a) (i), (ii), (iv) and (vi) of Article 69.

2 For the purpose of determining the basic own funds of insurance and reinsurance undertakings, basic own funds as referred to in Article 88 of Directive 2009/138/EC shall be reduced by the part of the value of all participations, as referred to in [^{F3}paragraph 6 below], in financial and credit institutions, other than participations referred to in paragraph 1, that exceeds 10 % of items included in points (a) (i), (ii), (iv) and (vi) of Article 69.

[^{F43} Notwithstanding paragraphs 1 and 2, insurance and reinsurance undertakings shall not deduct strategic participations as referred to in Article 171 which are included in the calculation of the group solvency on the basis of method 1 as set out in [^{F5}the Financial Conglomerates part of the PRA Rulebook] or on the basis of method 1 as set out in Article 230 of Directive 2009/138/EC.]

4 The deductions set out in paragraph 2 shall be applied on a pro-rata basis to all participations referred to in that paragraph.

5 The deductions set out in paragraphs 1 and 2 shall be made from the corresponding tier in which the participation has increased the own funds of the related undertaking as follows:

- a holdings of Common Equity Tier 1 items of financial and credit institutions shall be deducted from the items included in points (a) (i), (ii), (iv) and (vi) of Article 69;
- b holdings of Additional Tier 1 instruments of financial and credit institutions shall be deducted from the items included in points (a)(iii) and (v) and point (b) of Article 69;
- c holdings of Tier 2 instruments of financial and credit institutions shall be deducted from the basic own-fund items included in Article 72.

[^{F66} Participations in financial and credit institutions must comprise the following:

- a participations which insurance and reinsurance undertakings hold in:
 - i) credit institutions and financial institutions within the meaning of the United Kingdom law which implemented Article 4(1) and (5) of Directive 2006/48/EC;
 - ii) investment firms within the meaning of the United Kingdom law which implemented point 1 of Article 4(1) of Directive 2004/39/EC;
- b subordinated claims and instruments referred to in the United Kingdom law which implemented Articles 63 and 64(3) of Directive 2006/48/EC which insurance and reinsurance undertakings hold in respect of the entities defined in point (a) of this paragraph in which they hold a participation.]

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Textual Amendments

- F1** Words in [Art. 68\(1\)](#) substituted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/407), regs. 1(2), **11(12)(a)(i)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2) and with savings in S.I. 2019/680, reg. 11)
- F2** Words in [Art. 68\(1\)](#) substituted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/407), regs. 1(2), **11(12)(a)(ii)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2) and with savings in S.I. 2019/680, reg. 11)
- F3** Words in [Art. 68\(2\)](#) substituted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/407), regs. 1(2), **11(12)(b)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2) and with savings in S.I. 2019/680, reg. 11)
- F4** Substituted by [Commission Delegated Regulation \(EU\) 2016/467](#) of 30 September 2015 amending [Commission Delegated Regulation \(EU\) 2015/35](#) concerning the calculation of regulatory capital requirements for several categories of assets held by insurance and reinsurance undertakings (Text with EEA relevance).
- F5** Words in [Art. 68\(3\)](#) substituted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/407), regs. 1(2), **11(12)(c)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2) and with savings in S.I. 2019/680, reg. 11)
- F6** [Art. 68\(6\)](#) inserted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/407), regs. 1(2), **11(12)(d)** (as amended by S.I. 2020/1385, regs. 1(2), 54(2) and with savings in S.I. 2019/680, reg. 11)

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Changes and effects yet to be applied to :

- Regulation revoked by [2023 c. 29 Sch. 1 Pt. 3](#)
- Recital 53 Sentence 1 replacement by [EUR 2016/2283](#) Regulation

Changes and effects yet to be applied to the whole legislation item and associated provisions

- Art. 177(2)(b) words omitted by [S.I. 2019/407 reg. 11\(25\)\(a\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(h)(i) words omitted by [S.I. 2019/407 reg. 11\(25\)\(b\)\(ii\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(h)(i) words substituted by [S.I. 2019/407 reg. 11\(25\)\(b\)\(i\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(r) words substituted by [S.I. 2019/407 reg. 11\(25\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(s) words substituted by [S.I. 2019/407 reg. 11\(25\)\(c\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(2)(t) words substituted by [S.I. 2019/407 reg. 11\(25\)\(d\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(5)(a) words substituted by [S.I. 2019/407 reg. 11\(25\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)
- Art. 177(5)(c) words substituted by [S.I. 2019/407 reg. 11\(25\)\(f\)](#) (This amendment not applied to legislation.gov.uk. Reg. 11(25)(39) omitted immediately before IP completion day by virtue of S.I. 2019/710, regs. 1(2), 22)