

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

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

CHAPTER IV

OWN FUNDS

SECTION 2

Classification of own funds

Article 69

Tier 1 — List of own-fund items

The following basic own-fund items shall be deemed to substantially possess the characteristics set out in Article 93(1)(a) and (b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive, and shall be classified as Tier 1, where those items display all of the features set out in Article 71:

- (a) the part of excess of assets over liabilities, valued in accordance with Article 75 and Section 2 of Chapter VI of Directive 2009/138/EC, comprising the following items:
 - (i) paid-in ordinary share capital and the related share premium account;
 - (ii) paid-in initial funds, members' contributions or the equivalent basic own-fund item for mutual and mutual-type undertakings;
 - (iii) paid-in subordinated mutual member accounts;
 - (iv) surplus funds that are not considered as insurance and reinsurance liabilities in accordance with Article 91(2) of Directive 2009/138/EC;
 - (v) paid-in preference shares and the related share premium account;
 - (vi) a reconciliation reserve;
- (b) paid-in subordinated liabilities valued in accordance with Article 75 of Directive 2009/138/EC.

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Article 70

Reconciliation Reserve

1 The reconciliation reserve referred to in point (a)(vi) of Article 69 equals the total excess of assets over liabilities reduced by all of the following:

- a the amount of own shares held by the insurance and reinsurance undertaking;
- b foreseeable dividends, distributions and charges;
- c the basic own-fund items included in points (a)(i) to (v) of Article 69, Article 72(a) and Article 76(a);
- d the basic own-fund items not included in points (a)(i) to (v) of Article 69, point (a) of Article 72 and point (a) of Article 76, which have been approved by the supervisory authority in accordance with Article 79;
- e the restricted own-fund items that meet one of the following requirements:
 - (i) exceed the notional Solvency Capital Requirement in the case of matching adjustment portfolios and ring-fenced funds determined in accordance with Article 81(1);
 - (ii) that are excluded in accordance with Article 81(2);
- f the amount of participations held in financial and credit institutions as referred to in [F1Article 68(6) of this Regulation] deducted in accordance with Article 68, to the extent that this is not already included in points (a) to (e).

2 The excess of assets over liabilities referred to in paragraph 1 includes the amount that corresponds to the expected profit included in future premiums set out in paragraph 2 of Article 260.

3 The determination of whether, and to what extent, the reconciliation reserve displays the features set out in Article 71 shall not amount to an assessment of the features of the assets and liabilities that are included in computing the excess of assets over liabilities or the underlying items in the undertakings' financial statements.

Textual Amendments

- F1** Words in [Art. 70\(1\)\(f\)](#) substituted (31.12.2020) by [The Solvency 2 and Insurance \(Amendment, etc.\) \(EU Exit\) Regulations 2019 \(S.I. 2019/407\)](#), regs. 1(2), **11(13)** (as amended by [S.I. 2020/1385](#), regs. 1(2), 54(2) and with savings in [S.I. 2019/680](#), reg. 11)

Article 71

Tier 1 — Features determining classification

1 The features referred to in Article 69 shall be the following:

- a the basic own fund item:
 - (i) in the case of items referred to in points (a) (i) and (ii) of Article 69, ranks after all other claims in the event of winding-up proceedings regarding the insurance or reinsurance undertaking;

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- (ii) in the case of items referred to in points (a)(iii) and (v) and point (b) of Article 69, ranks to the same degree as, or ahead of, the items referred to in points (a)(i) and (ii) of Article 69, but after items listed in Articles 72 and 76 that display the features set out in Article 73 and 77 respectively and after the claims of all policy holders and beneficiaries and non-subordinated creditors;
- b the basic own-fund item does not include features which may cause the insolvency of the insurance or reinsurance undertaking or may accelerate the process of the undertaking becoming insolvent;
- c the basic own fund item is immediately available to absorb losses;
- d the basic own-fund item absorbs losses at least once there is non-compliance with the Solvency Capital Requirement and does not hinder the recapitalisation of the insurance or reinsurance undertaking;
- e the basic own-fund item, in the case of items referred to in points (a)(iii) and (v) and point (b) of Article 69, possesses one of the following principal loss absorbency mechanisms to be triggered at the trigger event specified in paragraph 8:
 - (i) [^{F2}the nominal or principal amount of the basic own-fund item is written down as set out in paragraphs 5 and 5a;
 - (ii) the basic own-fund item automatically converts into a basic own-fund item listed in point (a)(i) or (ii) of Article 69 as set out in paragraphs 6 and 6a of this Article;]
 - (iii) a principal loss absorbency mechanism that achieves an equivalent outcome to the principal loss absorbency mechanisms set out in points (i) or (ii);
- f the basic own-fund item meets one of the following criteria:
 - (i) in the case of items referred to in points (a)(i) and (ii) of Article 69, the item is undated or, where the insurance or reinsurance undertaking has a fixed maturity, is of the same maturity as the undertaking;
 - (ii) in the case of items referred to in points (a)(iii) and (v) and point (b) of Article 69, the item is undated; the first contractual opportunity to repay or redeem the basic own-fund item does not occur before 5 years from the date of issuance;
- g the basic own-fund item referred to in points (a)(iii) and (v) and point (b) of Article 69 may only allow for repayment or redemption of that item between 5 and 10 years after the date of issuance where the undertaking's Solvency Capital Requirement is exceeded by an appropriate margin taking into account the solvency position of the undertaking including the undertaking's medium-term capital management plan;
- h the basic own-fund item, in the case of items referred to in points (a)(i), (ii), (iii) and (v) and point (b) of Article 69, is only repayable or redeemable at the option of the insurance or reinsurance undertaking and the repayment or redemption of the basic own-fund item is subject to prior supervisory approval;
- i the basic own-fund item, in the case of items referred to in points (a)(i), (ii), (iii) and (v) and point (b) of Article 69, does not include any incentives to repay or redeem that item that increase the likelihood that an insurance or reinsurance undertaking will repay or redeem that basic own-fund item where it has the option to do so;
- j the basic own-fund item, in the case of items referred to in points (a)(i), (ii), (iii) and (v) and point (b) of Article 69, provides for the suspension of repayment or redemption of that item where there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance until the undertaking

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- complies with the Solvency Capital Requirement and the repayment or redemption would not lead to non-compliance with the Solvency Capital Requirement;
- k notwithstanding point (j), the basic own-fund item may only allow for repayment or redemption of that item where there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance, where all of the following conditions are met:
- (i) the supervisory authority has exceptionally waived the suspension of repayment or redemption of that item;
 - (ii) the item is exchanged for or converted into another Tier 1 own-fund item of at least the same quality;
 - (iii) the Minimum Capital Requirement is complied with after the repayment or redemption.
- l the basic own-fund item meets one of the following criteria:
- (i) in the case of items referred to in points (a)(i) and (ii) of Article 69(1), either the legal or contractual arrangements governing the basic own-fund item or national legislation allow for the cancellation of distributions in relation to that item where there is non-compliance with the Solvency Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the distribution would not lead to non-compliance with the Solvency Capital Requirement;
 - (ii) in the case of items referred to in points (a)(iii) and (v) and point (b) of Article 69 the terms of the contractual arrangement governing the basic own-fund item provide for the cancellation of distributions in relation to that item where there is non-compliance with the Solvency Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the distribution would not lead to non-compliance with the Solvency Capital Requirement;
- m the basic own-fund item may only allow for a distribution to be made where there is non-compliance with the Solvency Capital Requirement or the distribution on a basic-own fund item would lead to such non-compliance, where all of the following conditions are met:
- (i) the supervisory authority has exceptionally waived the cancellation of distributions;
 - (ii) the distribution does not further weaken the solvency position of the insurance or reinsurance undertaking;
 - (iii) the Minimum Capital Requirement is complied with after the distribution is made.
- n the basic own fund item, in the case of items referred to in points (a)(i), (ii), (iii) and (v) and point (b) of Article 69, provides the insurance or reinsurance undertaking with full flexibility over the distributions on the basic own-fund item;
- o the basic own-fund item is free from encumbrances and is not connected with any other transaction, which when considered with the basic own-fund item, could result in that basic own-fund item not complying with Article 94(1) of Directive 2009/138/EC.
- 2 For the purposes of this Article, the exchange or conversion of a basic own-fund item into another Tier 1 basic own-fund item or the repayment or redemption of a Tier 1 own-fund item out of the proceeds of a new basic own-fund item of at least the same quality shall not be

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deemed to be a repayment or redemption, provided that the exchange, conversion, repayment or redemption is subject to the approval of the supervisory authority.

3 For the purposes of point (n) of paragraph 1, in the case of basic own-fund items referred to in points (a)(i) and (ii) of Article 69, full flexibility over the distributions is provided where all of the following conditions are met:

- a there is no preferential distribution treatment regarding the order of distribution payments and the terms of the contractual arrangement governing the own-fund item do not provide preferential rights to the payment of distributions;
- b distributions are paid out of distributable items;
- c the level of distributions is not determined on the basis of the amount for which the own-fund item was purchased at issuance and there is no cap or other restriction on the maximum level of distribution;
- d notwithstanding point (c), in the case of instruments issued by mutual and mutual-type undertakings, a cap or other restriction on the maximum level of distribution may be set, provided that cap or other restriction is not an event linked to distributions being made, or not made, on other own fund items;
- e there is no obligation for an insurance or reinsurance undertaking to make distributions;
- f non-payment of distributions does not constitute an event of default of the insurance or reinsurance undertaking;
- g the cancellation of distributions imposes no restrictions on the insurance or reinsurance undertaking.

4 For the purposes of point (n) of paragraph 1, in the case of basic own-fund items referred to in points (a)(iii) and (a)(v) and point (b) of Article 69 full flexibility over the distributions is provided where all of the following conditions are met:

- a distributions are paid out of distributable items;
- b insurance and reinsurance undertakings have full discretion at all times to cancel distributions in relation to the own-fund item for an unlimited period and on a non-cumulative basis and the undertakings may use the cancelled payments without restriction to meet its obligations as they fall due;
- c there is no obligation to substitute the distribution by a payment in any other form;
- d there is no obligation to make distributions in the event of a distribution being made on another own fund item;
- e non-payment of distributions does not constitute an event of default of the insurance or reinsurance undertaking;
- f the cancellation of distributions imposes no restrictions on the insurance or reinsurance undertaking.

5 For the purposes of paragraph (1)(e)(i), the nominal or principal amount of the basic own-fund item shall be written down in such a way that all of the following are reduced:

- a the claim of the holder of that item in the event of winding-up proceedings;
- b the amount required to be paid on repayment or redemption of that item;
- c the distributions paid on that item.

[^{F3}5a For the purposes of point (i) of point (e) of paragraph 1, the provisions governing the write-down of the nominal or principal amount of the basic own-fund item shall provide for all of the following:

- a) if the trigger event specified in paragraph 8 has occurred in the circumstances described in point (c) of the second subparagraph of that paragraph and a partial write-down would be sufficient to re-establish compliance with the Solvency Capital Requirement, there

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- is a partial write-down of the nominal or principal amount for an amount that is at least sufficient to re-establish compliance with the Solvency Capital Requirement;
- b) if the trigger event specified in paragraph 8 has occurred in the circumstances described in point (c) of the second subparagraph of that paragraph and a partial write-down would not be sufficient to re-establish compliance with the Solvency Capital Requirement, the nominal or principal amount as determined at the time of original issuance of the basic own-fund item is written down at least on a linear basis in a manner which ensures that full write-down will occur when 75 % coverage of the Solvency Capital Requirement is reached, or prior to that event;
 - c) if the trigger event specified in paragraph 8 has occurred in the circumstances described in point (a) or point (b) of the second subparagraph of that paragraph, the nominal or principal amount is written down in full;
 - d) following a write-down in accordance with point (b) of this paragraph (‘ the initial write-down ’):
 - (i) if the trigger event specified in paragraph 8 subsequently occurs in the circumstances described in point (a) or point (b) of the second subparagraph of that paragraph, the nominal or principal amount is written down in full;
 - (ii) if, by the end of the period of three months from the date of the trigger event that resulted in the initial write-down, no trigger event has occurred in the circumstances described in point (a) or point (b) of the second subparagraph of paragraph 8 but the solvency ratio has deteriorated further, the nominal or principal amount as determined at the time of original issuance of the basic own-fund item is written down further in accordance with point (b) of this paragraph to reflect that further deterioration in the solvency ratio;
 - (iii) a further write-down is made in accordance with point (ii) for each subsequent deterioration in the solvency ratio at the end of each subsequent period of three months until the insurance or reinsurance undertaking has re-established compliance with the Solvency Capital Requirement.

For the purposes of this paragraph, ‘ solvency ratio ’ means the ratio of the eligible amount of own funds to cover the Solvency Capital Requirement and the Solvency Capital Requirement, using the latest available values.]

6 For the purposes of paragraph (1)(e)(ii), the provisions governing the conversion into basic own-fund items listed in points (a) (i) or (ii) of Article 69 shall specify either of the following:

- a the rate of conversion and a limit on the permitted amount of conversion;
- b a range within which the instruments will convert into the basic own funds item listed in points (a)(i) or (ii) of Article 69.

[^{F3}6a For the purposes of point (ii) of point (e) of paragraph 1, the provisions governing the conversion into basic own-fund items listed in points (i) or (ii) of point (a) of Article 69 shall provide for all of the following:

- a) if the trigger event specified in paragraph 8 has occurred in the circumstances described in point (c) of the second subparagraph of that paragraph and a partial conversion would be sufficient to re-establish compliance with the Solvency Capital Requirement, there is a partial conversion of the item for an amount that is at least sufficient to re-establish compliance with the Solvency Capital Requirement;
- b) if the trigger event specified in paragraph 8 has occurred in the circumstances described in point (c) of the second subparagraph of that paragraph and a partial conversion would not be sufficient to re-establish compliance with the Solvency Capital Requirement, the

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- item is converted in such a way that the remaining nominal or principal amount of the item decreases at least on a linear basis ensuring that full conversion will occur when 75 % coverage of the Solvency Capital Requirement is reached, or prior to that event;
- c) if the trigger event specified in paragraph 8 has occurred in the circumstances described in point (a) or point (b) of the second subparagraph of that paragraph, the item is converted in full;
- d) following a conversion in accordance with point (b) of this paragraph (‘ the initial conversion ’):
- (i) if the trigger event specified in paragraph 8 subsequently occurs in the circumstances described in point (a) or point (b) of the second subparagraph of that paragraph, the item is converted in full;
 - (ii) if, by the end of the period of three months from the date of the trigger event that resulted in the initial conversion, no trigger event has occurred in the circumstances described in point (a) or point (b) of the second subparagraph of paragraph 8 but the solvency ratio has deteriorated further, the item is converted further in accordance with point (b) of this paragraph to reflect that further deterioration in the solvency ratio;
 - (iii) a further conversion is made in accordance with point (ii) for each subsequent deterioration in the solvency ratio at the end of each subsequent period of three months until the insurance or reinsurance undertaking has re-established compliance with the Solvency Capital Requirement.

For the purposes of this paragraph, ‘ solvency ratio ’ has the same meaning as it has for the purposes of paragraph 5a.]

7 The nominal or principal amount of the basic own-fund item shall absorb losses at the trigger event. Loss absorbency resulting from the cancellation of, or a reduction in, distributions shall not be deemed to be sufficient to be considered to be a principal loss absorbency mechanism in accordance with paragraph (1)(e).

8 The trigger event referred to in paragraph (1)(e) shall be significant non-compliance with the Solvency Capital Requirement.

For the purposes of this paragraph, non-compliance with the Solvency Capital Requirement shall be considered significant where any of the following conditions is met:

- a the amount of own-fund items eligible to cover the Solvency Capital Requirement is equal to or less than the 75 % of the Solvency Capital Requirement;
- b the amount of own-fund items eligible to cover the Minimum Capital Requirement is equal to or less than Minimum Capital Requirement;
- c compliance with the Solvency Capital Requirement is not re-established within a period of three months of the date when non-compliance with the Solvency Capital Requirement was first observed.

Insurance and reinsurance undertakings may specify, in the provisions governing the instrument, one or more trigger events in addition to the events referred to in points (a) to (c).

9 For the purposes of points (d), (j) and (l) of paragraph 1, references to the Solvency Capital Requirement shall be read as references to the Minimum Capital Requirement where non-compliance with the Minimum Capital Requirement occurs before non-compliance with the Solvency Capital Requirement.

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[^{F3}10 Notwithstanding the requirement in point (e) of paragraph 1 for the principal loss absorbency mechanism to be triggered at the trigger event specified in paragraph 8, the basic own-fund item may allow for the principal loss absorbency mechanism not to be triggered at that event where all of the following conditions are met:

- a) the trigger event occurs in the circumstances described in point (c) of the second subparagraph of paragraph 8;
- b) there have been no previous trigger events in the circumstances described in point (a) or (b) of the second subparagraph of that paragraph;
- c) the supervisory authority agrees exceptionally to waive the triggering of the principal loss absorbency mechanism on the basis of both of the following pieces of information:
 - (i) projections provided to the supervisory authority by the insurance or reinsurance undertaking when that undertaking submits the recovery plan required by [^{F4}rule 4.4(2) of the Group Supervision part of the PRA Rulebook and rule 3.1(2) of the Undertakings in Difficulty part of the PRA Rulebook], that demonstrate that triggering the principal loss absorbency mechanism in that case would be very likely to give rise to a tax liability that would have a significant adverse effect on the undertaking's solvency position;
 - (ii) certificate issued by that undertaking's statutory auditors certifying that all of the assumptions used in the projections are realistic.

11 Notwithstanding the requirement in point (ii) of point (f) of paragraph (1), the basic own-fund item may allow for repayment or redemption earlier than that period where all of the following conditions are met:

- a) the undertaking's Solvency Capital Requirement, after the repayment or redemption, will be exceeded by an appropriate margin taking into account the solvency position of the undertaking, including the undertaking's medium-term capital management plan;
- b) the circumstances are as described in point (i) or point (ii):
 - (i) there is a change in the regulatory classification of the basic own-fund item which would be likely to result in its exclusion from own funds or reclassification as a lower tier of own funds, and both of the following conditions are met:
 - the supervisory authority considers such a change to be sufficiently certain;
 - the undertaking demonstrates to the satisfaction of the supervisory authority that the regulatory reclassification of the basic own-fund item was not reasonably foreseeable at the time of its issuance;
 - (ii) there is a change in the applicable tax treatment of the basic own-fund item which the undertaking demonstrates to the satisfaction of the supervisory authority is material and was not reasonably foreseeable at the time of its issuance.]

Textual Amendments

- F2** Substituted by [Commission Delegated Regulation \(EU\) 2019/981 of 8 March 2019 amending Delegated Regulation \(EU\) 2015/35 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 \(Solvency II\) \(Text with EEA relevance\).](#)
- F3** Inserted by [Commission Delegated Regulation \(EU\) 2019/981 of 8 March 2019 amending Delegated Regulation \(EU\) 2015/35 supplementing Directive 2009/138/EC of the European Parliament and of the](#)

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Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (Text with EEA relevance).

- F4** Words in Art. 71(10)(c)(i) substituted (31.12.2020) by The Risk Transformation and Solvency 2 (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/1233), regs. 1(4), 6(3); 2020 c. 1, Sch. 5 para. 1(1)

Article 72

Tier 2 Basic own-funds — List of own-fund items

The following basic own-fund items shall be deemed to substantially possess the characteristics set out in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive, and shall be classified as Tier 2 where the following items display all of the features set out in Article 73:

- (a) the part excess of assets over liabilities, valued in accordance with Article 75 and Section 2 of Chapter VI of Directive 2009/138/EC, comprising the following items:
 - (i) ordinary share capital and the related share premium account;
 - (ii) initial funds, members' contributions or the equivalent basic own-fund item for mutual and mutual-type undertakings;
 - (iii) subordinated mutual member accounts;
 - (iv) preference shares and the related share premium account;
- (b) subordinated liabilities valued in accordance with Article 75 of Directive 2009/138/EC.

Article 73

Tier 2 Basic own-funds — Features determining classification

1 ^[F5]The features referred to in Article 72 shall be either those set out in points (a) to (i) or those set out in point (j):]

- a the basic own-fund item ranks after the claims of all policy holders and beneficiaries and non-subordinated creditors;
- b the basic own-fund item does not include features which may cause the insolvency of the insurance or reinsurance undertaking or may accelerate the process of the undertaking becoming insolvent;
- c the basic own-fund item is undated or has an original maturity of at least 10 years; the first contractual opportunity to repay or redeem the basic own-fund item does not occur before 5 years from the date of issuance;
- d the basic own-fund item is only repayable or redeemable at the option of the insurance or reinsurance undertaking and the repayment or redemption of the basic own-fund item is subject to prior supervisory approval;
- e the basic own-fund item may include limited incentives to repay or redeem that basic own-fund item, provided that these do not occur before 10 years from the date of issuance;
- f the basic own-fund item provides for the suspension of repayment or redemption of that item where there is non-compliance with the Solvency Capital Requirement or

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- repayment or redemption would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the repayment or redemption would not lead to non-compliance with the Solvency Capital Requirement;
- g the basic own-fund item meets one of the following criteria:
- (i) in the case of items referred to in points (a)(i) and (ii) of Article 72, either the legal or contractual arrangements governing the basic own-fund item or national legislation allow for the distributions in relation to that item to be deferred where there is non-compliance with the Solvency Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the distribution would not lead to non-compliance with the Solvency Capital Requirement;
 - (ii) in the case of items referred to in points (a)(iii) and (iv) and point (b) of Article 72 the terms of the contractual arrangement governing the basic own-fund item provide for the distributions in relation to that item to be deferred where there is non-compliance with the Solvency Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the distribution would not lead to non-compliance with the Solvency Capital Requirement;
- h the basic own-fund item may only allow for a distribution to be made where there is non-compliance with the Solvency Capital Requirement or the distribution on a basic-own fund item would lead to such non-compliance, where all of the following conditions are met:
- (i) the supervisory authority has exceptionally waived the deferral of distributions;
 - (ii) the payment does not further weaken the solvency position of the insurance or reinsurance undertaking;
 - (iii) the Minimum Capital Requirement is complied with after the distribution is made.
- i the basic own-fund item is free from encumbrances and is not connected with any other transaction, which when considered with the basic own-fund item, could result in that basic own-fund item not complying with the first subparagraph of Article 94(2) of Directive 2009/138/EC.
- j the basic own-fund item displays the features set out in Article 71 that are relevant for basic own-fund items referred to in points (a)(iii), (v) and (b) of Article 69, but exceeds the limit set out in Article 82(3).

Notwithstanding point (f), the basic own-fund item may only allow for the repayment or redemption of that item where there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance, where all of the following conditions are met:

- (i) the supervisory authority has exceptionally waived the suspension of repayment or redemption of that item;
- (ii) the item is exchanged for or converted into another Tier 1 or Tier 2 basic own-fund item of at least the same quality;
- (iii) the Minimum Capital Requirement is complied with after the repayment or redemption.

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2 For the purposes of this Article, the exchange or conversion of a basic own-fund item into another Tier 1 or Tier 2 basic own-fund item or the repayment or redemption of a Tier 2 basic own-fund item out of the proceeds of a new basic own-fund item of at least the same quality shall not be deemed to be a repayment or redemption, provided that the exchange, conversion, repayment or redemption is subject to the approval of the supervisory authority.

3 For the purposes of points (f) and (g) of paragraph 1, references to the Solvency Capital Requirement shall be read as references to the Minimum Capital Requirement where non-compliance with the Minimum Capital Requirement occurs before non-compliance with the Solvency Capital Requirement.

4 For the purposes of point (e) of paragraph 1, undertakings shall consider incentives to redeem in the form of an interest rate step-up associated with a call option as limited where the step-up takes the form of a single increase in the coupon rate and results in an increase in the initial rate that is no greater than the higher of the following amounts:

- a 100 basis points, less the swap spread between the initial index basis and the stepped-up index basis;
- b 50 % of the initial credit spread, less the swap spread between the initial index basis and the stepped-up index basis.

[^{F35} Notwithstanding the requirement in point (c) of paragraph 1, the basic own-fund item may allow for repayment or redemption before 5 years where all of the following conditions are met:

- a the undertaking's Solvency Capital Requirement, after the repayment or redemption, will be exceeded by an appropriate margin, taking into account the solvency position of the undertaking, including the undertaking's medium-term capital management plan;
- b the circumstances are as described in point (i) or point (ii):
 - (i) there is a change in the regulatory classification of the basic own-fund item which would be likely to result in its exclusion from own funds or reclassification as a lower tier of own funds, and both of the following conditions are met:
 - the supervisory authority considers such a change to be sufficiently certain;
 - the undertaking demonstrates to the satisfaction of the supervisory authority that the regulatory reclassification of the basic own-fund item was not reasonably foreseeable at the time of its issuance;
 - (ii) there is a change in the applicable tax treatment of the basic own-fund item which the undertaking demonstrates to the satisfaction of the supervisory authority is material and was not reasonably foreseeable at the time of its issuance.]

Textual Amendments

- F3** Inserted by Commission Delegated Regulation (EU) 2019/981 of 8 March 2019 amending Delegated Regulation (EU) 2015/35 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).
- F5** 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).

Changes to legislation: Commission Delegated Regulation (EU) 2015/35, SECTION 2 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

Article 74

Tier 2 Ancillary own-funds — List of own-fund items

Without prejudice to Article 96 of Directive 2009/138/EC, the following ancillary own-fund items shall be deemed to substantially possess the characteristics set out in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive, and shall be classified as Tier 2, where the following items display all of the features set out in Article 75:

- (a) unpaid and uncalled ordinary share capital callable on demand;
- (b) unpaid and uncalled initial funds, members' contributions or the equivalent basic own-fund item for mutual and mutual-type undertakings, callable on demand;
- (c) unpaid and uncalled preference shares callable on demand;
- (d) a legally binding commitment to subscribe and pay for subordinated liabilities on demand;
- (e) 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 Article 8 of Directive 2013/36/EU;
- (f) letters of credit and guarantees provided that the items can be called up on demand and are clear of encumbrances;
- (g) 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 1 of Directive 2009/138/EC may have against their members by way of a call for supplementary contributions, within the following 12 months;
- (h) any future claims which mutual or mutual-type associations may have against their members by way of a call for supplementary contributions, within the following 12 months, provided that a call can be made on demand and is clear of encumbrances;
- (i) other legally binding commitments received by the insurance or reinsurance undertaking, provided that the item can be called up on demand and is clear of encumbrances.

Article 75

Tier 2 Ancillary own-funds — Features determining classification

In order to be classified as Tier 2, the ancillary own-fund items listed in Article 74 shall display the features of a basic own fund item classified in Tier 1 in accordance with Articles 69 and 71 once that item has been called up and paid in.

Changes to legislation: Commission Delegated Regulation (EU) 2015/35, SECTION 2 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

Article 76

Tier 3 Basic own-funds– List of own-fund items

The following basic own-fund items shall be deemed to possess the characteristics set out in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive, and shall be classified as Tier 3 where the following items display all of the features set out in Article 77:

- (a) the part excess of assets over liabilities, valued in accordance with Sections 1 and 2 of Chapter VI of Directive 2009/138/EC, comprising the following items:
 - (i) subordinated mutual member accounts;
 - (ii) preference shares and the related share premium account;
 - (iii) an amount equal to the value of net deferred tax assets;
- (b) subordinated liabilities valued in accordance with Article 75 of Directive 2009/138/EC.

Article 77

Tier 3 Basic own-funds– Features determining classification

- 1 The features referred to in Article 76 shall be the following:
 - a the basic own-fund item, in the case of items referred to in points (a)(i) and (ii) and point (b) of Article 76, ranks after the claims of all policy holders and beneficiaries and non-subordinated creditors;
 - b the basic own-fund item does not include features which may cause the insolvency of the insurance or reinsurance undertaking or may accelerate the process of the undertaking becoming insolvent;
 - c the basic own-fund item, in the case of items referred to in points (a)(i) and (ii) and point (b) of Article 76, is undated or has an original maturity of at least 5 years, where the maturity date is the first contractual opportunity to repay or redeem the basic own-fund item;
 - d the basic own-fund item, in the case of items referred to in points (a)(i) and (ii) and point (b) of Article 76, is only repayable or redeemable at the option of the insurance or reinsurance undertaking and the repayment or redemption of the basic own-fund item is subject to prior supervisory approval;
 - e the basic own-fund item, in the case of items referred to in points (a)(i) and (ii) and point (b) of Article 76, may include limited incentives to repay or redeem that basic own-fund item;
 - f the basic own-fund item, in the case of items referred to in points (a)(i) and (ii) and point (b) of Article 76, provides for the suspension of repayment or redemption where there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance until the undertaking complies with the Solvency Capital Requirement and the repayment or redemption would not lead to non-compliance with the Solvency Capital Requirement;
 - g the basic own-fund item, in the case of items referred to in points (a)(i) and (ii) and point (b) of Article 76, provides for the deferral of distributions where there is non-

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compliance with the Minimum Capital Requirement or the distribution would lead to such non-compliance until the undertaking complies with the Minimum Capital Requirement and the distribution would not lead to non-compliance with the Minimum Capital Requirement;

- h the basic own-fund item is free from encumbrances and is not connected with any other transaction, which could undermine the features that the item is required to possess in accordance with this Article.

Notwithstanding point (f), the basic own-fund item may only allow for the repayment or redemption of that item where there is non-compliance with the Solvency Capital Requirement or repayment or redemption would lead to such non-compliance, where all the following conditions are met:

- (i) the supervisory authority has exceptionally waived the suspension of repayment or redemption of that item;
- (ii) the item is exchanged for or converted into another Tier 1, Tier 2 basic own-fund item or Tier 3 basic own-fund item of at least the same quality;
- (iii) the Minimum Capital Requirement is complied with after the repayment or redemption.

2 For the purposes of this Article, the exchange or conversion of a basic own-fund item into another Tier 1, Tier 2 basic own-fund item or Tier 3 basic own-fund item or the repayment or redemption of a Tier 3 basic own-fund item out of the proceeds of a new basic own-fund item of at least the same quality shall not be deemed to be a repayment or redemption, provided that the exchange, conversion, repayment or redemption is subject to the approval of the supervisory authority.

3 For the purposes of point (f) of paragraph 1, references to the Solvency Capital Requirement shall be read as references to the Minimum Capital Requirement where non-compliance with the Minimum Capital Requirement occurs before non-compliance with the Solvency Capital Requirement.

4 For the purposes of point (e) of paragraph 1, undertakings shall consider incentives to redeem in the form of an interest rate step-up associated with a call option as limited where the step-up takes the form of a single increase in the coupon rate and results in an increase in the initial rate that is no greater than the higher of the following amounts:

- a 100 basis points, less the swap spread between the initial index basis and the stepped-up index basis;
- b 50 % of the initial credit spread, less the swap spread between the initial index basis and the stepped-up index basis.

[^{F35} Notwithstanding the requirement in point (c) of paragraph 1, the basic own-fund item may allow for repayment or redemption sooner than 5 years after the date of issuance where all of the following conditions are met:

- a the undertaking's Solvency Capital Requirement, after the repayment or redemption, will be exceeded by an appropriate margin, taking into account the solvency position of the undertaking, including the undertaking's medium-term capital management plan;
- b the circumstances are as described in point (i) or point (ii):
 - (i) there is a change in the regulatory classification of the basic own-fund item which would be likely to result in its exclusion from own funds, and both of the following conditions are met:

Changes to legislation: Commission Delegated Regulation (EU) 2015/35, SECTION 2 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

- the supervisory authority considers such a change to be sufficiently certain;
 - the undertaking demonstrates to the satisfaction of the supervisory authority that the regulatory reclassification of the basic own-fund item was not reasonably foreseeable at the time of its issuance;
- (ii) there is a change in the applicable tax treatment of the basic own-fund item which the undertaking demonstrates to the satisfaction of the supervisory authority is material and was not reasonably foreseeable at the time of its issuance.]

Textual Amendments

- F3** Inserted by [Commission Delegated Regulation \(EU\) 2019/981 of 8 March 2019 amending Delegated Regulation \(EU\) 2015/35 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 \(Solvency II\) \(Text with EEA relevance\)](#).

Article 78

Tier 3 Ancillary own-funds– List of own-funds items

Ancillary own-fund items that have been approved by the supervisory authority in accordance with Article 90 of Directive 2009/138/EC, and which do not display all of the features set out in Article 75 shall be classified as Tier 3 ancillary own funds.

Article 79

Supervisory Authorities approval of the assessment and classification of own-fund items

1 Without prejudice to Article 90 of Directive 2009/138/EC, where an own-fund item is not included in the list of own-funds items set out in Articles 69, 72, 74, 76 and 78, insurance or reinsurance undertakings shall only consider that item as own funds where an approval of the item's assessment and classification has been received from the supervisory authority.

2 The supervisory authority shall assess the following, on the basis of documents submitted by the insurance or reinsurance undertaking, when approving the assessment and classification of own-fund items not included in the list of own-fund items set out in Articles 69, 72, 74, 76 and 78:

- a where the undertaking is applying for approval for classification as Tier 1, whether the basic own-fund item substantially possesses the characteristics set out in Article 93(1)(a) and (b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive;
- b where the undertaking is applying for classification as Tier 2 basic own funds, whether the basic own-fund item substantially possesses the characteristics set out in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive;
- c where the undertaking is applying for classification as Tier 2 ancillary own funds, whether the ancillary own-fund item substantially possesses the characteristics in Article 93(1)(a) and (b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive;

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- d where the undertaking is applying for classification as Tier 3 basic own funds, whether the basic own-fund item possesses the characteristics set out in Article 93(1)(b) of Directive 2009/138/EC, taking into consideration the features set out in Article 93(2) of that Directive;
 - e the legal enforceability of the contractual terms of the own-fund item in all relevant jurisdictions;
 - f whether the own-fund item has been fully paid-in.
- 3 Basic own-fund items not included in the list of own-fund items set out in Articles 69, 72 and 76 shall only be classified as Tier 1 basic own funds where they are fully paid-in.
- 4 The inclusion of own-fund items approved by the supervisory authority in accordance with this Article shall be subject to quantitative limits set out in Article 82.

Changes to legislation:

Commission Delegated Regulation (EU) 2015/35, SECTION 2 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.

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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)