EUROPEAN UNION

THE EUROPEAN PARLIAMENT **THE COUNCIL**

Strasbourg, 27 November 2024
(OR. en)

2021/0295(COD)
LEX 2404

PE-CONS 5/1/24
REV 1

EF 21
ECOFIN 83
SURE 3
CODEC 160

DIRECTIVE
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
AMENDING DIRECTIVE 2009/138/EC AS REGARDS PROPORTIONALITY, QUALITY OF SUPERVISION, REPORTING, LONG-TERM GUARANTEE MEASURES, MACRO-PRUDENTIAL TOOLS, SUSTAINABILITY RISKS AND GROUP AND CROSS-BORDER SUPERVISION, AND AMENDING DIRECTIVES 2002/87/EC AND 2013/34/EU

DIRECTIVE (EU) 2024/…
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 27 November 2024

amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks and group and cross-border supervision, and amending Directives 2002/87/EC and 2013/34/EU

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1), Article 62 and Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[1],

Acting in accordance with the ordinary legislative procedure[2],

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1 OJ C 275, 18.7.2022, p. 45.

2 Position of the European Parliament of 23 April 2024 (not yet published in the Official Journal) and decision of the Council of 5 November 2024.

Whereas:

(1) Directive 2009/138/EC of the European Parliament and of the Council[3] has created more risk-based and more harmonised prudential rules for the insurance and reinsurance sector. Some of the provisions of that Directive are subject to review clauses. The application of that Directive has substantially contributed to strengthening the financial system in the Union and rendered insurance and reinsurance undertakings more resilient to a variety of risks. Although very comprehensive, that Directive does not address all identified weaknesses affecting insurance and reinsurance undertakings.

(2) The Covid-19 pandemic has caused tremendous socio-economic damage and left the economy of the Union in need of a sustainable, inclusive and fair recovery. Likewise, the economic and social consequences of Russia's war of aggression against Ukraine are still unfolding. This has made the work on the Union's political priorities even more urgent, in particular ensuring that the economy works for people and attaining the objectives of the European Green Deal. The insurance and reinsurance sector can provide private sources of financing to European businesses and can make the economy more resilient by supplying protection against a wide range of risks. With this dual role, the sector has a great potential to contribute to the achievement of the Union's priorities.

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[3] 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) (OJ L 335, 17.12.2009, p. 1).

(3) As underlined in the Commission's communication of 24 September 2020 'A Capital Markets Union for people and businesses', incentivising institutional investors, in particular insurers, to make more long-term investments will be instrumental in supporting re-equitisation in the corporate sector. To facilitate insurers' contribution to the financing of the economic recovery of the Union, the prudential framework should be adjusted to better take into account the long-term nature of the insurance business. In particular, when calculating the Solvency Capital Requirement under the standard formula, the possibility to use a more favourable standard parameter for equity investments which are held with a long-term perspective should be facilitated, provided that insurance and reinsurance undertakings comply with sound and robust criteria, that preserve policy holder protection and financial stability. Such criteria should aim to ensure that insurance and reinsurance undertakings are able to avoid forced selling of equities intended to be held for the long term, including under stressed market conditions. As insurance and reinsurance undertakings have a wide variety of risk-management tools to avoid such forced selling, those criteria should recognise such variety and not require the legal or contractual ring-fencing of long-term investment assets in order for insurance and reinsurance undertakings to benefit from the more favourable standard parameter for equity investments. In addition, the insurance or reinsurance undertaking's management should commit to a minimum holding period of the equities that the undertaking invests in through written policies and demonstrate the ability of the undertaking to maintain those equities over that holding period.

(4) Adjustments that better take into account the long-term nature of the insurance business might lead to an increase in free available capital as a result of the reduction in the Solvency Capital Requirement. Where that is the case, insurance and reinsurance undertakings should consider not to direct freed-up capital towards shareholder distributions or management bonuses, but should strive to direct the freed-up capital towards productive investments in the real economy in order to support the economic recovery and the Union's broader policy objectives.

(5) Insurers and reinsurers have the freedom to invest anywhere in the world, and are not limited to the Union. Investments in third countries can also be conducive to general development aid policies of the Union or Member States. Therefore, insurance and reinsurance undertakings should ensure that their investment policy reflects the objectives of the up-to-date EU list of non-cooperative jurisdictions for tax purposes and of Directive (EU) 2015/849 of the European Parliament and of the Council[4] in respect of high-risk third countries.

[4] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

(6) In its communication of 11 December 2019 on the European Green Deal, the Commission made a commitment to integrate better into the Union's prudential framework the management of climate and environmental risks. The European Green Deal is the Union's new growth strategy, which aims to transform the Union into a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases by 2050. It will contribute to the objective of building an economy that works for people, strengthening the Union's social market economy, helping to ensure that it is future-ready and that it delivers stability, jobs, growth and investment. In its proposal of 4 March 2020 for a European Climate Law, the Commission proposed to make the objective of climate neutrality and climate resilience by 2050 binding in the Union. That proposal was adopted by the European Parliament and by the Council and it entered into force on 29 July 2021[5]. The Commission's ambition to ensure global leadership by the Union on the path towards 2050 was reiterated in the 2021 Strategic Foresight Report, which identifies the building of resilient and future-proof economic and financial systems as a strategic area of action.

[5] Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).

(7) The EU sustainable finance framework will play a key role in meeting the targets of the European Green Deal and environmental regulation should be complemented by a sustainable finance framework which channels finance to investments that reduce exposure to climate and environmental risks. In its communication of 6 July 2021 entitled 'Strategy for Financing the Transition to a Sustainable Economy', the Commission committed to propose amendments to Directive 2009/138/EC to consistently integrate sustainability risks in risk management of insurers by requiring climate change scenario analysis by insurers.

(8) A number of legislative acts have recently been proposed and adopted to improve resilience and that contribute to sustainability, in particular in relation to sustainability reporting, including Regulation (EU) 2019/2088 of the European Parliament and of the Council[6], Directive (EU) 2022/2464 of the European Parliament and of the Council[7], and a directive on corporate sustainability due diligence and amending Directive (EU) 2019/1937, all of which affect the insurance and reinsurance sector.

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[6] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

[7] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting (OJ L 322, 16.12.2022, p. 15).

(9) The further integration of the Union internal market for insurance is a key objective of this amending Directive. The integration of the internal market for insurance increases competition and the availability of insurance products across Member States to the benefit of businesses and consumers. Insurance failures in the Union internal market for insurance since the application of Directive 2009/138/EC emphasise the need for more consistency and convergence of supervision across the Union. The supervision of insurance and reinsurance undertakings operating under the freedom to provide services and the right of establishment should be further improved without undermining the objective of further integrating the internal market for insurance to ensure consistent consumer protection and safeguarding fair competition across the internal market.

(10) Directive 2009/138/EC excludes certain undertakings from its scope, due to their size. Following the first years of application of Directive 2009/138/EC and with a view to ensuring that it does not unduly apply to undertakings of reduced size, it is appropriate to review those exclusions by increasing those thresholds, so that small undertakings that fulfil certain conditions are not subject to that Directive. As is already the case with insurance undertakings excluded from the scope of Directive 2009/138/EC, undertakings benefitting from such increased thresholds should have the option to keep or seek authorisation under that Directive in order to benefit from the single license provided therein and it should be possible for Member States to subject insurance undertakings that are excluded from the scope of Directive 2009/138/EC to provisions that are similar or identical to the ones provided for in that Directive.

(11) Directive 2009/138/EC does not apply to an assistance activity where the conditions of Article 6(1) of that Directive are fulfilled. The first condition states that the assistance is to be related to accidents or breakdowns involving a road vehicle which occur in the territory of the Member State of the undertaking providing cover. That provision could imply that a requirement of authorisation as insurer would apply to providers of assistance of road vehicles in the event of an accident or breakdown that occurs just across the border and could unduly disrupt assistance. For this reason, it is appropriate to review that condition. Therefore, the condition under Article 6(1), point (a), of Directive 2009/138/EC should be extended to accidents or breakdowns involving a road vehicle that might occur occasionally in a neighbouring country of the Member State of the undertaking providing cover.

(12) Information on any applications for authorisation to take up business in a Member State and the outcomes of the assessment of such applications could provide essential information for the assessment of applications in other Member States. Therefore, the supervisory authority concerned should be informed by the applicant about previous rejections or withdrawals of applications for authorisation in another Member State.

(13) Prior to the granting of authorisation to an insurance or reinsurance undertaking that is a subsidiary undertaking of an undertaking located in another Member State, or that will be under the control of the same legal or physical person as another insurance or reinsurance undertaking located in another Member State, the supervisory authority of the Member State which grants the authorisation should consult the supervisory authorities of any Member States concerned. In view of increased insurance group activities in different Member States, it is necessary to enhance the convergent application of Union law and the exchange of information between the supervisory authorities, in particular before authorisations are granted. Therefore, where several supervisory authorities need to be consulted, any supervisory authority concerned should be allowed to request a joint assessment of an application for authorisation from the supervisory authority of the Member State where the authorisation process of a future insurance or reinsurance undertaking of the group is ongoing. The decision to grant the authorisation remains the competence of the supervisory authority of the home Member State in which the undertaking concerned seeks authorisation. However, the results of the joint assessment should be taken into consideration when making that decision.

(14) Directive 2009/138/EC should be applied in accordance with the proportionality principle. To facilitate the proportionate application of the Directive to undertakings which are smaller and less complex than the average undertaking, and to ensure that they are not subject to disproportionately burdensome requirements, it is necessary to provide risk-based criteria that allow for their identification.

(15) It should be possible for undertakings complying with the risk-based criteria to be classified as small and non-complex undertakings in accordance with a simple notification process. Where, within a limited period after such notification, the supervisory authority does not oppose the classification for duly justified reasons linked to the assessment of the relevant criteria, that undertaking should be deemed as small and non-complex undertaking. Once it is classified as a small and non-complex undertaking, in principle, an undertaking should automatically benefit from identified proportionality measures on reporting, disclosure, governance, revision of written policies, calculation of technical provisions, own-risk and solvency assessment, and liquidity risk management plans.

(16) By way of derogation from the automatic benefit from proportionality measures, where supervisory authorities have serious concerns in relation to the risk profile of an individual small and non-complex undertaking, they should have the power to require the undertaking concerned to refrain from using one or several proportionality measures. Such power can be used where they identify that the Solvency Capital Requirement is no longer complied with, where there is a risk of non-compliance, where the risk profile of an undertaking changes materially, or where the system of governance of an undertaking is ineffective.

(17) It is appropriate that proportionality measures are available also to undertakings that are not classified as small and non-complex undertakings, but for which some of the requirements of Directive 2009/138/EC are too costly and complex, in view of the risks involved in the business carried out by such undertakings. Those undertakings should be permitted to use proportionality measures on the basis of a case-by-case analysis and following prior approval by their supervisory authorities.

(18) A proper implementation of the proportionality principle is crucial to avoiding an excessive burden on insurance and reinsurance undertakings. For that reason, insurance and reinsurance undertakings should only report to their supervisory authorities when there is a change to the scope of the proportionality measures they apply.

(19) Captive insurance undertakings and captive reinsurance undertakings which only cover risks associated with the industrial or commercial group to which they belong, present a particular risk profile that should be taken into account when defining some requirements, in particular on own-risk and solvency assessment, disclosures and the related empowerments for the Commission to further specify the rules on such requirements. Moreover, captive insurance undertakings and captive reinsurance undertakings should also be able to benefit from the proportionality measures when they are classified as small and non-complex undertakings.

(20) It is important that insurance and reinsurance undertakings maintain a healthy financial position. For that purpose, Directive 2009/138/EC provides for financial supervision with respect to an undertaking's state of solvency, the establishment of technical provisions, its assets and its eligible own funds. However, the system of governance of an undertaking is also an important factor in ensuring that the undertaking maintains its financial health. To that end, supervisory authorities should be required to carry out regular reviews of the system of governance as part of their financial supervision of insurance and reinsurance undertakings.

(21) Supervisory authorities should be entitled to receive from each supervised insurance and reinsurance undertaking and their groups, at least every three years, a regular narrative report with information on the business and performance, system of governance, risk profile, capital management and other relevant information for solvency purposes. In order to simplify that reporting requirement for insurance and reinsurance groups, it should be possible, subject to certain conditions, to submit the information of the regular supervisory report relating to the group and its subsidiaries in an aggregated way for the whole group.

(22) It should be ensured that small and non-complex undertakings are prioritised when supervisors grant exemptions and limitations to reporting. For that type of entity, the process of notification that applies for the classification as a small and non-complex undertaking should ensure that there is enough certainty as regards the use of exemptions and limitations to reporting.

(23) Reporting and disclosure deadlines should be clearly laid down in Directive 2009/138/EC. However, it should be recognised that exceptional circumstances such as health emergencies, natural catastrophes and other extreme events could make it impossible for insurance and reinsurance undertakings to submit such reports and disclosures within the established deadlines. Therefore, the Commission should be empowered to extend the deadlines under such circumstances after having consulted the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[8].

(24) Directive 2009/138/EC provides that supervisory authorities are to assess whether any new person appointed to manage an insurance or reinsurance undertaking or to perform a key function is fit and proper. However, those who manage the undertaking or perform a key function should be fit and proper on a continuous basis. In the case of non-compliance with the fit and proper requirements, supervisory authorities should have the power to take measures, such as, where appropriate, removing the person concerned from the relevant position.

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[8] Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

(25) As insurance activities could trigger or amplify risks for financial stability, insurance and reinsurance undertakings should incorporate macroprudential considerations and analysis in their underwriting, investment, and risk management activities. This could include taking into account the potential behaviour of other market participants, macroeconomic risks, such as credit cycle downturns or reduced market liquidity, or excessive concentrations at market level in certain asset types, counterparties or sectors.

(26) Where requested by the supervisory authority, insurance and reinsurance undertakings should be required to factor any relevant macroprudential information provided by the supervisory authorities into their own-risk and solvency assessment. In order to ensure the consistent application of such additional macroprudential requirements, EIOPA should develop draft regulatory technical standards that specify the criteria to be taken into account by supervisory authorities when identifying the undertakings to which the measure applies. The supervisory authorities should analyse the results of the own-risk and solvency assessment of insurance and reinsurance undertakings that are requested to take macroprudential considerations into account within their jurisdictions, aggregate them and provide input to insurance and reinsurance undertakings on the elements that should be considered in their future own-risk and solvency assessments, particularly as regards macroprudential risks. Member States should ensure that, where they entrust an authority or body with a macroprudential mandate, the outcome and the findings of macroprudential assessments by the supervisory authorities are shared with that macroprudential authority.

(27) In line with the Insurance Core Principles adopted in 2011 by the International Association of Insurance Supervisors, national supervisory authorities should be able to identify, monitor and analyse market and financial developments that could affect insurance and reinsurance undertakings or insurance and reinsurance markets, and should use that information in the supervision of individual insurance or reinsurance undertakings. In carrying out those tasks, supervisory authorities should, where appropriate, use information from, and insights gained by other supervisory authorities.

(28) Bodies or authorities with a macroprudential mandate are in charge of the macroprudential policy for their national insurance and reinsurance market. The macroprudential policy can be pursued by the supervisory authority or by another authority or body entrusted with that purpose.

(29) Good coordination between supervisory authorities and the relevant bodies and authorities with a macroprudential mandate is important for identifying, monitoring and analysing possible risks to the stability of the financial system that could affect insurance and reinsurance undertakings, and for taking measures to effectively and appropriately address those risks. Cooperation between authorities should also aim to avoid any form of duplicative or inconsistent action.

(30) The exchange of information between supervisory authorities and tax authorities should not be prevented. Such exchanges should be in line with national law and, where the information originates in another Member State, it should only be exchanged with the express agreement of the relevant authority from which the information originates.

(31) Directive 2009/138/EC requires insurance and reinsurance undertakings to have, as an integrated part of their business strategy, a periodic own-risk and solvency assessment. Some risks, such as climate change risks, are difficult to quantify or they materialise over a period that is longer than the one used for the calibration of the Solvency Capital Requirement. Those risks can be better taken into account in the own-risk and solvency assessment. Where insurance and reinsurance undertakings have material exposure to climate change risks, they should be required to carry out, within appropriate intervals and as part of the own-risk and solvency assessment, analyses of the impact of long-term climate change risk scenarios on their business. Such analyses should be proportionate to the nature, scale and complexity of the risks inherent in the business of the undertakings. In particular, while the assessment of the materiality of exposure to climate change risks should be required from all insurance and reinsurance undertakings, long-term climate change scenario analyses should not be required for small and non-complex undertakings.

(32) Undertakings should develop and monitor the implementation of specific plans to address the financial risks arising from sustainability factors. Where a group is required to draw up such a plan at the level of the group, it should be ensured that the requirement to draw up plans at individual level are waived for insurance and reinsurance subsidiaries of the group if all relevant aspects of those subsidiaries are reflected in the plan at the level of the group.

(33) Directive 2009/138/EC requires the disclosure, at least annually, of essential information through the solvency and financial condition report. That report is targeted at policy holders and beneficiaries on the one hand, and analysts and other market professionals on the other hand. In order to address the needs and the expectations of those two different groups, the content of the report should be divided into two parts. The first part, addressed mainly to policy holders and beneficiaries, should contain the key information on business, performance, capital management and risk profile. The second part, addressed to market professionals, should contain detailed information on the business and on the system of governance, specific information on technical provisions and other liabilities, the solvency position as well as other data relevant for specialised analysts.

(34) It is possible for insurance and reinsurance undertakings to adjust the relevant risk-free interest rate term structure for the calculation of the best estimate in line with the spread movements of their assets after supervisory approval ('matching adjustment') or in line with the average spread movement of assets held by insurance and reinsurance undertakings in a given currency or country ('volatility adjustment'). The part of the solvency and financial condition report targeted at policy holders and beneficiaries should only contain the information that is expected to be relevant to the decision-making of an average policy holder or beneficiary. While insurance and reinsurance undertakings should publicly disclose the impact of not applying the matching adjustment, the volatility adjustment and the transitional measures on risk-free interest rates and on technical provisions on their financial positions, such disclosure should not be assumed to be relevant to the decision-making of an average policy holder or beneficiary. Such disclosure should therefore be included in the part of the solvency and financial condition report targeted at market professionals and not in the part targeted at policy holders and beneficiaries.

(35) Disclosure requirements should not be excessively burdensome for insurance and reinsurance undertakings. To this end, some simplifications and proportionality measures should be included in Directive 2009/138/EC, in particular where they do not jeopardise the readability of the data provided by insurance and reinsurance undertakings. Furthermore, Directive 2013/34/EU of the European Parliament and of the Council[9] should be amended so that it is possible for small and non-complex undertakings to limit their sustainability reporting according to the simplified SME sustainability reporting standards laid down in that Directive.

(36) In order to guarantee the highest degree of accuracy of the information disclosed to the public, some elements of the solvency and financial condition report should be subject to audit. Such audit requirement should at least cover the balance sheet assessed in accordance with the valuation criteria set out in Directive 2009/138/EC.

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[9] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(37) As small and non-complex undertakings are not expected to be relevant for the financial stability of the Union, it is appropriate to include an exemption from the requirement of auditing the solvency and financial condition report for those undertakings. Similarly, because of the particular risk profile and specificity of captive insurance undertakings and captive reinsurance undertakings, it is appropriate not to impose on them the audit requirement. However, it should be possible for Member States that already apply audit requirements to all undertakings or to elements of the solvency and financial condition report other than the balance sheet, to continue applying such requirements.

(38) It should be acknowledged that, although beneficial, the auditing requirement would be an additional burden for every undertaking. Therefore, annual reporting and disclosure deadlines for insurance and reinsurance undertakings and for insurance and reinsurance groups should be extended in order to give them sufficient time to produce audited reports.

(39) EIOPA Guidelines on reporting for financial stability purposes already lay down criteria to identify insurance and reinsurance undertakings that are relevant for the stability of the financial systems in the Union.

(40) It should be ensured that the methods for calculating technical provisions of contracts with options and guarantees are proportionate to the nature, scale and complexity of the risks faced by the insurer. In that regard, some simplifications should be provided.

(41) The cost of capital should be decreased compared to the level set at the time of adoption of Directive 2009/138/EC and the delegated acts adopted pursuant to that Directive, while maintaining a sufficient level of prudence and protection of policy holders. In addition, the calculation of the risk margin should account for the time dependency of risks and reduce the amount of the risk margin in particular for long-term liabilities, thereby reducing the sensitivity of the risk margin to interest rate changes. Therefore, an exponential and time-dependent element should be introduced.

(42) Directive 2009/138/EC requires that the amount of eligible own funds necessary to support the insurance and reinsurance obligations be determined for the purposes of the calculation of the risk margin and that the Cost-of-Capital rate be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking would incur holding that amount of eligible own funds. Directive 2009/138/EC also requires that the Cost-of-Capital rate be reviewed periodically. For that purpose, the reviews should ensure that the Cost-of-Capital rate remains risk-based and does not exceed 5 %.

(43) The determination of the relevant risk-free interest rate term structure should balance the use of information derived from relevant financial instruments with the ability of insurance and reinsurance undertakings to hedge interest rates derived from financial instruments. In particular, it can happen that smaller insurance and reinsurance undertakings do not have the capacities to hedge interest rate risk with instruments other than bonds, loans or similar assets with fixed cash-flows. The relevant risk-free interest rate term structure should therefore be extrapolated for maturities where the markets for bonds are no longer deep, liquid and transparent. However, the method for the extrapolation should make use of information derived from relevant financial instruments other than bonds, where such information is available from deep, liquid and transparent markets for maturities where the bond markets are no longer deep, liquid and transparent. To ensure certainty and harmonised application while also allowing for timely reaction to changes in market conditions, the Commission should adopt delegated acts to specify how the new extrapolation method should apply. In light of current market conditions, the starting point for the extrapolation for the euro at the date of entry into force of this amending Directive should remain at the same level as its level on 31 December 2023, namely at a maturity of 20 years.

(44) The determination of the relevant risk-free interest rate term structure has a significant impact on the solvency position in particular for life insurance undertakings with long-term liabilities. In order to avoid a disruption to the existing insurance business and to allow for a smooth transition to the new extrapolation method, it is necessary to provide for a phasing-in mechanism. Such phasing-in mechanism should aim to avoid market disruption and provide a transparent path to the final extrapolation method.

(45) Directive 2009/138/EC provides for a volatility adjustment, which seeks to mitigate the effect of exaggerations of bond spreads and is based on reference portfolios for the relevant currencies of insurance and reinsurance undertakings and, in the case of the euro, on reference portfolios for national insurance markets. The use of a uniform volatility adjustment for entire currencies or countries can lead to benefits in excess of a mitigation of exaggerated bond spreads, in particular where the sensitivity of relevant assets of those insurance and reinsurance undertakings to changes in credit spreads is lower than the sensitivity of the relevant best estimate to changes in interest rates. In order to avoid such excessive benefits from the volatility adjustment, the volatility adjustment should be subject to supervisory approval and its calculation should take into account undertaking-specific characteristics related to the spread sensitivity of assets and the interest rate sensitivity of the best estimate of technical provisions. Moreover, minimum conditions for the use of the volatility adjustment should be introduced as an additional safeguard. Member States, some of which already subject the use of the volatility adjustment to a supervisory approval process, should have the option to extend the conditions for approval to include an assessment against the underlying assumptions of the volatility adjustment. In light of the additional safeguards, insurance and reinsurance undertakings should be allowed to add up to an increased proportion of 85 % of the risk-corrected spread derived from the representative portfolios to the basic risk-free interest rate term structure.

(46) Where an insurance or reinsurance undertaking invests in debt instruments which have a better credit quality than the debt instruments contained in the representative portfolio for the calculation of the volatility adjustment, the volatility adjustment might overcompensate the loss of own funds caused by widening bond spreads and might lead to undue volatility in the own funds. With the objective of offsetting the artificial volatility caused by such overcompensations, insurance and reinsurance undertakings should be able to apply, in such cases, for a modification of the volatility adjustment that takes into account information on the undertaking's specific investments in debt instruments.

(47) Directive 2009/138/EC provides for a country component in the volatility adjustment that aims to ensure that exaggerations of bond spreads in a specific country are mitigated. However, the activation of the country component is based on an absolute threshold and a relative threshold with respect to the risk-adjusted spread of the country, which can lead to cliff-edge effects and therefore increase the volatility of own funds of insurance and reinsurance undertakings. In order to ensure that exaggerations of bond spreads in a specific Member State whose currency is the euro are mitigated effectively, the country component should be replaced by a macro component which is to be calculated on the basis of the differences between the risk-corrected spread for the euro and the risk-corrected spread for the country. In order to avoid cliff-edge effects, the calculation should avoid discontinuities with respect to the input parameters.

(48) In order to take account of developments in the investment practices of insurance and reinsurance undertakings, the Commission should be empowered to adopt delegated acts to set out criteria for the eligibility of assets to be included in the assigned portfolio of assets where the nature of the assets could lead to diverging practices with respect to the criteria for the application and the calculation of the matching adjustment.

(49) In order to ensure that the same treatment is applied to all insurance and reinsurance undertakings calculating the volatility adjustment, or to take account of market developments, the Commission should be empowered to adopt delegated acts specifying the calculation of undertaking-specific elements of the volatility adjustment. For currencies other than the euro, the calculation of currency-specific elements of the volatility adjustment should take account of the possibility of cash-flow matching across pairs of pegged currencies of Member States, under the condition that it consistently reduces the currency risk.

(50) For the purpose of calculating their own funds under Regulation (EU) No 575/2013 of the European Parliament and of the Council[10], institutions which belong to financial conglomerates that are subject to Directive 2002/87/EC of the European Parliament and of the Council[11] could be permitted not to deduct their significant investments in insurance or reinsurance undertakings, provided that certain criteria are met. There is a need to ensure that prudential rules applicable to insurance or reinsurance undertakings and credit institutions allow for an appropriate level playing field between banking-led and insurance-led financial groups. Therefore, insurance or reinsurance undertakings should also be permitted not to deduct from their eligible own-fund participations in credit and financial institutions, subject to similar conditions. In particular, either group supervision in accordance with Directive 2009/138/EC or supplementary supervision in accordance with Directive 2002/87/EC should apply to a group encompassing both the insurance or reinsurance undertaking and the related institution. In addition, the participation in the institution should be an equity investment of strategic nature for the insurance or reinsurance undertaking and supervisory authorities should be satisfied as to the level of integrated management, risk management and internal controls regarding the entities in the scope of group supervision or supplementary supervision.

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[10] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

[11] Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L 35, 11.2.2003, p. 1).

(51) The existing limits imposed on the level of the symmetric adjustment restrict the ability of that adjustment to mitigate potential pro-cyclical effects of the financial system and to avoid a situation in which insurance and reinsurance undertakings are unduly forced to raise additional capital or sell their investments as a result of unsustained adverse movements in financial markets, such as the ones triggered by the Covid-19 pandemic. Therefore, the symmetric adjustment should be amended so that it allows for larger changes to the standard equity capital charge and further mitigates the impact of sharp increases or decreases in stock markets.

(52) To enhance the proportionality within the quantitative requirements, insurance and reinsurance undertakings should be granted the possibility to calculate the capital requirement for immaterial risks in the standard formula with a simplified approach for a period of no more than three years. Such a simplified approach should allow undertakings to estimate the capital requirement for an immaterial risk on the basis of an appropriate volume measure which varies over time. That approach should be based on common rules and subject to common criteria for the identification of immaterial risks.

(53) Insurance and reinsurance undertakings that use the matching adjustment have to identify, organise and manage the assigned portfolio of assets and obligations separately from other parts of the business and are therefore not permitted to meet risks arising elsewhere in the business using the assigned portfolio of assets. However, the separated management of the portfolio does not result in an increase in correlation between the risks within that portfolio and those within the rest of the undertaking. Therefore, insurance and reinsurance undertakings which use the matching adjustment should be allowed to calculate their Solvency Capital Requirement on the basis of the assumption of full diversification between the assets and liabilities of the portfolio and the rest of the undertaking, unless the portfolios of assets covering a corresponding best estimate of insurance or reinsurance obligations form a ring-fenced fund.

(54) The need to properly reflect extremely low and negative interest rates in the insurance supervision has arisen due to what has been witnessed in recent years on the markets. This should be achieved via a recalibration of the interest rate risk sub-module to reflect the existence of a negative yield environment. At the same time, the methodology to be used should not result in unrealistically large decreases in the liquid part of the curve and that could be avoided by providing for an explicit floor to represent a lower bound of negative interest rates. In line with interest rates dynamics, the Commission should aim at introducing a floor that is term dependent rather than flat, to the extent that the available market data allows for a robust risk-based calibration of such term-dependency.

(55) The Commission has bundled all empowerments provided for under Directive 2009/138/EC in Commission Delegated Regulation (EU) 2015/35[12]. That approach has worked well for the implementation of that Directive and made ensuring compliance with that Delegated Regulation easier. Therefore, Delegated Regulation (EU) 2015/35 should remain in force and all necessary amendments under existing empowerments as well as the implementation of new empowerments under this Directive should be effected exclusively as amending acts to Delegated Regulation (EU) 2015/35. Where such amendments are to be bundled in the future into one or more amending delegated acts, the Commission, in accordance with paragraph 31 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[13], in the course of the consultations in the preparation of such delegated acts, also indicates which empowerments are considered to be substantively linked, for which the Commission is expected to provide objective justifications based on the substantive link between two or more empowerments.

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[12] 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) (OJ L 12, 17.1.2015, p. 1).

[13] OJ L 123, 12.5.2016, p. 1.

(56) As part of the supervisory review process, it is important for supervisory authorities to be able to compare information across the insurance and reinsurance undertakings they supervise. Partial and full internal models allow to capture the individual risk of an undertaking better and Directive 2009/138/EC allows insurance and reinsurance undertakings to use them for determining capital requirements without limitations stemming from the standard formula. Supervisory authorities would benefit from access also to estimates of the Solvency Capital Requirements determined in accordance with the standard formula in order to make comparisons across undertakings and to make comparisons for a given undertaking over time. All insurance and reinsurance undertakings using a full or partial internal model should therefore regularly report to their supervisory authorities an estimate of the Solvency Capital Requirement determined in accordance with the standard formula. Such an estimate should appropriately reflect the methods and underlying assumptions of the standard formula facilitating a proper supervisory assessment. In order to avoid an excessive burden for undertakings when determining the estimate, they should be allowed to make use of information derived from the relevant simplifications in the standard formula laid down in Directive 2009/138/EC and the delegated acts adopted pursuant to that Directive. Where such a simplified approach is used to determine the estimate of the Solvency Capital Requirement, the underlying assumptions should be clearly explained to the satisfaction of supervisory authorities.

(57) Directive 2009/138/EC provides for the possibility for insurance and reinsurance undertakings to calculate their Solvency Capital Requirement with an internal model subject to supervisory approval. Where an internal model is applied, that Directive does not prevent an insurance or reinsurance undertaking from taking into account the effect of credit spread movements on the volatility adjustment in its internal model. As the use of the volatility adjustment can lead to benefits in excess of a mitigation of exaggerated bond spreads in the calculation of the best estimate, such excessive benefits can also distort the calculation of the Solvency Capital Requirement where the effect of credit spread movements on the volatility adjustment is taken into account in the internal model. In order to avoid such distortion, the Solvency Capital Requirement should be floored, where supervisory authorities allow insurance and reinsurance undertakings to take into account the effect of credit spread movements on the volatility adjustment in their internal model, at a level below which benefits on the Solvency Capital Requirement in excess of a mitigation of exaggerated bond spreads are expected to occur.

(58) Insurance and reinsurance undertakings should be incentivised to build resilience for crisis situations. Where insurance and reinsurance undertakings take into account the effect of credit spread movements on the volatility adjustment in their internal model, while also considering the effect of credit spread movements on the macro volatility adjustment, this could undermine in a severe manner any incentives to build up resilience for crisis situations. Insurance and reinsurance undertakings should therefore be prevented from taking into account a macro volatility adjustment in their internal model.

(59) Considering the nature, scale and complexity of the risks, supervisory authorities should be able to collect relevant macroprudential information on the investment strategy of insurance and reinsurance undertakings, analyse it together with other relevant information that might be available from other market sources, and incorporate a macroprudential perspective in their supervision of insurance and reinsurance undertakings. This could include supervising risks related to specific credit cycles, economic downturns and collective or herding behaviour in investments.

(60) It is necessary to deal in an efficient manner with deteriorating financial positions of insurance and reinsurance undertakings, or breaches of regulatory requirements by those undertakings, and to prevent the escalation of problems. Supervisory authorities should therefore have the power to impose preventive measures. Such preventive powers should, however, be consistent with the ladder of intervention and the supervisory powers already provided for in Directive 2009/138/EC for similar circumstances, including supervisory powers provided for in the supervisory review process laid down in Article 36 of that Directive. Such preventive powers should not lead to a new pre-defined intervention trigger ahead of the Solvency Capital Requirement, laid down in Title I, Chapter VI, Section 4, of that Directive. Supervisory authorities should assess each situation individually and decide upon the need for preventive measures on the basis of the circumstances, the situation of the undertaking and their supervisory judgment.

(61) Directive 2009/138/EC provides for the mutual recognition and enforcement in all Member States of decisions concerning the reorganisation or winding-up of insurance undertakings. That Directive ensures that all assets and liabilities of the undertaking, regardless of the country in which they are situated, are dealt with in a single process in the home Member State and that creditors in the host Member States are treated in the same way as creditors in the home Member State. In order to achieve an effective resolution, the provisions on reorganisation and winding-up laid down in Directive 2009/138/EC should apply in the event of use of the resolution tools, both where those tools are applied to insurance and reinsurance undertakings and where they are applied to other entities covered by the resolution regime. Those provisions should therefore be amended accordingly.

(62) Directive 2009/138/EC provides for an extension of the recovery period in cases of breaches of the Solvency Capital Requirement where EIOPA has declared the existence of exceptional adverse situations. The declarations can be made following requests by national supervisory authorities, who are required to consult the European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council[14], where appropriate before the request. The consultation with the ESRB in a decentralised manner by national supervisory authorities is less efficient than a consultation with the ESRB in a centralised manner by EIOPA. In order to ensure an efficient process, it should be EIOPA, and not the national supervisory authorities, that consults the ESRB before the declaration of the existence of exceptional adverse situations, where the nature of the situation allows such prior consultation.

[14] Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).

(63) Directive 2009/138/EC requires insurance and reinsurance undertakings to inform the supervisory authority concerned immediately where they observe a failure to comply, or a risk of non-compliance in the following three months, with the Minimum Capital Requirement. However, that Directive does not specify when the non-compliance with the Minimum Capital Requirement or the risk of non-compliance in the following three months can be observed and undertakings could delay informing supervisory authorities until the end of the relevant quarter when the calculation of the Minimum Capital Requirement to be formally reported to the supervisory authority takes place. In order to ensure that supervisory authorities receive timely information and are able to take necessary action, insurance and reinsurance undertakings should be required to immediately inform the supervisory authorities of a failure to comply with the Minimum Capital Requirement or a risk of non-compliance also where this has been observed on the basis of estimations or calculations between two dates of official calculations of the Minimum Capital Requirement, in the relevant quarter.

(64) The protection of the interests of insured persons is a general objective of the prudential framework that should be pursued by supervisory authorities at every stage of the supervisory review process, including in cases of breaches or likely breaches of requirements by insurance or reinsurance undertakings that could give rise to the withdrawal of authorisation. That objective should be pursued before and after the withdrawal of authorisation, and consideration should be given to any legal implications for insured persons that could result from that withdrawal.

(65) Supervisory authorities should be equipped with tools to prevent the materialisation of risks for the financial stability in insurance markets, limit pro-cyclical behaviours by insurance and reinsurance undertakings and mitigate negative spillover effects within the financial system and into the real economy.

(66) Recent economic and financial crises, in particular the crisis ensuing from the Covid-19 pandemic, have demonstrated that a sound liquidity management by insurance and reinsurance undertakings can prevent risks for the stability of the financial system. For that reason, insurance and reinsurance undertakings should be required to strengthen liquidity management and planning, especially in the context of adverse situations affecting a large part or the totality of the insurance and reinsurance market.

(67) Where insurance and reinsurance undertakings with particularly vulnerable profiles, such as those having liquid liabilities, holding illiquid assets, or with liquidity vulnerabilities, which can affect the overall financial stability, do not appropriately remedy the situation, national supervisory authorities should be able to intervene to reinforce the liquidity position of those undertakings.

(68) Supervisory authorities should have the necessary powers to preserve the solvency position of specific insurance or reinsurance undertakings during exceptional situations such as adverse economic or market events affecting a large part or the totality of the insurance and reinsurance market, in order to protect policy holders and preserve financial stability. Those powers should include the possibility to restrict or suspend distributions to shareholders and other subordinated creditors of a given insurance or reinsurance undertaking before an actual breach of the Solvency Capital Requirement occurs. Those powers should be applied on a case-by-case basis, respect common risk-based criteria and not undermine the functioning of the internal market.

(69) As the restriction or the suspension of the distribution of dividends and other bonuses would affect, even on a temporary basis, the rights of shareholders and other subordinated creditors, supervisory authorities should duly take into account the principles of proportionality and necessity when taking such measures. Supervisory authorities should also ensure that none of the measures adopted entails disproportionate adverse effects on the whole or parts of the financial system in other Member States or in the Union as a whole. In particular, supervisory authorities should only restrict capital distributions within an insurance and reinsurance group in exceptional circumstances, and when duly justified to preserve the stability of the insurance and reinsurance market and of the financial system as a whole.

(70) In exceptional circumstances, insurance undertakings can be subject to significant liquidity risks. Therefore, supervisory authorities should have the power to temporarily suspend redemption rights on life insurance policies of such undertakings concerned by significant liquidity risks for a short period and only as a last resort measure. Such exceptional measure should be used with a view to preserving the collective policy holder protection, namely the protection of all policy holders, including those who might be indirectly affected by such risks.

(71) Recent failures of insurance and reinsurance undertakings operating cross-border have underlined the need for supervisory authorities to be better informed on activities conducted by those undertakings. Therefore, insurance and reinsurance undertakings should be required to notify the supervisory authority of their home Member State of any material changes affecting their risk profile in relation to their ongoing cross-border insurance activities, and that information should be shared with the supervisory authorities of the host Member States concerned.

(72) Under Directive 2009/138/EC EIOPA has the power to set up and coordinate collaboration platforms to enhance collaboration between the relevant supervisory authorities where an insurance or reinsurance undertaking carries out, or intends to carry out, activities which are based on the freedom to provide services or the right of establishment. However, in view of the complexity of the supervisory issues dealt with within those platforms, in several cases, supervisory authorities fail to reach a common view on how to address issues related to an insurance or reinsurance undertaking which is operating on a cross-border basis. In the event that the supervisory authorities involved in the collaboration platforms cannot reach an agreement on issues related to an insurance or reinsurance undertaking which is operating on a cross-border basis, EIOPA should have the power to settle the disagreement in accordance with Article 19 of Regulation (EU) No 1094/2010.

(73) Cooperation and information-sharing between the supervisory authority of the home Member State that granted authorisation to an insurance or reinsurance undertaking and the supervisory authorities of the Member States where that undertaking pursues activities by establishing branches or by providing services, should be strengthened in order to better prevent potential problems affecting consumer rights and to enhance the protection of policy holders across the Union. That enhanced cooperation is particularly important where there are significant cross-border activities, and should increase transparency and the regular mandatory exchange of information between supervisory authorities concerned. Such exchange should be sufficiently informative and include all relevant information coming from the supervisory authority of the home Member State, in particular regarding the outcome of the supervisory review process related to the cross-border activity and the financial condition of the undertaking. To ensure smooth access to and efficient exchange of available supervisory data, reports on the supervisory review process, and other relevant information in relation to undertakings carrying out significant cross-border activities, and taking into account the need to limit administrative burden, digital information-sharing tools should be used. Therefore, such information could be channelled through the existing digital collaboration tools put in place by EIOPA.

(74) Where the supervisory authority of a host Member State has serious concerns regarding the solvency position of an insurance or reinsurance undertaking which carries out significant cross-border activities in its territory, it should have the power to request the carrying out of a joint on-site inspection together with the supervisory authority of the home Member State, where there is a non-compliance with the Solvency Capital Requirement or the Minimum Capital Requirement. The supervisory authority of the home Member State should coordinate the joint on-site inspection and should invite all relevant national supervisory authorities as well as EIOPA. All supervisory authorities involved should agree on the objectives of the on-site inspection before it is carried out. By the end of the inspection, they should also form a shared view on the necessary supervisory measures to be taken. The supervisory authority of the home Member State should inform all supervisory authorities concerned about the follow-up to the on-site inspection. Where supervisory authorities disagree on whether it is necessary to carry out a joint on-site inspection, EIOPA should have the power to settle the disagreement in accordance with Article 19 of Regulation (EU) No 1094/2010.

(75) Under Directive 2009/138/EC, insurance or reinsurance undertakings are not required to provide information on the conduct of their business to the supervisory authorities of the host Member States in a timely manner. Such information can only be obtained by requesting it from the supervisory authority of the home Member State. However, such an approach does not ensure access to information within a reasonable period. Therefore, the supervisory authorities of the host Member States should have the power to directly request information from insurance or reinsurance undertakings, where the supervisory authority of the home Member State fails to provide the information in a timely manner. That power should not prevent the voluntary transmission of information from insurance and reinsurance undertakings to the supervisory authorities of host Member States.

(76) In order to be identified as an insurance holding company, a parent company must, in particular, have, as its main business, the acquisition and holding of participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third- country insurance or reinsurance undertakings. Currently, supervisory authorities have different interpretations as to the meaning of 'exclusively or mainly' in that context. Therefore, the definition of an insurance holding company should be amended and clarified, taking into account similar amendments to the definition of a financial holding company as referred to in Regulation (EU) No 575/2013 for the banking sector. In particular, in order for an undertaking to be classified as an insurance holding company, its main business should be related to acquiring and holding insurance or reinsurance undertakings, providing ancillary services to related insurance or reinsurance undertakings, or carrying out other unregulated financial activities. Supervisory authorities should have the power to conclude that such a criterion is fulfilled, irrespective of the undertaking's own stated corporate purpose or object.

(77) In some cases, within a group subject to group supervision in accordance with Article 213(2), points (a), (b) or (c), of Directive 2009/138/EC, participations in insurance and reinsurance subsidiary undertakings that are located in a third country are held through an intermediate unregulated holding company. Even if this intermediate unregulated holding company does not have any insurance or reinsurance subsidiary undertaking whose head office is located in the Union, it is important that it can be treated similarly to an insurance holding company or a mixed financial holding company and be included in the group solvency calculations. Therefore, a definition of holding companies of third-country insurance and reinsurance undertakings should be introduced in order to allow groups to take into account related third-country undertakings when calculating the group Solvency Capital Requirement.

(78) In some cases, several insurance and reinsurance undertakings form a de facto group and behave as such, although they do not meet the definition of a group as set out in Article 212 of Directive 2009/138/EC. Therefore, Title III of that Directive does not apply to such insurance and reinsurance undertakings. In such cases, in particular for horizontal groups with no capital links between different undertakings, the group supervisors should have the power to identify the existence of a group. Objective criteria should also be provided to make such an identification. In the absence of changes in the groups' specificities, it is expected that groups which are already subject to group supervision will continue being subject to such supervision.

(79) Insurance and reinsurance groups are free to decide on the specific internal arrangements, distribution of tasks and organisational structure within the group as they see fit to ensure compliance with Directive 2009/138/EC. However, in a few cases, such arrangements and organisational structures can jeopardise effective group supervision. Therefore, group supervisors should have the power - in exceptional circumstances and after consulting EIOPA and the other supervisory authorities concerned - to require changes to those arrangements or organisational structures. Group supervisors should duly justify their decisions and explain why the existing arrangements or structures obstruct and jeopardise effective group supervision.

(80) Group supervisors might decide to exclude an undertaking from group supervision, in particular when such an undertaking is deemed of negligible interest with respect to the objectives of group supervision. EIOPA has noted diverging interpretations on the criterion of negligible interest, and has identified that, in some cases, such exclusions result in complete waivers of group supervision or in supervision at the level of an intermediate parent company. It is therefore necessary to clarify that decisions to exclude that would result in complete waivers of group supervision or in supervision at the level of an intermediate parent company should only be made in very exceptional circumstances and that group supervisors should consult EIOPA before making such decisions. Criteria should also be introduced so that there is more clarity as to what should be deemed as negligible interest with respect to the objectives of group supervision.

(81) Decisions not to include an undertaking in the scope of group supervision can be based on various provisions laid down in Directive 2009/138/EC. Amendments to Article 214(2) of that Directive aiming to specify the concept of 'negligible interest' should therefore not affect the existing possible basis for making decisions of exclusions from group supervision pursuant to point (c) of that paragraph, where the Member State has transposed Article 214 of that Directive in such a way that it allows for the exclusion of the ultimate parent undertaking where the latter has all of the following characteristics: it remains subject to supervision of the supervisory authority pursuant to the law of that Member State, holds no authorisation to take up the business of insurance or reinsurance, does not provide the insurance or reinsurance subsidiaries in the group with ancillary services, has by-laws expressly precluding the undertaking from performing central coordination of its insurance or reinsurance subsidiaries in accordance with the law of the Member State strictly limiting the scope of activities of the undertaking, and there is an intermediate entity established in the territory of a Member State actively managing the insurance or reinsurance subsidiaries in the group.

(82) There is a lack of clarity regarding the types of undertaking in respect of which method 2, namely a deduction and aggregation method defined in Directive 2009/138/EC, can be applied when calculating group solvency, which is detrimental to the level playing field. Therefore, it should be clearly specified which undertakings can be included in the group solvency calculation through method 2. Method 2 should only apply to insurance and reinsurance undertakings, third- country insurance and reinsurance undertakings, undertakings belonging to other financial sectors, mixed financial holding companies, insurance holding companies, and other parent undertakings the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings.

(83) In some insurance or reinsurance groups, an intermediate parent undertaking other than an insurance or reinsurance undertaking or a third-country insurance or reinsurance undertaking acquires and holds participations in subsidiary undertakings where those subsidiary undertakings are exclusively or mainly third-country insurance or reinsurance undertakings. Under current rules, if those intermediate parent undertakings do not hold a participation in at least one insurance or reinsurance subsidiary undertaking which has its head office in the Union, they are not treated as insurance holding companies for the purposes of group solvency calculation, although the nature of their risks are very similar. Therefore, the rules should be amended so that such holding companies of third-country insurance and reinsurance undertakings are treated in the same manner as insurance holding companies for the purposes of group solvency calculation.

(84) Directive 2009/138/EC and Delegated Regulation (EU) 2015/35 provide four methods of inclusion in the group solvency calculation of undertakings belonging to other financial sectors, including methods 1 and 2 set out in Annex I to Directive 2002/87/EC. That leads to inconsistent supervisory approaches and an uneven playing field, and generates undue complexity. Therefore, rules should be simplified so that undertakings belonging to other financial sectors always contribute to the group solvency by using the relevant sectoral rules regarding the calculation of own funds and capital requirements. Those own funds and capital requirements should simply be aggregated to the own funds and capital requirements of the insurance and reinsurance part of the group.

(85) Under current rules, participating insurance and reinsurance undertakings are granted limited possibilities to use simplified calculations for the purpose of determining their group solvency when method 1, namely accounting consolidation-based method, is used. This generates a disproportionate burden, in particular when groups hold participations in related undertakings that are very small in size. Therefore, subject to prior supervisory approval, participating undertakings should be allowed to integrate related undertakings whose size is immaterial in their group solvency by using simplified approaches.

(86) It is unclear how the concept of encumbrance, which should be taken into account when classifying own-fund items into tiers, applies to insurance holding companies and mixed financial holding companies which do not have policy holders and beneficiaries as direct clients. Therefore, minimum criteria should be introduced to allow for the identification of cases where an own-fund item issued by an insurance holding company or a mixed financial holding company is clear of encumbrances.

(87) The scope of the undertakings which should be taken into account when calculating the floor for the group Solvency Capital Requirement should be consistent with the scope of undertakings contributing to the eligible own funds that are available to cover the consolidated group Solvency Capital Requirement. Therefore, when calculating the floor, third-country insurance and reinsurance undertakings included through method 1 should be taken into account.

(88) The formula for calculating the minimum consolidated group Solvency Capital Requirement might lead to situations where that minimum is close, or even equal, to the consolidated group Solvency Capital Requirement. Where, in such cases, a group does not comply with the minimum consolidated group Solvency Capital Requirement but still complies with its Solvency Capital Requirement at group level calculated on the basis of consolidated data, supervisory authorities should only use the powers which are available where the group Solvency Capital Requirement is not complied with.

(89) For the purposes of group solvency calculation, insurance holding companies and mixed financial holding companies should be treated as insurance or reinsurance undertakings. That implies calculating notional capital requirements for such undertakings. However, such calculations should never imply that insurance holding companies and mixed financial holding companies are required to comply with those notional capital requirements at the individual level.

(90) There is no legal provision specifying how to calculate group solvency when a combination of method 1 and method 2 is used. That leads to inconsistent practices and uncertainties, in particular in relation to the way of calculating the contribution to the group Solvency Capital Requirement of insurance and reinsurance undertakings included through method 2. Therefore, it should be clarified how group solvency is to be calculated when a combination of methods is used. To that end, no material risk stemming from such undertakings should be ignored in the calculation of the group solvency. However, in order to avoid material increases in capital requirements and to preserve a level playing field for insurance or reinsurance groups at global level, it should be clarified that, for the purpose of calculating the consolidated group Solvency Capital Requirement, no equity risk capital charge is to be applied to such holdings. For the same reason, a currency risk capital charge should only be applied to the value of those holdings that is in excess of the Solvency Capital Requirements of those related undertakings. Participating insurance or reinsurance undertakings should be allowed to take into account diversification between that currency risk and other risks underlying the calculation of the consolidated group Solvency Capital Requirement.

(91) Currently, group supervisors can determine thresholds above which intra-group transactions and risk concentration are deemed significant on the basis of Solvency Capital Requirements, technical provisions, or both. However, other risk-based quantitative or qualitative criteria, for instance eligible own funds could also be appropriate for determining the thresholds. Therefore, group supervisors should have more flexibility when defining a significant intra-group transaction or a significant risk concentration.

(92) Insurance holding companies and mixed financial holding companies can be parent undertakings of insurance or reinsurance groups. In that case, the application of group supervision is required on the basis of the consolidated situation of such holding companies. As the insurance or reinsurance undertakings controlled by such holding companies are not always able to ensure compliance with the requirements on group supervision, it is necessary to ensure that group supervisors have the appropriate supervisory and enforcement powers to ensure compliance by groups with Directive 2009/138/EC. Therefore, similar to amendments to Directive 2013/36/EU of the European Parliament and of the Council[15] introduced by Directive (EU) 2019/878 of the European Parliament and of the Council[16] for credit and financial institutions, group supervisors should have a minimum set of powers over holding companies, including the general supervisory powers that are applicable to insurance and reinsurance undertakings for the purposes of group supervision.

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15 Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

16 Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (OJ L 150, 7.6.2019, p. 253).

(93) For the purposes of policy holder protection, all insurance groups operating in the Union, regardless of the location of the head office of their ultimate parent undertaking, should be treated equally in the application of group supervision under Title III of Directive 2009/138/EC. Where insurance and reinsurance undertakings are part of a group whose parent undertaking has its head office in a third country that is not deemed equivalent or temporarily equivalent in accordance with Article 260 of that Directive, exercising group supervision is more challenging. Group supervisors might decide to apply so-called 'other methods' in accordance with Article 262 of that Directive to such groups. However, those methods are not clearly defined and the objectives that those other methods should achieve are uncertain. If not addressed, that issue could lead to unwanted effects on the level playing field between groups whose ultimate parent undertaking is located in the Union and groups whose ultimate parent undertaking is located in a non-equivalent third country. Therefore, the purpose of the other methods should be further specified, including a minimum set of measures that group supervisors should consider. In particular, those methods should warrant the same level of protection for all policy holders of insurance or reinsurance undertakings which have their head office in the Union, irrespective of the location of the head office of the ultimate parent undertaking of the group to which such insurance or reinsurance undertakings belong.

(94) Commission Delegated Regulation (EU) 2019/981[17] introduced a preferential treatment for long-term investments in equity. The duration-based equity risk submodule, which also aims at reflecting the lower risk of investing over a longer time horizon, but is of very limited use in the Union, is subject to criteria that are stricter than those applicable to long-term equity investments. Therefore, the new prudential category of long-term equity investments appears to obviate the need for the existing duration-based equity risk submodule. As there is no need to keep two distinct preferential treatments which have the same objective of rewarding long-term investments, the duration-based equity risk submodule should be deleted. However, in order to avoid a situation whereby that deletion leads to adverse effects, a grandfathering clause should be provided for with respect to insurers which are currently applying the duration-based equity risk submodule.

[17] 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) (OJ L 161, 18.6.2019, p. 1).

(95) Achieving the environmental and climate ambitions of the European Green Deal requires the channelling of large amounts of investments from the private sector, including from insurance and reinsurance undertakings, towards sustainable investments. The provisions of Directive 2009/138/EC on capital requirements should not impede sustainable investments by insurance and reinsurance undertakings but should reflect the full risk of investments in environmentally harmful activities. Therefore, there is a need to assess whether the available evidence on risk differentials between environmentally or socially harmful and other investments is sufficient to justify a differentiated prudential treatment. In order to ensure an appropriate assessment of the relevant evidence, EIOPA should monitor and report by … [1 month from the date of entry into force of this amending Directive] on the evidence on the risk profile of environmentally or socially harmful investments. Where appropriate, EIOPA's report should advise on changes to Directive 2009/138/EC and to the delegated and implementing acts adopted pursuant to that Directive. It should be possible for EIOPA to also inquire whether it would be appropriate that certain environmental risks, other than climate change-related risks, should be taken into account and how. For instance, if evidence so suggests, EIOPA could analyse the need for extending scenario analyses as introduced by this Directive in the context of climate change-related risks to other environmental risks.

(96) Climate change is affecting the frequency and severity of natural catastrophes, both of which are likely to further increase due to environmental degradation and pollution. This could also change the exposure of insurance and reinsurance undertakings to natural catastrophe risk and render invalid the standard parameters for natural catastrophe risk set out in Delegated Regulation (EU) 2015/35. In order to ensure that there is no persistent discrepancy between the standard parameters for natural catastrophe risk and the actual exposure of insurance and reinsurance companies to such risks, EIOPA should review regularly the scope of the natural catastrophe risk module and the calibrations of its standard parameters. For that purpose, EIOPA should take into account the latest available evidence from climate science and, where discrepancies are found, it should submit an opinion to the Commission accordingly.

(97) The requirements set out in Article 308b(12) of Directive 2009/138/EC should be amended to ensure consistency with the banking framework and a level playing field in the treatment of exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State. For that purpose, a grandfathering regime for such exposures should be introduced to exempt the relevant exposures from spread and market concentration risk capital charges, provided that the exposures were incurred before 1 January 2023.

(98) In some cases, insurance or reinsurance groups heavily rely on the use of the transitional measure on the risk-free interest rates and of the transitional measure on technical provisions. Such reliance might misrepresent the actual solvency position of the group. Therefore, insurance or reinsurance groups should be required to disclose the impact on their solvency position of assuming that own funds stemming from those transitional measures are not available to cover the group Solvency Capital Requirement. Supervisory authorities should also have the power to take appropriate measures so that the use of the measures appropriately reflects the financial position of the group. However, those measures should not affect the use by related insurance or reinsurance undertakings of those transitional measures when calculating their individual Solvency Capital Requirement.

(99) Directive 2009/138/EC provides for transitional measures for the risk-free interest rates and for technical provisions which are subject to supervisory approval and which apply with respect to contracts that give rise to insurance and reinsurance obligations that were concluded before 2016. While the transitional measures should encourage undertakings to comply with that Directive as soon as possible, the application of transitional measures approved for the first time long after 2016 is likely to slow down the path to compliance with that Directive. Such approval of the use of those transitional measures should therefore be restricted to cases where an insurance or reinsurance undertaking becomes for the first time subject to the rules of Directive 2009/138/EC or where an undertaking has accepted a portfolio of insurance or reinsurance contracts and the transferring undertaking applied, before the transfer, a transitional measure with respect to the obligations relating to that portfolio.

(100) In order to take account of market developments and supplement certain detailed technical aspects of this Directive, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of the criteria for identifying small and non-complex undertakings and groups, the treatment of risk posed by crypto-assets in the market risk sub-module, clarifications concerning long-term investments, the criteria for limited supervisory reporting for captive insurance and reinsurance undertakings, the prudent deterministic valuation of the best estimate, the application of the simplified approach for the purpose of calculating group solvency, the information to be included in the group regular supervisory report, and extending reporting deadlines in exceptional circumstances. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(101) To ensure the harmonised application of this Directive, EIOPA should develop draft regulatory technical standards to further specify the factors to be considered by supervisory authorities for the purpose of identifying the relationship between different undertakings that could form part of a group. The Commission should supplement this Directive by adopting the regulatory technical standards developed by EIOPA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010. The Commission should also be empowered to adopt implementing technical standards developed by EIOPA regarding some specific methodological elements pertaining to the prudent deterministic valuation of the best estimate for life obligations by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1094/2010.

(102) Since the objectives of this Directive, namely to provide incentives for insurers to contribute to the long-term sustainable financing of the economy, to improve risk-sensitivity, to mitigate excessive short-term volatility in insurers' solvency positions, to enhance the quality, consistency and coordination of insurance supervision across the Union and improve protection of policy holders and beneficiaries, and to better address the potential build-up of systemic risk in the insurance sector, cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(103) The United Kingdom became a third country on 1 February 2020 and Union law ceased to apply to and in the United Kingdom on 31 December 2020. Given that Directive 2009/138/EC has several provisions that address the specifics of particular Member States, where such provisions specifically concern the United Kingdom, they have become obsolete and should therefore be deleted.

(104) The calibrations used for the delegated acts and implementing acts adopted by the Commission are often based on data that is heavily influenced by the inclusion of data from the United Kingdom market. Therefore, all calibrations that are input for the calculations of the Solvency Capital Requirement and the Minimum Capital Requirement should be reviewed to determine whether they are unduly dependent on data from the United Kingdom market and, where applicable, such data should be eliminated from the relevant data sets, unless no other data is available.

(105) It should be ensured that the prudential treatment of investments in securitisation, including simple, transparent and standardised (STS) securitisation, appropriately reflects the actual risks, and that capital requirements associated with such investments be risk-oriented. To that end, the Commission should assess the appropriateness of existing calibrations for investments in securitisation that are set out in the delegated acts adopted pursuant to Directive 2009/138/EC, taking into account available market data, and their consistency with capital requirements that are applicable to investments in other fixed-income securities. On the basis of such an assessment, and where appropriate, the Commission should consider amending the delegated act setting capital requirements applicable to investments in securitisation. Such amendments, which should be risk-based and evidence-based, could include the introduction of a more granular set of risk factors depending on the ranking of the securitisation tranches, or differentiating between different types of non-STS securitisation depending on their risks.

(106) Directive 2009/138/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

(1) in Article 2(3), point (a)(iv) is replaced by the following:

‘(iv) types of permanent health insurance not subject to cancellation currently existing in Ireland;’;

(2) in Article 4(1), points (a), (b) and (c) are replaced by the following:

‘(a) the undertaking’s annual gross written premium income does not exceed EUR 15 000 000;

(b) the total of the undertaking’s technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, does not exceed EUR 50 000 000;

(c) where the undertaking belongs to a group, the total of the technical provisions of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed EUR 50 000 000;’;

(3) Article 6 is amended as follows:

(a) in paragraph 1, point (a) is replaced by the following:

‘(a) the assistance is provided in the event of an accident or breakdown involving a road vehicle when the accident or breakdown occurs in the territory of the Member State of the undertaking providing cover or neighbouring countries;’;

(b) paragraph 2 is replaced by the following:

‘2. In the cases referred to in paragraph 1, points (b)(i) and (b)(ii), the condition that the accident or breakdown must have happened in the territory of the Member State of the undertaking providing cover shall not apply where the beneficiary is a member of the body providing cover and the breakdown service or conveyance of the vehicle is provided simply on presentation of a membership card, without any additional premium being paid, by a similar body in the country concerned on the basis of a reciprocal agreement.’;

(c) paragraph 3 is deleted;

(4) in Article 8, point (3) is deleted;

(5) Article 13 is amended as follows:

(a) in point (7), point (b) is deleted;

(b) the following points are inserted:

‘(10a) “small and non-complex undertaking” means an insurance or reinsurance undertaking, including a captive insurance undertaking or a captive reinsurance undertaking, that meets the conditions set out in Article 29a and has been classified as such in accordance with Article 29b;

(10b) “small and non-complex group” means a group that complies with the conditions laid down in Article 213a and has been classified as such by the group supervisor pursuant to paragraph 2 of that Article;

(10c) “statutory auditor” means a statutory auditor within the meaning of Article 2, point (2), of Directive 2006/43/EC of the European Parliament and of the Council*;

(10d) “audit firm” means an audit firm within the meaning of Article 2, point (3), of Directive 2006/43/EC;

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* Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (OJ L 157, 9.6.2006, p. 87).’;

(c) points (15) and (16) are replaced by the following:

‘(15) “parent undertaking” means a parent undertaking as referred to in Article 22(1) and (2) of Directive 2013/34/EU of the European Parliament and of the Council*, or an undertaking which supervisory authorities consider as parent undertaking in accordance with Article 212(2) or Article 214(5) or (6) of this Directive;

(16) “subsidiary undertaking” means a subsidiary undertaking as referred to in Article 22(1) and (2) of Directive 2013/34/EU, including subsidiaries thereof, or an undertaking which supervisory authorities are to consider as a subsidiary undertaking in accordance with Article 212(2) or Article 214(5) or (6) of this Directive;

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* Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).’;

(d) in point (18), the words ‘Article 1 of Directive 83/349/EEC’ are replaced by the words ‘Article 22(1) and (2) of Directive 2013/34/EU’;

(e) point (19) is replaced by the following:

‘(19) “intra-group transaction” means any transaction by which an insurance or reinsurance undertaking, a third-country insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;’;

(f) point (22) is amended as follows:

(i) in point (a), the words ‘Article 4(1)(14) of Directive 2004/39/EC’ are replaced by the words ‘Article 4(1), point (21), of Directive 2014/65/EU of the European Parliament and of the Council*

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* Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).’;

(ii) in point (b)(i), the words ‘Directive 2004/39/EC’ are replaced by the words ‘Directive 2014/65/EU’;

(g) point (25) is amended as follows:

(i) in point (a), the words ‘Article 4(1), (5) and (21) of Directive 2006/48/EC’ are replaced by the words ‘Article 4(1), points (1), (18) and (26), of Regulation (EU) No 575/2013 of the European Parliament and of the Council*

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* Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).’;

(ii) in point (c), the words ‘Directive 2004/39/EC’ are replaced by the words ‘Directive 2014/65/EU’;

(h) point (27) is amended as follows:

(i) in the first subparagraph, point (c)(ii) is replaced by the following:

‘(ii) a net turnover, within the meaning of Article 2, point (5), of Directive 2013/34/EU, of EUR 13 600 000;’;

(ii) in the second subparagraph, the words ‘Directive 83/349/EEC’ are replaced by the words ‘Directive 2013/34/EU’;

(i) the following points are added:

‘(41) “regulated undertaking” means a regulated entity within the meaning of Article 2, point (4), of Directive 2002/87/EC or an institution for occupational retirement provision within the meaning of Article 6, point (1), of Directive (EU) 2016/2341;

(42) “crypto-asset” means a crypto-asset as defined in Article 3(1), point (5), of Regulation (EU) 2023/1114 of the European Parliament and of the Council*;

(43) “proportionality measure” means any of the measures provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 45a(5), Article 51(6), Article 51a(1), Article 77(8) and Article 144a(4) or any measure provided for in the delegated acts adopted pursuant to this Directive explicitly applicable to small and non-complex undertakings in accordance with Article 29c;

(44) “sustainability risk” means an environmental, social or governance event or condition that, if it occurs, could cause an actual or potential negative impact on the value of the investment or on the value of the liability;

(45) “sustainability factors” means sustainability factors as defined in Article 2, point (24), of Regulation (EU) 2019/2088 of the European Parliament and of the Council**;

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* Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets, and amending Regulations (EU) No 1093/2010 and (EU) No 1095/2010 and Directives 2013/36/EU and (EU) 2019/1937 (OJ L 150, 9.6.2023, p. 40).

** Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).';

(6) in Article 18(1), the following point is added:

'(i) to indicate whether an application in another Member State for an authorisation to take up the business of direct insurance or reinsurance or to take up the business of another regulated undertaking or insurance distributor has been rejected or withdrawn, and the reasons for the rejection or withdrawal;';

(7) in Article 23(1), the following point is added:

'(f) the Member States, third countries and, where authorisations to take up and pursue the business of insurance or reinsurance is granted at the level of geographical areas within third countries, relevant geographical areas of those third countries, where the insurance or reinsurance undertaking concerned intends to operate.';

(8) in Article 24(2), second subparagraph, the words 'Directive 2004/39/EC' are replaced by the words 'Directive 2014/65/EU';

(9) Article 25 is amended as follows:

(a) the third paragraph is replaced by the following:

‘Such provision shall also be made with regard to cases where the supervisory authorities have not dealt with an application for an authorisation within six months or, in cases of joint assessment pursuant to Article 26(4), within eight months of the date of its receipt.’;

(b) the following paragraph is added:

‘Each refusal of an authorisation, including the identification of the applicant undertaking and the reasons for refusal shall be notified to the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council*. EIOPA shall keep an updated database with such information and grant access to the database to supervisory authorities.

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* Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).’;

(10) in Article 25a, the words ‘the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (“EIOPA”) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([1])’ are replaced by the word ‘EIOPA’;

(11) in Article 26, the following paragraph is added:

‘4. Where several supervisory authorities need to be consulted pursuant to paragraph 1, any supervisory authority concerned may request, within one month of the date of receipt, the supervisory authority of the home Member State of the undertaking seeking authorisation to jointly assess the application for authorisation. The supervisory authority of the home Member State of the undertaking seeking authorisation shall take into consideration the conclusions of the joint assessment when making its final decision.’;

(12) in Article 29, paragraphs 3 and 4 are replaced by the following:

‘3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking, in particular with respect to undertakings classified as small and non-complex undertakings.

4. The delegated acts and the regulatory and implementing technical standards adopted by the Commission shall take into account the principle of proportionality, thereby ensuring the proportionate application of this Directive, in particular in relation to small and non-complex undertakings.

The draft regulatory technical standards submitted by EIOPA in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010, the draft implementing technical standards submitted in accordance with Article 15 of that Regulation, and the guidelines and recommendations issued in accordance with Article 16 of that Regulation, shall ensure the proportionate application of this Directive, in particular in relation to small and non-complex undertakings.

5. The Commission shall supplement this Directive by adopting delegated acts, in accordance with Article 301a, specifying:

(a) the criteria laid down in Article 29a(1), including the approach for calculating the sum referred to in points (a)(iv), (b)(v) and (c)(vii) thereof;

(b) the methodology to be used when classifying undertakings as small and non-complex undertakings; and

(c) the conditions for granting or withdrawing supervisory approval for proportionality measures to be used by undertakings not classified as small and non-complex undertakings referred to in Article 29d.';

(13) the following articles are inserted:

‘*Article 29a*

Criteria for identifying small and non-complex undertakings

1. Member States shall ensure that undertakings are classified as small and non-complex undertakings, in accordance with the process set out in Article 29b, where, for the two consecutive financial years directly prior to such classification, the undertakings meet the following criteria:

(a) For undertakings pursuing life activities and for undertakings pursuing both life and non-life activities whose technical provisions related to the life activities represent 20 % or more of the total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, and whose annual gross written premium income related to the non-life activities represents less than 40 % of the total annual gross written premium, all of the following criteria shall be met:

(i) the interest rate risk submodule referred to in Article 105(5), second subparagraph, point (a), is not higher than 5 % of the technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76;

(ii) annual gross written premium income from business underwritten in Member States other than the home Member State where the undertaking received its authorisation in accordance with Article 14 is lower than either of the following thresholds:

(1) EUR 20 000 000;

(2) 10 % of its total annual gross written premium income;

(iii) technical provisions from life activities, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, are not higher than EUR 1 000 000 000;

(iv) the sum of the following is not higher than 20 % of total investments:

(1) the market risk module referred to in Article 105(5);

(2) the part of the counterparty default risk module referred to in Article 105(6), that corresponds to exposures to securitisations, derivatives, receivables from intermediaries and other investment assets which are not covered in the spread risk sub-module;

(3) any capital requirement that is applicable to investments in intangible assets that are not covered by the market risk and the counterparty default risk modules;

(v) the reinsurance accepted by the undertaking does not exceed 50 % of its total annual gross written premium income;

(vi) the Solvency Capital Requirement is complied with.

(b) For undertakings pursuing non-life activities and for undertakings pursuing both life and non-life activities whose annual gross written premium income related to the non-life activities represent 40 % or more of their total annual gross written premium income and whose technical provisions related to the life activities represent less than 20 % of their total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, all of the following criteria shall be met:

(i) the average combined ratio for non-life activities net of reinsurance of the last three years is less than 100 %;

(ii) annual gross written premium income from business underwritten in Member States other than the home Member State where the undertaking received its authorisation in accordance with Article 14 is lower than either of the following thresholds:

(1) EUR 20 000 000;

(2) 10 % of its total annual gross written premium income;

(iii) the annual gross written premium income from non-life activities is not higher than EUR 100 000 000;

(iv) the sum of the annual gross written premiums in classes 5 to 7, 11, 12, 14 and 15 in Part A of Annex I is not higher than 30 % of total annual written premiums of non-life business;

(v) the sum of the following is not higher than 20 % of total investments:

(1) the market risk module referred to in Article 105(5);

(2) the part of the counterparty default risk module referred to in Article 105(6), that corresponds to exposures to securitisations, derivatives, receivables from intermediaries and other investment assets which are not covered in the spread risk sub-module;

(3) any capital requirement that is applicable to investments in intangible assets that are not covered by the market risk and the counterparty default risk modules;

(vi) the reinsurance accepted by the undertaking does not exceed 50 % of its total annual gross written premium income;

(vii) the Solvency Capital Requirement is complied with.

(c) For undertakings pursuing both life and non-life activities whose technical provisions related to the life activities represent 20 % or more of their total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, and whose annual gross written premium income related to the non-life activities represents 40 % or more of their total annual gross written premium income, all of the following criteria shall be met:

(i) the interest rate risk submodule referred to in Article 105(5), second subparagraph, point (a), is not higher than 5 % of the technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76;

(ii) the average combined ratio for non-life activities net of reinsurance of the last three years is less than 100 %;

(iii) technical provisions from life activities, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, are not higher than EUR 1 000 000 000;

(iv) the annual gross written premium income from non-life activities is not higher than EUR 100 000 000;

(v) annual gross written premium income from business underwritten in Member States other than the home Member State where the undertaking received its authorisation in accordance with Article 14 is lower than either of the following thresholds:

(1) EUR 20 000 000;

(2) 10 % of its total annual gross written premium income;

(vi) the sum of the annual gross written premium in classes 5 to 7, 11, 12, 14 and 15 in Part A of Annex I is not higher than 30 % of total annual written premiums of non-life business;

(vii) the sum of the following is not higher than 20 % of total investments:

(1) the market risk module referred to in Article 105(5);

(2) the part of the counterparty default risk module referred to in Article 105(6), that corresponds to exposures to securitisations, derivatives, receivables from intermediaries and other investment assets which are not covered in the spread risk sub-module;

(3) any capital requirement that is applicable to investments in intangible assets that are not covered by the market risk and the counterparty default risk modules;

(viii) the reinsurance accepted by the undertaking does not exceed 50 % of its total annual gross written premium income;

(ix) the Solvency Capital Requirement is complied with.

The criteria laid down in points (a)(ii) and (v), points (b)(ii) and (vi), and points (c)(v) and (viii) of the first subparagraph shall not apply to captive insurance undertakings or to captive reinsurance undertakings.

By way of derogation from the first subparagraph, captive insurance undertakings and captive reinsurance undertakings shall also be classified as small and non-complex undertakings where they do not comply with the criteria laid down in the first subparagraph provided they comply with both of the following criteria:

(a) the insured persons and beneficiaries are any of the following:

(i) legal entities of the group of which the captive insurance undertaking or captive reinsurance undertaking is part,

(ii) natural persons eligible to be covered under that group's insurance policies, provided that the business covering those natural persons remains below 5 % of technical provisions;

(b) the insurance obligations and the insurance contracts underlying the reinsurance obligations of the captive insurance undertaking or captive reinsurance undertaking do not consist of any compulsory third-party liability insurance.

2. For undertakings which have obtained authorisation in accordance with Article 14 within the last two financial years, compliance with the criteria set out in paragraph 1 of this Article shall be assessed with reference to the last financial year prior to the classification, or where the authorisation has been obtained within the last 12 months, the scheme of operations referred to in Article 23.

3. The following undertakings shall never be classified as small and non-complex undertakings:

(a) undertakings that use an approved partial or full internal model to calculate the Solvency Capital Requirement, in accordance with the requirements for full and partial internal models set out in Chapter VI, Section 4, Subsection 3;

(b) undertakings that are parent undertakings of a financial conglomerate within the meaning of Article 2, point (14), of Directive 2002/87/EC or of a group within the meaning of Article 212 of this Directive, to which group supervision applies in accordance with Article 213(2), point (a) or (b), of this Directive unless the group is classified as a small and non-complex group;

(c) undertakings that are the parent undertaking of an undertaking referred to in Article 228(1), points (a) to (e);

(d) undertakings that manage group pension funds within the meaning of Article 2(3), points (b)(iii) and (b)(iv), where the value of the assets of the group pension funds exceeds EUR 1 000 000 000.

Article 29b

Process of classification for undertakings complying with the criteria

1. Member States shall ensure that undertakings complying with the criteria set out in Article 29a may notify the supervisory authority of such compliance with a view to being classified as small and non-complex undertakings.

2. The notification referred to in paragraph 1 of this Article shall be submitted by the undertaking to the supervisory authority of the Member State that granted the prior authorisation referred to in Article 14. That notification shall include all of the following:

(a) evidence of the compliance with all criteria set out in Article 29a applicable to that undertaking;

(b) a declaration that the undertaking does not plan any strategic change that would lead to non-compliance with any of the criteria set out in Article 29a within the next three years;

(c) an identification of the proportionality measures the undertaking expects to implement, in particular if the best estimate simplification is intended to be used and whether the undertaking plans to use the simplified method to calculate technical provisions laid down in Article 77(8).

3. The supervisory authority may oppose the classification as a small and non-complex undertaking within two months of receipt of the complete notification referred to in paragraph 1 on grounds related exclusively to any of the following:

(a) non-compliance with the criteria provided for in Article 29a;

(b) non-compliance with the Solvency Capital Requirement, assessed without the use of any of the transitional measures referred to in Article 77a(2), Article 308c, Article 308d or, where relevant, Article 111(1), second subparagraph;

(c) the undertaking represents more than 5 % of the life market or, where applicable, non-life market in accordance with Article 35a(1), second subparagraph, of the home Member State of the undertaking.

4. Any decision of the supervisory authority to oppose the classification as a small and non-complex undertaking shall state the reasons therefor and shall be communicated to the undertaking concerned in writing.

In the absence of such a decision, the undertaking shall be classified as a small and non-complex undertaking as of the end of the two-month period referred to in paragraph 3.

Where, before the end of the two-month period referred to in paragraph 3, the supervisory authority has issued a decision confirming compliance with the criteria, the undertaking shall be classified as a small and non-complex undertaking as of the date of such decision.

5. With respect to requests received by supervisory authorities within the first six months of … [the date of application of this amending Directive], the period referred to in paragraph 3 shall be extended to four months.

6. An undertaking shall be classified as a small and non-complex undertaking for as long as such classification does not cease in accordance with this paragraph.

Where a small and non-complex undertaking no longer complies with any of the criteria set out in Article 29a(1), it shall inform the supervisory authority without delay. Where such non-compliance continuously persists over two consecutive years, the undertaking shall inform the supervisory authority thereof, and shall cease to be classified as a small and non-complex undertaking as from the following financial year.

Where an undertaking that has been classified as a small and non-complex undertaking fulfils any of the exclusion criteria set out in Article 29a(3), that undertaking shall inform the supervisory authority without delay and shall cease to be classified as a small and non-complex undertaking as from the following financial year.

Article 29c

Use of proportionality measures by undertakings classified as small and non-complex undertakings

1. Member States shall ensure that undertakings classified as small and non-complex undertakings may use all proportionality measures.

2. By way of derogation from paragraph 1, where the supervisory authority has serious concerns in relation to the risk profile of a small and non-complex undertaking, the supervisory authority may request the undertaking concerned to refrain from using one or several proportionality measures, provided that the request is duly justified in writing with reference to the specific concerns relating to the risk profile of the undertaking. A serious concern shall be considered to exist where:

   (a) the Solvency Capital Requirement is no longer complied with, or there is a risk of non-compliance in the following three months assessed, where applicable, without the use of any of the transitional measures referred to in Article 77a(2), Article 308c, Article 308d or, where relevant, Article 111(1), second subparagraph;

(b) the system of governance of the undertaking is not effective within the meaning of Article 41; or

(c) material changes in the risk profile of the undertaking could lead to significant non-compliance of any of the criteria set out in Article 29a(1).

Article 29d

Use of proportionality measures by undertakings not classified as small and non-complex undertakings

1. Member States shall ensure that insurance and reinsurance undertakings that are not classified as small and non-complex undertakings may only use proportionality measures as provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 77(8) and Article 144a(4) and proportionality measures as provided for in the delegated acts adopted pursuant to this Directive that are both explicitly applicable to small and non-complex undertakings in accordance with Article 29c and identified for the purposes of this Article, with the prior approval of the supervisory authority.

The insurance or reinsurance undertaking shall submit a request in writing for approval to the supervisory authority. That request shall include:

(a) a list of the proportionality measures intended to be used and the reasons why their use is justified in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

(b) any other material information regarding the risk profile of the undertaking;

(c) a declaration that the undertaking does not plan any strategic change that would have an impact on the risk profile of the undertaking within the next three years.

2. The supervisory authority shall, within two months of receipt of the request referred to in paragraph 1, second subparagraph, assess the request and inform the undertaking of its approval or rejection, as well as of the proportionality measures the use of which has been approved. Where the supervisory authority approves the use of proportionality measures under certain terms or conditions, the approval decision shall contain the reasons for those terms and conditions. A decision of the supervisory authority to oppose the use of one or more of the proportionality measures listed in the request shall be notified in writing, and state the reasons for the supervisory authority's decision. Such reasons shall be linked to the risk profile of the undertaking,

3. The supervisory authority may request any further information that is necessary to complete the assessment referred to in paragraph 2. The period referred to in that paragraph shall be suspended for the period between the date of the first request for information by the supervisory authorities and the receipt of a response thereto by the concerned undertaking. Any further requests by the supervisory authority shall not result in a suspension of the assessment period.

4. With respect to requests received by supervisory authorities before … [six months from the date of application of this amending Directive], the period referred to in paragraph 2 shall be four months.

5. Approval to use proportionality measures may be amended or withdrawn at any point in time if the insurance or reinsurance undertaking's risk profile has changed. Any decision of the supervisory authority to amend or withdraw that approval shall state the reasons therefor and shall be communicated to the undertaking concerned in writing.

Article 29e

Monitoring of the use of proportionality measures

1. Within one year of their classification as small and non-complex undertakings, insurance and reinsurance undertakings shall report to their supervisory authorities information on the proportionality measures used as part of the information to be provided for supervisory purposes referred to in Article 35. Where such undertakings intend to change the list of proportionality measures to be used, they shall notify their supervisory authorities immediately.

2. Where insurance and reinsurance undertakings which use proportionality measures pursuant to Article 29d decide to stop using any such measures, they shall inform their supervisory authorities thereof.

3. Insurance and reinsurance undertakings applying any proportionality measures that correspond to existing measures under this Directive by … [the date of entry into force of this amending Directive] may continue to apply such measures without applying the requirements set out in Articles 29b, 29c and 29d, for a period not exceeding four financial years.';

(14) in Article 30(2), the first subparagraph is replaced by the following:

'Financial supervision pursuant to paragraph 1 shall include verification, with respect to the entire business of the insurance and reinsurance undertaking, of its system of governance, of its state of solvency, of the establishment of technical provisions, of its assets and of the eligible own funds, in accordance with the rules laid down or practices followed in the home Member State under provisions adopted at Union level.';

(15) Article 35 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

'Member States shall require insurance and reinsurance undertakings to submit to the supervisory authorities the information which is necessary for the purposes of supervision, taking into account the objectives of supervision laid down in Articles 27 and 28 and the general principles of supervision laid down in Article 29, in particular the principle of proportionality.';

(b) the following paragraph is inserted:

‘5a. Taking into account the information required in paragraphs 1, 2, and 3 and the principles set out in paragraph 4, Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities a regular supervisory report that comprises information on the undertaking’s business and performance, system of governance, risk profile, valuation for solvency purposes and capital management over the reporting period.

The frequency of the regular supervisory report shall be:

(a) for small and non-complex undertakings, every three years, or, where permitted by the supervisory authority, up to every five years;

(b) for insurance and reinsurance undertakings other than small and non-complex undertakings, every three years.

For the purposes of point (b) of the second subparagraph, if deemed necessary, a supervisory authority may require supervised undertakings to report more frequently.’;

(c) paragraphs 6, 7 and 8 are deleted;

(d) paragraph 9 is replaced by the following:

‘9. The Commission shall supplement this Directive by adopting delegated acts in accordance with Article 301a specifying:

(a) the information referred to in paragraphs 1 to 4 of this Article;

(b) the criteria for limited supervisory reporting for captive insurance undertakings and captive reinsurance undertakings considering the nature, scale and complexity of the risks of those specific types of undertaking with a view to ensuring, to the appropriate extent, convergence of supervisory reporting.’;

(e) in paragraph 10, the first subparagraph is replaced by the following:

‘In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on regular supervisory reporting with regard to the templates for the submission of information to the supervisory authorities referred to in paragraphs 1 and 2, including the risk-based thresholds establishing the trigger for reporting requirements, where applicable, or any exemption of specific information for certain types of undertaking, such as captive insurance and reinsurance undertakings, considering the nature, scale and complexity of the risks of specific types of undertaking. EIOPA shall develop information technology (IT) solutions, including reporting templates and instructions for the reporting referred to in paragraphs 1 and 2.’;

(f) paragraph 11 is deleted;

(g) the following paragraph is added:

‘12. By … [two years from the date of entry into force of this amending Directive], EIOPA shall submit to the Commission a report on potential measures, including legislative changes, to develop an integrated data collection in order to:

(a) reduce areas of duplications and inconsistencies between the reporting frameworks in the insurance sector and other sectors of the financial industry;

(b) improve data standardisation and efficient sharing and use of data already reported within any Union reporting framework by any relevant Union or national competent authority; and

(c) reduce compliance costs.

EIOPA shall prioritise, but not limit itself to, information concerning the areas of collective investment undertakings and derivatives reporting.

When preparing the report referred to in the first subparagraph, EIOPA shall work in close cooperation with the other European Supervisory Authorities and the European Central Bank (ECB) and shall, where relevant, involve the national competent authorities.’;

(16) the following articles are inserted:

‘*Article 35a*

Exemptions and limitations to quantitative regular supervisory reporting granted by supervisory authorities

1. Without prejudice to Article 129(4), where the predefined periods referred to in Article 35(2), point (a)(i), are shorter than one year, the supervisory authorities concerned may limit regular supervisory reporting, where:

(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

(b) the information is reported at least annually.

That limitation to regular supervisory reporting shall be granted only to undertakings that collectively do not represent more than 20 % of a Member State’s life and non-life insurance and reinsurance market respectively, where the life market share is based on gross technical provisions and the non-life market share is based on gross written premiums.

When determining the eligibility of undertakings for those limitations, supervisory authorities shall give priority to small and non-complex undertakings.

2. The supervisory authorities concerned may limit regular supervisory reporting, or exempt insurance and reinsurance undertakings from reporting on an item-by-item basis, where:

(a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;

(b) the submission of that information is not necessary for the effective supervision of the undertaking;

(c) the exemption does not undermine the stability of the financial systems concerned in the Union; and

(d) the undertaking is able to provide the information upon request.

The exemption from reporting on an item-by-item basis shall be granted only to undertakings that collectively do not represent more than 20 % of a Member State's life and non-life insurance and reinsurance market respectively, where the life market share is based on gross technical provisions and the non-life market share is based on gross written premiums.

When determining the eligibility of undertakings for those limitations or exemptions, supervisory authorities shall give priority to small and non-complex undertakings.

3. Captive insurance undertakings and captive reinsurance undertakings shall be exempted from regular supervisory reporting on an item-by-item basis where the predefined periods referred to in Article 35(2), point (a)(i), are shorter than one year, provided that they comply with both of the following conditions:

(a) the insured persons and beneficiaries are any of the following:

(i) legal entities of the group of which the captive insurance undertaking or captive reinsurance undertaking is part,

(ii) natural persons eligible to be covered under that group's insurance policies, provided that the business covering those natural persons remains below 5 % of technical provisions;

(b) the insurance obligations and the insurance contracts underlying the reinsurance obligations of the captive insurance undertaking or captive reinsurance undertaking do not consist of any compulsory third-party liability insurance.

4. For the purposes of paragraphs 1 and 2 of this Article, as part of the supervisory review process, in respect of undertakings classified as small and non-complex undertakings, supervisory authorities shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least:

   (a) the market risks that the investments of the undertaking give rise to;

   (b) the level of risk concentrations;

   (c) possible effects of the management of the assets of the undertaking on financial stability;

   (d) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy referred to in Article 35(5).

5. For the purposes of paragraphs 1 and 2, as part of the supervisory review process, in respect of undertakings not classified as small and non-complex undertakings, supervisory authorities shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least, paragraph 4, points (a) to (d), and the following:

   (a) the volume of premiums, technical provisions and assets of the undertaking;

(b) the volatility of the claims and benefits covered by the undertaking;

(c) the total number of classes of life and non-life insurance for which authorisation is granted;

(d) the appropriateness of the system of governance of the undertaking;

(e) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement;

(f) whether the undertaking is a captive insurance undertaking or a captive reinsurance undertaking only covering risks associated with the industrial or commercial group to which it belongs.

6. In order to ensure the coherent and consistent application of paragraphs 1 to 5 of this Article, EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to further specify:

(a) the methods for determining the market shares referred to in paragraph 1, second subparagraph, and in paragraph 2, second subparagraph, of this Article;

(b) the process to be used by the supervisory authorities to inform the insurance and reinsurance undertakings about any limitation or exemption referred to in this Article.

Article 35b

Reporting deadlines

1. Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities the information referred to in Article 35(1) to (4) on an annual or less frequent basis within 16 weeks of the end of the undertaking's financial year.

2. Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities the information referred to in Article 35(1) to (4) on a quarterly basis within five weeks of the end of each quarter.

3. Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities the regular supervisory report referred to in Article 35(5a) within 18 weeks of the end of the undertaking's financial year.';

(17) in Article 36(2), point (a) is replaced by the following:

'(a) the system of governance, including the fit and proper requirements as set out in Article 42, and the own-risk and solvency assessment, as set out in Chapter IV, Section 2;';

(18) Article 37 is amended as follows:

(a) in paragraph 1, the following point is added:

‘(e) the insurance or reinsurance undertaking applies one of the transitional measures referred to in Articles 308c and 308d and all of the following conditions are met:

(i) the undertaking would not comply with the Solvency Capital Requirement without application of the transitional measure;

(ii) the undertaking has failed to submit to the supervisory authority either the initial phasing-in plan within the required period as set out in Article 308e, second paragraph, or the required annual report as set out in the third paragraph of that Article.’;

(b) in paragraph 2, the third subparagraph is replaced by the following:

‘In the circumstances set out in paragraph 1, points (d) and (e), the capital add-on shall be proportionate to the material risks arising from the deviation and the non-compliance, respectively, referred to in those points.’;

(19) in Article 40, the following paragraphs are added:

‘The members of the administrative, management and supervisory bodies of the insurance or reinsurance undertaking shall at all times be of good repute and possess collectively sufficient knowledge, skills and experience to perform their duties.

Members of the administrative, management and supervisory bodies shall not have been convicted of any serious or repeated offences relating to money laundering or terrorist financing or other offences that would bring into question their good repute, in, at least, the ten years preceding the year in which they are or would be performing their duties in the undertaking.’;

(20) Article 41 is amended as follows:

(a) in paragraph 1, the third subparagraph is replaced by the following:

‘The system of governance shall be subject to regular internal review. Such internal review shall include an assessment of the adequacy of the composition, effectiveness and internal governance of the administrative, management or supervisory body, taking into account the nature, scale and complexity of the risks inherent in the business of the undertaking.

Insurance and reinsurance undertakings shall put in place a policy promoting diversity in the administrative, management or supervisory body, including setting individual quantitative objectives related to gender-balance.

EIOPA shall issue guidelines on the notion of diversity to be taken into account for the selection of members of the administrative, management or supervisory body.';

(b) the following paragraph is inserted:

'2a. Member States shall require that insurance and reinsurance undertakings appoint different persons to carry out the key functions of risk management, actuarial, compliance and internal audit, and that each such function is performed in an independent manner from the other functions in order to avoid conflicts of interest.

When an undertaking has been classified as a small and non-complex undertaking, pursuant to Article 29b, or when an undertaking has obtained prior supervisory approval, pursuant to Article 29d, the persons responsible for the key functions of risk management, actuarial and compliance may also perform any other key function different from internal audit, any other function, or be a member of the administrative, management or supervisory body, provided that the following conditions are met:

(a) potential conflicts of interest are properly managed;

(b) the combination of functions or the combination of a function with the condition of membership of the administrative, management or supervisory body does not compromise the person's ability to carry out her or his responsibilities.';

(c) paragraph 3 is replaced by the following:

'3. Insurance and reinsurance undertakings shall have written policies in relation to at least risk management, internal control, internal audit, remuneration and, where relevant, outsourcing. They shall ensure that those policies are implemented.

Those written policies shall be reviewed at least annually. They shall be subject to prior approval by the administrative, management or supervisory body and be adapted in view of any significant change in the system or area concerned. Small and non-complex undertakings may perform a less frequent review, at least every five years, unless the supervisory authority concludes, based on the specific circumstances of that undertaking, that a more frequent review is needed.';

(21) in Article 42, paragraphs 2 and 3 are replaced by the following:

‘2. Insurance and reinsurance undertakings shall notify the supervisory authority of any changes to the identity of the persons who effectively run the undertaking or are responsible for other key functions, along with the reasons for the changes and all information needed to assess whether the new persons appointed to manage the undertaking are fit and proper.

3. Insurance and reinsurance undertakings shall notify their supervisory authority if any of the persons referred to in paragraph 1 no longer fulfil the requirements referred to in paragraph 1 or have been replaced for that reason.

4. Where a person who effectively runs the undertaking or has other key functions does not fulfil the requirements set out in paragraph 1, the supervisory authorities shall have the power to require the insurance and reinsurance undertaking to remove such person from that position.’;

(22) Article 44 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) point (e) is replaced by the following:

‘(e) operational risk management, including cybersecurity as defined in Article 2, point (1), of Regulation (EU) 2019/881 of the European Parliament and of the Council*;

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* Regulation (EU) 2019/881 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity) and on information and communications technology cybersecurity certification and repealing Regulation (EU) No 526/2013 (Cybersecurity Act) (OJ L 151, 7.6.2019, p. 15).';

(ii) the following subparagraphs are added:

'Where insurance or reinsurance undertakings apply the volatility adjustment referred to in Article 77d, their liquidity plans shall take into account the use of the volatility adjustment and assess whether liquidity constraints may arise which are not consistent with the use of the volatility adjustment.

Insurance and reinsurance undertakings shall take into account the short-, medium- and long-term horizon when assessing sustainability risks.

For the purposes of the assessment referred to in the fifth subparagraph, the supervisory authorities shall ensure that undertakings, as part of their risk management, have strategies, policies, processes and systems for the identification, measurement, management and monitoring of sustainability risks over the short, medium and long term.';

(b) paragraph 2a is amended as follows:

(i) the first subparagraph is amended as follows:

(1) point (b) is amended as follows:

– point (i) is replaced by the following:

‘(i) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in Article 77c(1), point (b);’;

– point (iii) is deleted;

(2) point (c) is replaced by the following:

‘(c) where the volatility adjustment referred to in Article 77d is applied, the sensitivity of their technical provisions and eligible own funds to changes in the economic conditions that would affect the risk-corrected spread referred to in Article 77d(3).’;

(ii) the third subparagraph is replaced by the following:

‘Where the volatility adjustment referred to in Article 77d is applied, the written policy on risk management referred to in Article 41(3) shall take account of the volatility adjustment.’;

(c) the following paragraphs are inserted:

‘2b. Member States shall ensure that insurance and reinsurance undertakings develop and monitor the implementation of specific plans that include quantifiable targets and processes to monitor and address the financial risks arising in the short, medium, and long term from sustainability factors, including those arising from the process of adjustment and from transition trends in the context of the relevant Union and Member State regulatory objectives and legal acts in relation to sustainability factors, in particular those set out in Regulation (EU) 2021/1119 of the European Parliament and of the Council*.

The quantifiable targets and processes to address the sustainability risks included in the plans referred to in the first subparagraph of this paragraph shall consider the latest reports and measures prescribed by the European Scientific Advisory Board on Climate Change, in particular in relation to the achievement of the climate targets of the Union. Where the undertaking discloses information on sustainability matters in accordance with Directive 2013/34/EU, the plans referred to in the first subparagraph of this paragraph shall be consistent with the plans referred to in Article 19a or Article 29a of that Directive and shall in particular include actions with regard to the business model and strategy of the undertaking that are consistent across both plans. Where relevant, the methodologies and assumptions sustaining the targets, the commitments and strategic decisions disclosed by undertakings to the public shall be consistent with the methodologies and assumptions included in the plans referred to in the first subparagraph of this paragraph.

The targets, processes and actions to address the sustainability risks included in the plans referred to in the first subparagraph of this paragraph shall be proportionate to the nature, scale, and complexity of the sustainability risks of the business model of the insurance and reinsurance undertakings, in accordance with Article 29(3).

2c. In order to ensure consistent application of this Article, EIOPA shall develop draft regulatory technical standards to further specify:

(a) the minimum standards and reference methodologies for the identification, measurement, management and monitoring of sustainability risks;

(b) the elements to be covered in the plans to be prepared in accordance with paragraphs 2b and 2e of this Article, which shall include specific timelines and intermediate quantifiable targets and milestones, in order to monitor and address the financial risks arising from sustainability factors, as well as the interlinkages with the requirements laid down in Articles 45 and 45a;

(c) supervisory approaches in relation to the plans, quantifiable targets and processes referred to in paragraphs 2b and 2e;

(d) the elements of the plans referred to in paragraphs 2b and 2e of this Article to be disclosed, including the relevant quantifiable targets, in accordance with Article 51.

EIOPA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

2d. The undertaking shall disclose on an annual basis the quantifiable targets included in the plans referred to in paragraphs 2b and 2e.

2e. Where a participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union is required to draw up a plan in accordance with paragraph 2b of this Article at the level of the group, Member States shall ensure that insurance and reinsurance subsidiaries which are covered by that plan and in the scope of group supervision in accordance with Article 213(2), points (a) and (b), are exempted from drawing up a plan at individual level in accordance with paragraph 2b of this Article.

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* Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law') (OJ L 243, 9.7.2021, p. 1).';

(23) Article 45 is amended as follows:

(a) in paragraph 1, second subparagraph, the following points are added:

‘(d) consideration and analysis of the macroeconomic situation, and possible macroeconomic and financial markets’ developments;

(e) upon a reasoned request of the supervisory authority, consideration and analysis of:

(i) the macroprudential concerns that may affect the specific risk profile, the approved risk tolerance limits, the business strategy, the underwriting activities or the investment decisions, and the overall solvency needs of the undertaking referred to in point (a);

(ii) the activities of the undertaking that may affect the macroeconomic and financial markets’ developments, and have the potential to turn into sources of systemic risk;

(f) the overall capacity of the undertaking to settle its financial obligations towards policy holders and other counterparties when those obligations fall due, even under stressed conditions.’;

(b) the following paragraphs are inserted:

‘1a. For the purposes of paragraph 1, points (d) and (e), macroeconomic and financial markets’ developments shall include at least the following:

(a) the level of interest rates and spreads;

(b) the level of financial market indices;

(c) inflation;

(d) interconnectedness with other financial market participants;

(e) climate change, pandemics, other mass-scale events and other catastrophes which may affect insurance and reinsurance undertakings.

For the purposes of paragraph 1, point (e)(i), macroprudential concerns shall include, at least, plausible unfavourable future scenarios and risks related to the credit cycle and economic downturn, herding behaviour in investments or excessive exposure concentrations at the sectoral level.

1b. Member States shall ensure that the analysis required under paragraph 1, point (d), of this Article is commensurate with the nature of risks as well as the scale and complexity of the activities of undertakings. Member States shall ensure that small and non-complex undertakings and undertakings which have obtained prior supervisory approval, pursuant to Article 29d, are not obliged to conduct the analysis referred to in paragraph 1, point (e), of this Article.';

(c) paragraph 2a is replaced by the following:

'2a. Where the insurance or reinsurance undertaking applies the matching adjustment referred to in Article 77b, the volatility adjustment referred to in Article 77d or the transitional measures referred to in Article 77a(2), Articles 308c and 308d, or, where relevant, Article 111(1), second subparagraph, and Article 111(2a), it shall perform the assessment of compliance with the capital requirements referred to in paragraph 1, point (b), of this Article with and without taking into account those adjustments and transitional measures.

By way of derogation from the first subparagraph of this paragraph, the assessment requirement for the phasing-in mechanism referred to in Article 77a shall not apply to a currency for which any of the following applies:

(a) the share of future cash flows associated with insurance or reinsurance obligations in that currency relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 5 %;

(b) with respect to future cash flows associated with insurance or reinsurance obligations in that currency, the share of future cash-flows pertaining to maturities where the relevant risk-free interest rate term structure is extrapolated relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 10 %.

2b. Where the insurance or reinsurance undertaking applies the volatility adjustment referred to in Article 77d, the assessment referred to in paragraph 1 of this Article shall, in addition, include the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the volatility adjustment.';

(d) paragraph 5 is replaced by the following:

‘5. Insurance and reinsurance undertakings shall perform the assessment referred to in paragraph 1 annually, and without any delay following any significant change in their risk profile.

By way of derogation from the first subparagraph of this paragraph, insurance and reinsurance undertakings may perform the assessment referred to in paragraph 1 at least every two years and without any delay following any significant change in their risk profile, unless the supervisory authority concludes on the basis of the specific circumstances of the undertaking that a more frequent assessment is needed, where either of the following conditions is met:

(a) the undertaking is classified as a small and non-complex undertaking;

(b) the undertaking is a captive insurance undertaking or a captive reinsurance undertaking that complies with all of the following criteria:

(i) the insured persons and beneficiaries are legal entities of the group of which the captive insurance undertaking or captive reinsurance undertaking is part or natural persons eligible to be covered under that group’s insurance policies and the business covering natural persons eligible to be covered under the group insurance policies remains below 5 % of technical provisions;

(ii) the insurance obligations and the insurance contracts underlying the reinsurance obligations of the captive insurance undertaking or captive reinsurance undertaking do not consist of any compulsory third-party liability insurance.

The exemption from the annual assessment shall not prevent the undertaking from identifying, measuring, managing, monitoring, and reporting risks on a continuous basis.';

(e) the following paragraphs are added:

'8. For the purposes of paragraph 1, points (d) and (e), where authorities other than the supervisory authorities are entrusted with a macroprudential mandate, Member States shall ensure that the supervisory authorities share the findings of their macroprudential assessments of the own-risk and solvency assessment by insurance and reinsurance undertakings, as referred to in this Article, with the relevant national bodies and authorities with a macroprudential mandate.

Member States shall ensure that supervisory authorities cooperate with any national bodies and authorities with a macroprudential mandate to analyse the results and, where applicable, to identify any macroprudential concerns on how the activity of the undertakings may affect macroeconomic and financial markets' developments.

Member States shall ensure that the supervisory authorities share any macroprudential concerns and input parameters relevant for the assessment with the undertaking concerned.

9. When deciding whether to request any of the analyses referred to in paragraph 1, point (e), of this Article to an insurance or reinsurance undertaking which is a subsidiary undertaking included in the scope of group supervision in accordance with Article 213(2), points (a) and (b), the supervisory authority shall consider whether any of those analyses is performed at group level by the participating insurance or reinsurance undertaking, the insurance holding company or mixed financial holding company which has its head office in the Union, and covers the specificities of that subsidiary undertaking.

National supervisory authorities shall notify on a yearly basis to both EIOPA and the European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council* the list of insurance and reinsurance undertakings and the list of groups for which they request the additional macroprudential measures.

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* Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (OJ L 331, 15.12.2010, p. 1).';

(24) the following article is inserted:

‘*Article 45a*

Climate change scenario analysis

1. For the purposes of the identification and assessment of risks referred to in Article 45(2), the undertaking concerned shall also assess whether it has any material exposure to climate change risks. The undertaking shall demonstrate the materiality of its exposure to climate change risks in the assessment referred to in Article 45(1).

2. Where the undertaking concerned has material exposure to climate change risks, the undertaking shall specify at least two long-term climate change scenarios, including the following:

   (a) a long-term climate change scenario where the global temperature increase remains below two degrees Celsius;

   (b) a long-term climate change scenario where the global temperature increase is significantly higher than two degrees Celsius.

3. At regular intervals, the assessment referred to in Article 45(1) shall contain an analysis of the impact on the business of the undertaking of the long-term climate change scenarios specified pursuant to paragraph 2 of this Article. Those intervals shall be proportionate to the nature, scale and complexity of the climate change risks inherent in the business of the undertaking, but shall be no longer than three years.

4. The long-term climate change scenarios referred to in the paragraph 2 shall be reviewed at least every three years, and updated where necessary. When reviewing the long-term climate change scenarios, insurance and reinsurance undertakings shall take into account the performance of tools and principles used in previous climate change scenarios, so as to enhance their effectiveness.

5. By way of derogation from paragraphs 2, 3 and 4, small and non-complex undertakings shall not be required to specify climate change scenarios or assess their impact on the business of the undertaking.';

(25) Article 51 is replaced by the following:

'*Article 51*
Report on solvency and financial condition: contents

1. Member States shall, taking into account the information required pursuant to Article 35(3) and the principles set out in paragraph 4 of that Article, require insurance and reinsurance undertakings to disclose publicly, on an annual basis, a report on their solvency and financial condition.

The solvency and financial condition report shall consist of two parts, clearly identified and disclosed jointly. The first part shall consist of information specifically targeted at policy holders and beneficiaries, and the second part shall consist of information targeted at market professionals.

1a. The part of the solvency and financial condition report consisting of information targeted at policy holders and beneficiaries shall contain the following information:

(a) a brief description of the business and the performance of the undertaking;

(b) a brief description of the capital management and the risk profile of the undertaking, including in relation to sustainability risks; and

(c) a statement of whether the undertaking discloses the plans referred to in Article 19a or Article 29a of Directive 2013/34/EU.

1b. The part of the solvency and financial condition report consisting of information targeted at market professionals shall contain the following information, either in full or by way of references to equivalent information, both in nature and scope, disclosed publicly under other legal or regulatory requirements:

(a) a description of the business and the performance of the undertaking;

(b) a description of the system of governance;

(c) a description, separately for assets, technical provisions and other liabilities, of the bases and methods used for their valuation;

(d) a description of the capital management and the risk profile, including at least the following:

(i) the structure and amount of own funds, and their quality;

(ii) the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;

(iii) for insurance and reinsurance undertakings relevant for the stability of the financial systems in the Union, information on risk sensitivity;

(iv) the option set out in Article 304 used for the calculation of the Solvency Capital Requirement;

(v) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;

(vi) the amount of any non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken;

(e) an indication of whether the undertaking has any material exposure to climate change risks following the materiality assessment referred to in Article 45a(1), and, where relevant, if it has put in place any actions;

(f) a statement of whether the undertaking discloses the plans referred to in Article 19a or Article 29a of Directive 2013/34/EU;

(g) the elements referred to in Article 44(2c), point (d).

1c. Where the matching adjustment referred to in Article 77b is applied, the description referred to in paragraph 1b, point (c), and points (d)(i) and (ii), of this Article shall also describe the matching adjustment and the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position.

The description referred to in paragraph 1b, point (c), and points (d)(i) and (ii), of this Article shall also contain a statement on whether the volatility adjustment referred to in Article 77d is used by the undertaking and, where the volatility adjustment is used, it shall disclose the following information:

(a) a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position;

(b) for each relevant currency or, as applicable, country, the volatility adjustment calculated in accordance with Article 77d and the corresponding best estimates for insurance or reinsurance obligations.

2. The description referred to in paragraph 1b, point (d)(i), shall include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

The disclosure of the Solvency Capital Requirement referred to in paragraph 1b, point (d)(ii), of this Article shall show separately the amount calculated in accordance with Chapter VI, Section 4, Subsections 2 and 3 and any capital add-on imposed in accordance with Article 37 or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with Article 110, together with concise information on its justification by the supervisory authority concerned.

The disclosure of the Solvency Capital Requirement shall be accompanied, where applicable, by an indication that its final amount is still subject to supervisory assessment.

3. Captive insurance undertakings shall not be required to disclose the part targeted at policy holders and beneficiaries and shall only be required to include in the part targeted at market professionals the quantitative data required by the implementing technical standards referred to in Article 56 provided that those undertakings meet the following conditions:

(a) the insured persons and beneficiaries are legal entities of the group of which the captive insurance undertaking is part or natural persons eligible to be covered under that group's insurance policies and the business covering natural persons eligible to be covered under the group insurance policies remains below 5 % of technical provisions;

(b) the insurance obligations of the captive insurance undertaking do not consist of any compulsory third-party liability insurance.

4. Captive reinsurance undertakings shall not be required to disclose the part targeted at policy holders and beneficiaries and they shall only be required to include in the part targeted at market professionals the quantitative data required by the implementing technical standards referred to in Article 56, provided that those undertakings meet the following conditions:

(a) the insured persons and beneficiaries are legal entities of the group of which the captive reinsurance undertaking is part or natural persons eligible to be covered under that group's insurance policies and the business covering natural persons eligible to be covered under the group insurance policies remains below 5 % of technical provisions;

(b) the insurance contracts underlying the reinsurance obligations of the captive reinsurance undertaking do not relate to any compulsory third-party liability insurance;

(c) loans in place with the parent or any group company, including groups cashpools do not exceed 20 % of total assets held by the captive reinsurance undertaking; and

(d) the maximum loss resulting from the gross technical provisions can be deterministically assessed without using stochastic methods.

5. By way of derogation from paragraph 1, reinsurance undertakings may choose not to disclose the part of the solvency and financial condition report targeted at policy holders and beneficiaries.

6. By way of derogation from paragraph 1b of this Article, small and non-complex undertakings may disclose only the quantitative data required by the implementing technical standards referred to in Article 56 in the part of the solvency and financial condition report consisting of information targeted at other market professionals, provided that they disclose a full report containing all the information required in this Article every three years.

7. Member States shall ensure that insurance and reinsurance undertakings publicly disclose and submit to the supervisory authority the information referred to in this Article on an annual or less frequent basis within 18 weeks of the end of the undertaking's financial year.

8. As part of the report referred to in paragraph 1 of this Article, insurance and reinsurance undertakings shall be required to disclose the impact of using, for the purpose of determining the technical provisions set out in Article 77, the risk-free interest rate term structure determined without the application of the transitional for the extrapolation as referred to Article 77e(1), point (aa), instead of the relevant risk-free interest rate term structure.

However, by way of derogation from the first subparagraph, the disclosure requirement shall not apply to a currency for which any of the following applies:

(a) the share of future cash flows associated with insurance or reinsurance obligations in that currency relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 5 %;

(b) with respect to future cash flows associated with insurance or reinsurance obligations in that currency, the share of future cash-flows pertaining to maturities where the relevant risk-free interest rate term structure is extrapolated relative to all future cash flows associated with insurance or reinsurance obligations does not exceed 10 %.';

(26) the following article is inserted:

'*Article 51a*
Solvency and financial condition report: audit requirements

1. For insurance and reinsurance undertakings other than small and non-complex undertakings and captive insurance undertakings and captive reinsurance undertakings, the balance sheet disclosed as part of the solvency and financial condition report in accordance with Article 51(1) or the balance sheet disclosed as part of the single solvency and financial condition report in accordance with Article 256(2), point (b), shall be subject to an audit.

2. By way of derogation from Article 29c, Member States may extend the requirement laid down in paragraph 1 of this Article to undertakings classified as small and non-complex undertakings, captive insurance undertakings and captive reinsurance undertakings.

3. Member States may extend the scope of the audit requirement referred to in paragraph 1 to other elements of the solvency and financial condition report.

4. The audit shall be carried out by a statutory auditor or an audit firm, in accordance with the auditing standards applicable pursuant to Article 26 of Directive 2006/43/EC. Statutory auditors and audit firms, when performing this task, shall comply with the duties of auditors set out in Article 72 of this Directive.

5. In Member States where on … [the date of entry into force of this amending Directive] registered actuaries are authorised pursuant to national law to audit technical provisions, reinsurance recoverables and related items, those registered actuaries may continue to carry out such audits provided they act in accordance with binding standards that ensure a high-quality audit and cover at least the area of audit practice, independence and internal quality controls when performing such audits, and in compliance with the duties referred to in Article 72.

6. A separate report, including a description of the nature, and the results, of the audit, prepared by the statutory auditor or the audit firm shall be submitted together with the solvency and financial condition report to the supervisory authority by the insurance and reinsurance undertakings.';

(27) Article 52 is amended as follows:

(a) in paragraph 1, the following points are added:

'(e) the total number of insurance and reinsurance undertakings, broken down by small and non-complex undertakings and others, using simplifications or proportionality measures and the number of undertakings using specific proportionality measures;

(f) the number of groups, broken down by small and non-complex groups and others, using simplifications or proportionality measures and the number of groups using specific proportionality measures.';

(b) in paragraph 2, the following point is added:

'(f) for each Member State, the number of insurance and reinsurance undertakings and the number of groups, broken down by small and non-complex undertakings or groups, respectively, and others using simplifications or proportionality measures and the number of undertakings or groups using specific simplifications and other proportionality measures.';

(c) paragraph 3 is replaced by the following:

‘3. EIOPA shall provide the information referred to in paragraph 2 to the European Parliament, to the Council and to the Commission, together with a report outlining the degree of supervisory convergence in the use of capital add-ons and in the use of proportionality measures between supervisory authorities in the different Member States.

4. EIOPA shall assess the effects of applying the criteria set out in Article 29a(1) for identifying small and non-complex undertakings, and the criteria set out in Article 213a(1) for identifying small and non-complex groups, at least with respect to the objectives of policy holders’ protection, financial stability and a level playing field. EIOPA shall submit a report on its findings to the Commission by … [three years from the date of application of this amending Directive]. Where appropriate, the report shall consider the possibility to amend those criteria.’;

(28) in Article 53, paragraph 4 is replaced by the following:

‘4. Paragraphs 1 and 2 of this Article shall not apply to the information referred to in Article 51(1a), point (b), and Article 51(1b), points (d) and (e).’;

(29) in Article 56 the following paragraph is added:

‘EIOPA shall develop IT solutions for the procedures, formats and templates referred to in the second paragraph, including for instructions.’;

(30) in Article 58(3), points (a) and (b) are replaced by the following:

‘(a) situated or regulated outside the Union; or

(b) a natural or legal person not subject to supervision under this Directive, Directive 2009/65/EC of the European Parliament and of the Council*, Directive 2013/36/EU, or Directive 2014/65/EU.

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* Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).’;

(31) in Article 60(1), point (a), the words ‘point 2 of Article 1a of Directive 85/611/EEC’ are replaced by the words ‘Article 2(1), point (b), of Directive 2009/65/EC’;

(32) in Article 62, first paragraph, the first sentence is replaced by the following:

‘Where the influence exercised by the persons referred to in Article 57 is likely to operate against the sound and prudent management of an insurance or reinsurance undertaking, Member States shall require the supervisory authority of the home Member State of that undertaking in which a qualifying holding is held, sought or increased to take appropriate measures to put an end to that situation.’;

(33) in Article 63, second paragraph, the words ‘Directive 2004/39/EC’ are replaced by the words ‘Directive 2014/65/EU’;

(34) in Article 64, the following paragraph is added:

‘The first, second and third paragraphs of this Article shall not prevent the supervisory authorities from publishing the outcome of stress tests carried out in accordance with Article 34(4) of this Directive or Article 32 of Regulation (EU) No 1094/2010 or from transmitting the outcome of stress tests to EIOPA for the purposes of the publication by EIOPA of the results of Union-wide stress tests.’;

(35) in Article 68(1), the following subparagraph is inserted after the first subparagraph:

‘Article 64, first paragraph, and Article 67 shall not prevent the exchange of information between supervisory authorities and tax authorities in the same Member State to the extent that such exchange is allowed by national law. Where that information originates in another Member State, it shall only be exchanged with the express agreement of the authority from which the information originates.’;

(36) in Article 70, paragraph 1 is amended as follows:

(a) in point (a), the words ‘European Central Bank (ECB)’ are replaced by the word ‘ECB’;

(b) in point (c), the words ‘European Systemic Risk Board (ESRB), established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council ([1])’ are replaced by the word ‘ESRB’;

(37) in Article 72(1), the introductory wording is replaced by the following:

‘1. Member States shall provide at least that persons authorised within the meaning of Directive 2006/43/EC, who perform in an insurance or reinsurance undertaking the statutory audit referred to in Article 34 or 35 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC or any other statutory task, shall have a duty to report promptly to the supervisory authorities any fact or decision concerning that undertaking of which they have become aware while carrying out that task and which is liable to bring about any of the following:’;

(38) Article 77 is amended as follows:

(a) in paragraph 5 the first subparagraph is replaced by the following:

‘Where insurance and reinsurance undertakings value the best estimate and the risk margin separately, the risk margin shall be calculated by determining the cost of providing an amount of eligible own funds equal to the time-adjusted Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over the lifetime thereof. The adjustment of the Solvency Capital Requirement consists of an exponential and time-dependent element.’;

(b) the following paragraphs are added:

‘6. The Cost-of-Capital rate referred to in paragraph 5 shall be assumed to be equal to 4,75 % as of … [the date of application of this amending Directive]. The periodical review referred to in paragraph 5, second subparagraph, shall be undertaken by the Commission not earlier than … [five years from the date of application of this amending Directive].

7. Where insurance and reinsurance contracts include financial options and guarantees, the methods used to calculate the best estimate shall appropriately reflect that the present value of cash flows arising from those contracts may depend both on the expected outcome of future events and developments and on potential deviations of the actual outcome from the expected outcome in certain scenarios.

8. Notwithstanding paragraph 7, insurance and reinsurance undertakings that are classified as small and non-complex undertakings and undertakings that have obtained prior supervisory approval may use a prudent deterministic valuation of the best estimate for life obligations with options and guarantees that are not deemed material.';

(39) Article 77a is replaced by the following:

'*Article 77a*

Extrapolation of the relevant risk-free interest rate term structure

1. The determination of the relevant risk-free interest rate term structure referred to in Article 77(2) shall make use of, and be consistent with, information derived from relevant financial instruments. That determination shall take into account relevant financial instruments of those maturities where the markets for those financial instruments are deep, liquid and transparent. For maturities beyond the first smoothing point, the relevant risk-free interest rate shall be extrapolated in accordance with the third subparagraph. The first smoothing point for a currency shall be the longest maturity for which the following conditions are met:

   (a) the markets for financial instruments of that maturity are deep, liquid and transparent;

(b) the percentage of outstanding bonds of that or a longer maturity among all outstanding bonds denominated in that currency is sufficiently high.

The extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly from the applicable forward rate at the first smoothing point to an ultimate forward rate (UFR).

The extrapolated forward rate shall be equal to a weighted average of a liquid forward rate and the UFR. The liquid forward rate shall be based on one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument can be observed in a deep, liquid and transparent market. For maturities of at least 40 years past the first smoothing point the weight of the UFR shall be at least 77,5 %.

The extrapolated part of the relevant risk-free interest rates shall take into account information from financial instruments other than bonds where the markets for those financial instruments are deep, liquid and transparent.

2. Insurance and reinsurance undertakings may, subject to prior approval by their supervisory authority, apply the phasing-in mechanism set out in the second subparagraph.

The phasing-in mechanism referred to in the first subparagraph shall consist of the following:

(a) on … [date of application of this amending Directive], the parameters determining the speed of the convergence of the forward rates towards the ultimate forward rate of the extrapolation shall be set such that the risk-free interest rate term structure is sufficiently similar to the risk-free interest rate term structure on that date determined in line with the rules for the extrapolation applicable on … [one day before date of application of this amending Directive];

(b) the parameters determining the speed of the convergence of the forward rates towards the ultimate forward rate of the extrapolation shall be decreased linearly at the beginning of each calendar year, such that the final parameters of the extrapolation are applied as of 1 January 2032.

The phasing-in mechanism referred to in the first subparagraph of this paragraph shall not affect the determination of the depth, liquidity and transparency of financial markets and the first smoothing point referred to in paragraph 1.

Insurance and reinsurance undertakings applying the first and second subparagraphs of this paragraph shall within the part of their report on their solvency financial condition consisting of information targeted at market professionals referred to in Article 51(1b) publicly disclose:

(a) the fact that they apply the phasing-in mechanism for extrapolation; and

(b) the quantification of the impact of not applying the phasing-in mechanism on their financial position.

3. Notwithstanding paragraph 1, on … [the date of entry into force of this amending Directive], the first smoothing point for the euro, shall be at a maturity of 20 years.';

(40) in Article 77b(1), the following subparagraph is added:

'For the purposes of the first subparagraph, point (i), a group life contract shall be considered to be a single contract.';

(41) Article 77d is amended as follows:

(a) paragraphs 1 to 4 are replaced by the following:

‘1. Member States shall ensure that an insurance or reinsurance undertaking may apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2) subject to prior approval by the supervisory authorities where at least the following conditions are met:

(a) the volatility adjustment for a given currency is applied in the calculation of the best estimate of all insurance and reinsurance obligations of the undertaking denominated in that currency where the relevant risk-free interest rate term structure used to calculate the best estimate for those obligations does not include a matching adjustment as referred to in Article 77b;

(b) the undertaking demonstrates to the satisfaction of the supervisory authority that it has adequate processes in place to calculate the volatility adjustment pursuant to paragraphs 3 and 4 of this Article.

1a. Notwithstanding paragraph 1 of this Article, insurance and reinsurance undertakings that applied a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2) before … [one year before the date of application of this amending Directive] may, without prior approval by the supervisory authority, continue applying a volatility adjustment provided that they comply with the conditions for prior approval under paragraph 1 of this Article as of … [the date of application of this amending Directive].

1b. Member States shall ensure that supervisory authorities have the power to require an insurance or reinsurance undertaking to stop applying a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2) where the undertaking no longer meets the conditions for prior approval laid down by national law in accordance with paragraph 1 of this Article. When an undertaking restores compliance with those conditions, it may request prior approval from the supervisory authorities to apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate pursuant to paragraph 1 of this Article.

1c. Insurance and reinsurance undertakings may, subject to prior approval by the supervisory authority, apply an undertaking-specific adjustment to the risk-corrected spread of the currency referred to in paragraph 3, where:

(a) the risk-corrected spread exceeded the risk-corrected spread calculated on the basis of the undertaking's portfolio of investments in debt instruments for the four quarterly reporting periods prior to the reporting date; and

(b) the information that is inherent to the relevant assets of the undertaking and that is reported by the undertaking in line with Article 35(1) to (4) is of sufficient quality to allow a robust and reliable calculation of that adjustment.

The adjustment shall correspond to the lower of 105 % and the ratio of the risk-corrected spread calculated based on the undertaking's portfolio of investments in debt instruments and the risk-corrected spread calculated on the basis of the reference portfolio for the relevant currency. The risk-corrected spread based on the undertaking's portfolio of investments in debt instruments shall be calculated in the same manner as the risk-corrected spread based on the reference portfolio for the relevant currency, but using undertaking-specific data on the weights and the average duration of the relevant sub-classes within the undertaking's portfolio of investments in debt instruments for the relevant currency.

Where the adjustment is applied, the volatility adjustment shall not be increased by the macro volatility adjustment referred to in paragraph 4.

Insurance and reinsurance undertakings shall immediately stop applying the adjustment when it increases the risk-corrected spread of the currency referred to in paragraph 3 for two consecutive quarterly reporting periods.

2. For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure shall be based on the spread between the interest rate that could be earned from a reference portfolio of investments in debt instruments for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency.

The reference portfolio of investments in debt instruments for a currency shall be representative for the assets which are denominated in that currency and in which insurance and reinsurance undertakings invest to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

3. The amount of the volatility adjustment to risk-free interest rates for a currency shall be calculated as follows:

$$VA_{cu} = 85\ \% \cdot CSSR_{cu} \cdot RCS_{cu}$$

where:

(a) VA_{cu} is the volatility adjustment for a currency ***cu***;

(b) $CSSR_{cu}$ is the credit spread sensitivity ratio of an insurance or reinsurance undertaking for the currency ***cu***;

(c) RCS_{cu} is the risk-corrected spread for the currency ***cu***.

VA_{cu} shall apply to the relevant risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with Article 77a. Where the extrapolated part of the relevant risk-free interest rates takes into account information from financial instruments other than bonds pursuant to Article 77a(1), VA_{cu} shall also apply to risk-free interest rates derived from those financial instruments. The extrapolation of the relevant risk-free interest rate term structure shall be based on those adjusted risk-free interest rates.

CSSR$_{cu}$ shall not be negative and not be higher than one. It shall take values lower than one where the sensitivity of the assets of an insurance or reinsurance undertaking in a currency to changes in credit spreads is lower than the sensitivity of the technical provisions of that undertaking in that currency to changes in interest rates.

RCS$_{cu}$ shall be calculated as the difference between the spread referred to in paragraph 2 and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

The portion of the spread that is attributable to a realistic assessment of expected losses, unexpected credit risk or any other risk shall be calculated as a percentage of spreads. That percentage shall decrease as spreads increase and shall at least differentiate the following three cases:

(a) where spreads do not exceed their long-term average;

(b) where spreads exceed their long-term average but do not exceed twice their long-term average;

(c) where spreads exceed twice their long-term average.

The risk correction shall never exceed an appropriate percentage of the long-term average spreads.

By way of derogation from the first subparagraph, insurance and reinsurance undertakings having their head office in a Member State with a currency pegged to the euro which complies with the detailed criteria for the adjustments for currencies pegged to the euro for the purpose of facilitating the calculation of the currency risk sub-module, as established pursuant to Article 111(1), point (p), when calculating the volatility adjustment to risk-free interest rates for the pegged currency and the volatility adjustment to risk-free interest rates for the euro, shall be allowed to calculate a single $\boldsymbol{CSSR_{cu}}$ for both their local currency and the euro, by jointly taking into account the assets and liabilities denominated in euro and their local currency.

4. Without prejudice to paragraph 1c, the volatility adjustment for the euro shall be increased by a macro volatility adjustment. The macro volatility adjustment shall be calculated as follows:

$$\boldsymbol{VA_{Euro,macro} = 85\ \% \cdot CSSR_{Euro} \cdot max(RCS_{co} - 1.3 \cdot RCS_{Euro}; 0) \cdot \omega_{co}}$$

where:

(a) $\boldsymbol{VA_{Euro,macro}}$ is the macro volatility adjustment for a country ***co***;

(b) $\boldsymbol{CSSR_{Euro}}$ is the credit spread sensitivity ratio of an insurance or reinsurance undertaking for the euro;

(c) $\boldsymbol{RCS_{co}}$ is the risk-corrected spread for the country ***co***;

(d) RCS_{Euro} is the risk-corrected spread for the euro;

(e) ω_{co} is the country adjustment factor for country ***co***.

$CSSR_{Euro}$ shall be calculated as the credit spread sensitivity ratio of an insurance or reinsurance undertaking for the euro in accordance with paragraph 3.

RCS_{co} shall be calculated in the same way as the risk-corrected spread for the euro under paragraph 3, but based on a reference portfolio that is representative for the assets which insurance and reinsurance undertakings are investing in to cover the best estimate for insurance and reinsurance obligations of products sold in the insurance market of that country and denominated in euro.

RCS_{Euro} is calculated as the risk-corrected spread for the euro in accordance with paragraph 3.

The country adjustment factor referred to in the first subparagraph, point (e), shall be calculated as follows:

$$\omega_{co} = max(min((RCS_{co}^{*} - 0.6\ \%)/0.3\ \%);1);0)$$

Where RCS_{co}^{*} is the risk-corrected spread for the country ***co*** as referred to in the first subparagraph, point (c), multiplied by the percentage of investments in debt instruments relative to total assets held by insurance and reinsurance undertakings authorised in country ***co***.

4a. To calculate the spread underlying the volatility adjustment, for each currency and each country, the spread referred to in paragraphs 2 and 4 shall be the value weighted sum of the average currency spread on government bonds and the average currency spread on bonds other than government bonds, loans, and securitisations. For the purposes of that calculation, the respective weights shall be the ratio of the value of government bonds included in the reference portfolio of assets for that currency or country and the value of all assets included in that reference portfolio, and the ratio of the value of bonds other than government bonds, loans and securitisations included in the reference portfolio of assets for that currency or country and the value of all assets included in that reference portfolio.';

(42) Article 77e is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following points are inserted:

'(aa) for the purpose of the disclosures pursuant to Article 51(8), a relevant risk-free interest rate term structure without any matching adjustment or volatility adjustment and determined without the application of the phasing-in mechanism for the extrapolation as set out in Article 77a(2);

(ab) the set of scenarios to be used for the prudent deterministic valuation of the best estimate for life obligations pursuant to Article 77(8);';

(ii) point (c) is replaced by the following:

'(c) for each relevant currency and national insurance market, a risk-corrected spread as referred to in Article 77d(3) and (4) respectively;';

(iii) the following point is added:

'(d) for each relevant Member State, the percentage of investments in debt instruments relative to total assets held by insurance and reinsurance undertakings authorised in the country as referred to in Article 77d(4).';

(b) the following paragraph is inserted:

'1a. For each relevant currency and each maturity where the markets for relevant financial instruments or bonds of that maturity are deep, liquid and transparent, EIOPA shall lay down and publish, at least on an annual basis, the percentage of bonds with that or a longer maturity among all bonds denominated in that currency as referred to in Article 77a(1).';

(c) in paragraph 2, the first subparagraph is replaced by the following:

‘In order to ensure uniform conditions for the calculation of technical provisions and basic own funds, the Commission may adopt implementing acts which set out, for each relevant currency, the technical information referred to in paragraph 1 of this Article and the first smoothing point pursuant to Article 77a(1). Those implementing acts may make use of the information published by EIOPA pursuant to paragraph 1 of this Article.’;

(d) in paragraph 3, the second subparagraph is replaced by the following:

‘With respect to currencies where the risk-corrected spread referred to in paragraph 1, point (c), is not set out in the implementing acts referred to in paragraph 2, no volatility adjustment shall be applied to the relevant risk-free interest rate term structure to calculate the best estimate. With respect to Member States whose currency is the euro and where the risk-corrected spread referred to in paragraph 1, point (c), and the percentage referred to in paragraph 1, point (d), are not set out in the implementing acts referred to in paragraph 2, no macro volatility adjustment shall be added to the volatility adjustment.’;

(e) the following paragraph is added:

‘4. For the purposes of paragraph 2 of this Article, a first smoothing point for a currency set out in an implementing act shall not be modified, unless an assessment of the percentages of bonds with maturity larger than or equal to a given maturity among all bonds denominated in that currency indicates a different first smoothing point pursuant to Article 77a(1) and the percentage set out in delegated acts referred to in Article 86(1), point (b)(iii), for at least two consecutive years.;’

(43) Article 86 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following point is inserted:

‘(aa) the prudent deterministic valuation referred to in Article 77(8) as well as the conditions under which that valuation may be used to value the best estimate of technical provisions with options and guarantees’;

(ii) point (b) is replaced by the following:

‘(b) the methodologies, principles and techniques for the determination of the relevant risk-free interest rate term structure to be used to calculate the best estimate referred to in Article 77(2), in particular:

(i) the formula for the extrapolation referred to in Article 77a(1), including the parameters that determine the convergence speed of the extrapolation;

(ii) the method for the determination of the depth, liquidity and transparency of markets for financial instruments referred to in Article 77a(1);

(iii) the currency related percentages below which the share of bonds with maturities longer than or equal to a given maturity among all bonds shall be regarded as low for the purposes of Article 77a(1);

(iv) the phasing-in mechanism referred to in Article 77a(2);’;

(iii) point (i) is replaced by the following:

‘(i) methods and assumptions for the calculation of the volatility adjustment referred to in Article 77d, including the following:

(i) a formula for the calculation of the credit spread sensitivity ratio referred to in Article 77d(3) and (4);

(ii) for each relevant asset class, the percentage of the spread that represents the portion of the spread that is attributable to a realistic assessment of expected losses, unexpected credit risk or any other risk, to be calculated as referred to in Article 77d(3); such percentage shall decrease as spreads increase, taking into account at least the following three cases:

(1) where spreads do not exceed their long-term average;

(2) where spreads exceed their long-term average but do not exceed twice their long-term average;

(3) where spreads exceed twice their long-term average.

The risk correction shall never exceed an appropriate percentage of the long-term average spreads.’;

(b) the following paragraphs are inserted:

‘1a. The Commission may supplement this Directive by adopting delegated acts in accordance with Article 301a laying down criteria for assets to be eligible to be included in the portfolio of assets referred to in Article 77b(1), point (a).

1b. Where the periodical review of the Cost-of-Capital rate referred to in Article 77(5) concludes that the assumed value is no longer appropriate, the Commission may adopt a delegated act amending the assumed value of the Cost-of-Capital rate set out in Article 77(6). The Commission may only set the assumed value of the Cost-of-Capital rate at a level that is not lower than 4 % and not higher than 5 %.’;

(c) the following paragraph is inserted:

‘2a. In order to ensure uniform conditions of application of Article 77(8), EIOPA shall develop draft implementing technical standards specifying the methodology to determine the set of scenarios to be used for the prudent deterministic valuation of the best estimate for life obligations referred to in that paragraph. EIOPA shall submit those draft implementing technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1094/2010.’;

(44) in Article 92, paragraphs 1a and 2 are replaced by the following:

‘1a. The Commission shall supplement this Directive by adopting delegated acts in accordance with Article 301a specifying the treatment of participations, within the meaning of Article 212(2), third subparagraph, in financial and credit institutions with respect to the determination of own funds, including approaches to deductions from the basic own funds of an insurance or reinsurance undertaking of material participations in credit and financial institutions.

Notwithstanding the deductions of participations from the own funds eligible to cover the Solvency Capital Requirement as specified in the delegated act adopted pursuant to the first subparagraph of this paragraph, for the purpose of determining the basic own funds as referred to in Article 88, supervisory authorities may permit an insurance or reinsurance undertaking not to deduct the value of its participation in a credit or financial institution, provided that all of the following conditions are met:

(a) the insurance or reinsurance undertaking is in one of the following circumstances:

(i) the credit or financial institution and the insurance or reinsurance undertaking belong to the same group, as defined in Article 212, to which group supervision applies in accordance with Article 213(2), points (a), (b) and (c), and the related credit or financial institution is not subject to the deduction referred to in Article 228(5); or

(ii) supervisory authorities require or permit insurance or reinsurance undertakings to apply technical calculation methods in accordance with Part II of Annex I to Directive 2002/87/EC, and the credit or financial institution is included in the same supplementary supervision under that Directive as the insurance or reinsurance undertaking;

(b) supervisory authorities are satisfied as to the level of integrated management, risk management and internal control regarding the undertakings in the scope of group supervision referred to in point (a)(i) or in the scope of supplementary supervision referred to in point (a)(ii);

(c) the participation in the credit or financial institution is an equity investment of strategic nature as specified in the delegated act adopted pursuant to Article 111(1), point (m).

2. Participations in financial and credit institutions as referred to in paragraph 1a shall comprise the following:

(a) participations which insurance and reinsurance undertakings hold in:

(i) credit institutions and financial institutions within the meaning of Article 4(1), points (1) and (26), respectively, of Regulation (EU) No 575/2013,

(ii) investment firms within the meaning of Article 4(1), point (1), of Directive 2014/65/EU;

(b) Additional Tier 1 instruments referred to in Article 52 of Regulation (EU) No 575/2013 and Tier 2 instruments referred to in Article 63 of that Regulation, as well as Additional Tier 1 and Tier 2 instruments within the meaning of Article 9 of Regulation (EU) 2019/2033 of the European Parliament and of the Council*, which insurance and reinsurance undertakings hold in respect of the entities referred to in point (a) of this paragraph in which they hold a participation.

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* Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1).';

(45) in Article 95, the second subparagraph is replaced by the following:

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

(46) in Article 96, the first paragraph is replaced by the following:

'Without prejudice to Article 95 and Article 97(1), 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 2013/36/EU 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.';

(47) in Article 105, the following paragraph is added:

'7. The Commission is empowered to adopt, in accordance with Article 301a, delegated acts supplementing this Directive, in order to reflect the risk posed by crypto-assets in the market risk module referred to in paragraph 5 of this Article and in the counterparty default risk module referred to in paragraph 6 of this Article.';

(48) the following article is inserted:

‘*Article 105a*

Long-term equity investments

1. By way of derogation from Article 101(3), and as part of the equity risk sub-module referred to in Article 105(5), second subparagraph, point (b), Member States shall allow insurance and reinsurance undertakings which comply with the conditions laid down in the second subparagraph of this paragraph, to apply to a specific subset of equity investments held with a long-term perspective a capital requirement in accordance with paragraph 4 of this Article.

For the purposes of the first subparagraph, a sub-set of equity investments may be treated as long-term equity investments if the insurance or reinsurance undertaking demonstrates, to the satisfaction of the supervisory authority, that all of the following conditions are met:

(a) the sub-set of equity investments is clearly identified and managed separately from the other activities of the undertaking;

(b) a policy for long-term investment management is set up for each long-term equity portfolio and reflects the undertaking's commitment to hold the overall exposure to equity in the sub-set of equity investment for a period that exceeds five years on average. The administrative, management or supervisory body of the undertaking shall explicitly endorse the investment management policies and those policies are frequently reviewed against the actual management of the portfolios, and reported in the own-risk and solvency assessment of the undertaking referred to in Article 45;

(c) the sub-set of equity investments consists only of equities that are listed in countries that are member of the EEA or of the Organisation for Economic Co-operation and Development (OECD) or of unlisted equities of companies that have their head offices in countries that are member of the EEA or of the OECD;

(d) on an ongoing basis and under stressed conditions, the insurance or reinsurance undertaking is able to avoid forced selling of equity investments within the sub-set for five years;

(e) the risk management, asset-liability management and investment policies of the insurance or reinsurance undertaking reflect the undertaking's intention to hold the sub-set of equity investments for a period that is compatible with the requirement laid down in point (b) and the undertaking's ability to meet the requirement laid down in point (d);

(f) the sub-set of equity investments is appropriately diversified in such a way as to avoid excessive reliance on any particular issuer or group of undertakings and excessive accumulation of risk in the portfolio of long-term equity investments as a whole with the same risk profile;

(g) the sub-set of equity investments does not include participations.

2. Where equities are held within European long-term investment funds or within certain types of collective investment undertaking, including alternative investment funds, which are identified in the delegated acts adopted pursuant to this Directive as having a lower risk profile, the conditions laid down in paragraph 1 may be assessed at the level of the funds and not of the underlying assets held within those funds.

3. Insurance or reinsurance undertakings that treat a sub-set of equity investments as long-term equity investments in accordance with paragraph 1 shall not revert back to an approach that does not include long-term equity investments.

Where an insurance or reinsurance undertaking that treats a sub-set of equity investments as long-term equity investments no longer complies with the conditions laid down in paragraph 1, it shall immediately inform the supervisory authority and take the necessary measures to restore compliance.

Within one month of the date of the first observation of non-compliance with the conditions laid down in paragraph 1, the insurance or reinsurance undertaking shall provide the supervisory authority with the necessary information and the actions to be taken by the undertaking to achieve, within six months of the date of the first observation of non-compliance, the re-establishment of compliance with those conditions.

Where the undertaking is not able to restore compliance within six months of the date of the first observation of non-compliance, it shall cease to classify any equity investment as a long-term equity investment in accordance with this Article for a period of two and a half years, or as long as compliance with the conditions laid down in paragraph 1 is not restored, whichever period is longer.

4. The capital requirement for long-term equity investments shall be equal to the loss in the basic own funds that would result from an instantaneous decrease equal to 22 % in the value of investments that are treated as long-term equity.

5. The Commission shall adopt delegated acts in accordance with Article 301a to supplement this Directive by further specifying:

(a) the conditions set out in paragraph 1, second subparagraph, of this Article;

(b) the types of collective investment undertaking referred to in paragraph 2 of this Article;

(c) the information to be included in the solvency and financial condition report referred to in Article 51(1) and in the regular supervisory report referred to in Article 35(5a).';

(49) in Article 106, paragraph 3 is replaced by the following:

'3. The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices shall not result in an equity capital charge being applied that is more than 13 percentage points lower or higher than the standard equity capital charge.';

(50) Article 109 is replaced by the following:

‘*Article 109*

Simplifications in the standard formula

1. Insurance and reinsurance undertakings may use a simplified calculation for a specific risk module or risk sub-module where all the following conditions are met:

   (a) the nature, scale and complexity of the risks they face justifies the use of a simplified calculation;

   (b) it would be disproportionate to require the insurance or reinsurance undertaking to apply the standardised calculation;

   (c) the error compared to the standardised calculation does not lead to a material misstatement of the Solvency Capital Requirement, except in cases where the simplified calculation leads to a Solvency Capital Requirement which exceeds the Solvency Capital Requirement that results from the standardised calculation.

Notwithstanding the first subparagraph, small and non-complex undertakings may use a simplified calculation for a specific risk module or risk sub-module where they can demonstrate to the satisfaction of the supervisory authority and at least every five years that the following conditions are met:

(a) each individual risk module or risk sub-module for which a simplified calculation is intended to be used, represents, without applying the simplification, less than 2 % of the Basic Solvency Capital Requirement;

(b) the sum of all risk modules or risk sub-modules for which a simplified calculation is intended to be used, represents, without applying the simplification, less than 10 % of the Basic Solvency Capital Requirement.

For the purposes of this paragraph, simplified calculations shall be calibrated in accordance with Article 101(3).

2. Without prejudice to paragraph 1 of this Article and to Article 102(1), where an insurance or reinsurance undertaking calculates the Solvency Capital Requirement and a risk module or risk sub-module does not represent a share of more than 5 % of the Basic Solvency Capital Requirement referred to in Article 103, point (a), the undertaking may use a simplified calculation for that risk module or risk sub-module during a period of no more than three years following that calculation of the Solvency Capital Requirement.

3. For the purposes of paragraph 2, the sum of the shares, relative to the Basic Solvency Capital Requirement, of each risk module or risk sub-module where the simplified calculations pursuant to that paragraph are applied shall not exceed 10 %.

The share of a risk module or risk sub-module relative to the Basic Solvency Capital Requirement referred to in the first subparagraph of this paragraph shall be that share as calculated the last time when the risk module or risk sub-module was calculated without a simplified calculation pursuant to paragraph 2.';

(51) Article 111 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (l) and (m) are replaced by the following:

'(l) the simplified calculations provided for specific risk modules and risk sub-modules referred to in Article 109(1) and for immaterial risk modules and risk sub-modules referred to in Article 109(2), as well as the criteria that insurance and reinsurance undertakings, including captive insurance undertakings and captive reinsurance undertakings, shall be required to fulfil in order to be entitled to use simplifications, as set out in Article 109(1);

(m) the approach to be used with respect to qualifying holdings within the meaning of Article 13, point (21), in the calculation of the Solvency Capital Requirement, in particular the calculation of the equity risk sub-module referred to in Article 105(5), taking into account the likely reduction in the volatility of the value of those qualifying holdings arising from the strategic nature of those investments and the influence exercised by the insurance or reinsurance undertaking on those investees;';

(ii) the following subparagraphs are added:

'For the purposes of the first subparagraph, point (c), of this paragraph, the methods, assumptions and standard parameters for the interest rate risk sub-module referred to in Article 105(5), second subparagraph, point (a), shall reflect the risk that interest rates may further decrease even where they are low or negative and the calculation of the interest rate risk sub-module shall be consistent with the extrapolation of interest rates in accordance with Article 77a. Notwithstanding the first sentence of this subparagraph, the calculation of the interest rate risk sub-module shall not be required to take into account the risk of interest rates falling to levels below a negative floor where a negative floor is determined such that the likelihood of interest rates across relevant currencies and across maturities not being at all times above the negative floor is sufficiently small.

For the purposes of the first subparagraph, point (h), of this paragraph, the methods and adjustments to be used to reflect the reduced scope for risk diversification of insurance and reinsurance undertakings relating to ring-fenced funds shall not apply to the portfolios of assets that are not ring-fenced funds and that are assigned to cover a corresponding best estimate of insurance or reinsurance obligations as referred to in Article 77b(1), point (a).';

(b) the following paragraph is inserted:

'2a. Where the Commission, pursuant to paragraph 1, first subparagraph, point (c), of this Article adopts delegated acts to supplement this Directive by specifying the methods, assumptions and standard parameters to be used for calculating the interest rate risk sub-module referred to in Article 105(5), second subparagraph, point (a), with the objective to improve the sensitivity of capital requirements in line with developments in interest rates, amendments to the interest rate risk sub-module may be phased in over a transitional period of up to five years. Such phasing-in shall be mandatory and apply to all insurance or reinsurance undertakings.';

(c) paragraph 3 is replaced by the following:

‘3. By … [five years from the date of entry into force of this amending Directive], and every five years thereafter, EIOPA shall carry out an assessment of the appropriateness of the methods, assumptions, and standard parameters used when calculating the Solvency Capital Requirement on the basis of the standard formula. It shall, in particular, take into account the performance of any asset class and financial instruments, the behaviour of investors in those asset classes and financial instruments as well as developments in international standard setting in financial services. The review of certain risks and certain asset classes may be prioritised. On the basis of EIOPA’s assessment, the Commission shall present, where appropriate, proposals for the amendment of this Directive, or of delegated or implementing acts adopted pursuant thereto.

Insurance and reinsurance undertakings applying the phasing-in referred to in paragraph 2a of this Article shall within the part of their report on their solvency financial condition consisting of information targeted at market professionals referred to in Article 51(1b) publicly disclose:

(i) the fact that they apply the phasing-in referred to in paragraph 2a of this Article; and

(ii) the quantification of the impact of not applying the phasing-in referred to in paragraph 2a of this Article on their financial position.’;

(52) in Article 112, paragraph 7 is replaced by the following:

‘7. After having received approval from supervisory authorities to use an internal model, insurance and reinsurance undertakings shall provide the supervisory authorities every two years with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2. Supervisory authorities may, by means of a decision stating the reasons, request more frequent reporting from the insurance or reinsurance undertaking.’;

(53) in Article 122, the following paragraph is added:

‘5. Member States may allow insurance and reinsurance undertakings to take into account the effect of credit spread movements on the volatility adjustment calculated in accordance with Article 77d in their internal model, only where:

(a) the method to take into account the effect of credit spread movements on the volatility adjustment for a currency does neither take into account the undertaking-specific adjustment of the risk-corrected spread pursuant to Article 77d(1c) nor, in the case of the euro, a possible increase of the volatility adjustment by a macro volatility adjustment pursuant to Article 77d(4);

(b) the Solvency Capital Requirement is not lower than any of the following:

(i) a notional Solvency Capital Requirement calculated as the Solvency Capital Requirement, except that the effect of credit spread movements on the volatility adjustment is taken into account in accordance with the methodology used by EIOPA for the purposes of the publication of technical information pursuant to Article 77e(1), point (c);

(ii) a notional Solvency Capital Requirement calculated in accordance with point (i) of this point, except that the representative portfolio for a currency referred to in Article 77d(2), second subparagraph, is determined on the basis of the assets in which the insurance or reinsurance undertaking is investing instead of the assets of all insurance or reinsurance undertakings with insurance or reinsurance obligations denominated in that currency.

For the purposes of the first subparagraph, point (b), the determination of the representative portfolio for a given currency shall be based on the undertaking's assets denominated in that currency and used to cover the best estimate for insurance and reinsurance obligations denominated in that currency.';

(54) Article 132 is amended as follows:

(a) in paragraph 3, second subparagraph, the words ‘Directive 85/611/EEC’ are replaced by the words ‘Directive 2009/65/EC’;

(b) the following paragraphs are added:

‘5. Insurance and reinsurance undertakings shall take account of possible macroeconomic and financial markets’ developments, when they decide on their investment strategy.

Insurance and reinsurance undertakings shall also take account of the impact of sustainability risks on their investments and the potential long-term impact of their investment decisions on sustainability factors when they decide on their investment strategy.

6. At the request of the supervisory authority, insurance and reinsurance undertakings shall take account of macroprudential concerns when they decide on their investment strategy and assess the extent to which their investment strategy may affect macroeconomic and financial markets’ developments and have the potential to turn into sources of systemic risk, and incorporate such considerations as part of their investment decisions.

7. For the purposes of paragraphs 5 and 6 of this Article, macroeconomic and financial markets' developments as well as macroprudential concerns shall have the same meaning as in Article 45.

8. When deciding whether to make the request referred to in paragraph 6 of this Article to an insurance or reinsurance undertaking which is a subsidiary undertaking included in the scope of group supervision in accordance with Article 213(2), points (a) and (b), the supervisory authority shall consider whether the assessment referred to in paragraph 6 of this Article is performed at group level by the participating insurance or reinsurance undertaking, the insurance holding company or mixed financial holding company which has its head office in the Union, and covers the specificities of that subsidiary undertaking.';

(55) in Article 133(3), the words 'Directive 85/611/EEC' are replaced by the words 'Directive 2009/65/EC';

(56) The following article is inserted:

‘*Article 136a*

Deterioration of solvency position

1. Following a notification pursuant to Article 136 or following the identification of deteriorating financial conditions pursuant to Article 36(3), where the solvency position of the undertaking deteriorates, the supervisory authorities shall have the power to take the necessary measures to remedy that deterioration.

2. The measures referred to in paragraph 1 shall be proportionate to the risk and commensurate with the significance of the deteriorating conditions. Member States shall ensure that supervisory authorities have the power to take at least the following measures:

   (a) requiring the administrative, management, or supervisory body of the undertaking to update the pre-emptive recovery plan drawn up in accordance with Article 5 of Directive (EU) 2024/… of the European Parliament and of the Council*+, where the circumstances are different from the assumptions set out in that plan;

+ OJ: Please insert in the text the number of the Directive contained in document PE-CONS 6/24 (2021/0296(COD)) and insert the number, date and OJ reference of that Directive in the footnote.

(b) requiring the administrative, management, or supervisory body of the undertaking to take measures set out in the pre-emptive recovery plan drawn up in accordance with Article 5 of Directive (EU) 2024/…[+]; where the plan is updated pursuant to point (a) of this paragraph, the measures taken shall contain any updated measures;

(c) requiring the administrative, management, or supervisory body of an undertaking that does not have in place a pre-emptive recovery plan as referred to in Article 5 of Directive (EU) 2024/…[+], to identify the causes of the non-compliance or likely non-compliance with regulatory requirements and to identify suitable measures and a timeframe for the implementation of those regulatory requirements;

(d) requiring the administrative, management, or supervisory body of the undertaking to suspend or restrict variable remuneration and bonuses, distributions on own fund instruments or repayment or repurchase of own fund items.

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[*] Directive (EU) 2024/… of the European Parliament and of the Council of … establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and, (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129 (OJ L, 2024/…, …, ELI: http://data.europa.eu/eli/dir/…/…/oj).';

[+] OJ: Please insert the number of the Directive contained in document PE-CONS 6/24 (2021/0296(COD)).

(57) Article 138(4) is amended as follows:

(a) the first subparagraph is replaced by the following:

‘In the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, as declared by EIOPA, the supervisory authority may extend, for affected undertakings, the period set out in paragraph 3, second subparagraph, by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.’;

(b) in the second subparagraph, the first sentence is replaced by the following:

‘Without prejudice to the powers of EIOPA under Article 18 of Regulation (EU) No 1094/2010, for the purposes of this paragraph EIOPA shall, following a request by the supervisory authority concerned and, where appropriate, after consulting the ESRB, declare the existence of exceptional adverse situations.’;

(58) Article 139 is replaced by the following:

‘*Article 139*
Non-compliance with the Minimum Capital Requirement

1. Insurance and reinsurance undertakings shall inform the supervisory authority immediately where they observe that the Minimum Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

For the purposes of the first subparagraph of this paragraph, the requirement to inform the supervisory authority shall apply irrespective of whether the insurance or reinsurance undertaking observes the failure to comply with the Minimum Capital Requirement or the risk of non-compliance during a calculation of the Minimum Capital Requirement pursuant to Article 129(4) or during a calculation of the Minimum Capital Requirement between two dates when such calculation is reported to the supervisory authority pursuant to Article 129(4).

2. Within one month of the observation of non-compliance with the Minimum Capital Requirement or of the observation of the risk of non-compliance, the insurance or reinsurance undertaking concerned shall submit, for approval by the supervisory authority, a realistic short-term finance scheme to restore, within three months of that observation, the eligible basic own funds, at least to the level of the Minimum Capital Requirement or to reduce its risk profile to ensure compliance with the Minimum Capital Requirement.

3. If a winding-up proceeding is not opened within two months of receipt of the information referred to in paragraph 1, the supervisory authority of the home Member State shall consider restricting or prohibiting the free disposal of assets of the insurance or reinsurance undertaking. It shall inform the supervisory authorities of the host Member States accordingly. At the request of the supervisory authority of the home Member State, those authorities shall take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.

4. EIOPA may develop guidelines for the actions that supervisory authorities should take when they observe a failure to comply with the Minimum Capital Requirement or the risk of non-compliance referred to in paragraph 1.';

(59) Article 141 is replaced by the following:

'*Article 141*
Supervisory powers in deteriorating financial conditions

1. Where any of the measures referred to in Articles 136a, 138 and 139 are considered by the supervisory authorities to be ineffective or insufficient to address the deterioration of the solvency position of the undertaking, the supervisory authorities shall have the power to take all measures which are necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

2. Those measures shall be proportionate and thus reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking concerned.';

(60) in Article 144, the following paragraph is added:

'4. In the event of withdrawal of authorisation, Member States shall ensure that insurance and reinsurance undertakings continue to be subject to the general rules and objectives of the insurance supervision set out in Title I, Chapter III, until at least any winding-up proceedings are opened.';

(61) in Title I, the following chapter is inserted:

‘**Chapter VIIa**

Macroprudential tools

Article 144a

Liquidity risk management

1. Member States shall ensure that the liquidity risk management of insurance and reinsurance undertakings referred to in Article 44(2), second subparagraph, point (d), ensures that they maintain adequate liquidity to settle their financial obligations towards policy holders and other counterparties when they fall due, even under stressed conditions.

2. For the purposes of paragraph 1, Member States shall ensure that insurance and reinsurance undertakings draw up and keep up to date a liquidity risk management plan covering liquidity analysis over the short term, projecting the incoming and outgoing cash flows in relation to their assets and liabilities. When requested by the supervisory authorities, insurance and reinsurance undertakings shall extend the liquidity risk management plan to cover also liquidity analysis over medium and long-term. Member States shall ensure that insurance and reinsurance undertakings develop and keep up to date a set of liquidity risk indicators to identify, monitor and address potential liquidity stress.

3. Member States shall ensure that insurance and reinsurance undertakings submit to the supervisory authorities the liquidity risk management plan as part of the information referred to in Article 35(1).

4. Member States shall ensure that small and non-complex undertakings and undertakings which have obtained prior approval from the supervisory authority pursuant to Article 29d are not obliged to draw up a liquidity risk management plan as referred to in paragraph 2 of this Article.

5. Member States shall ensure that, where insurance and reinsurance undertakings apply the matching adjustment referred to in Article 77b or the volatility adjustment referred to in Article 77d, they may combine the liquidity risk management plan referred to in paragraph 2 of this Article with the plan required in accordance with Article 44(2), fourth subparagraph.

Article 144b

Supervisory powers to remedy liquidity vulnerabilities in exceptional circumstances

1. As part of the regular supervisory review process, supervisory authorities shall monitor the liquidity position of insurance and reinsurance undertakings. Where they identify material liquidity risks, they shall inform the insurance or reinsurance undertaking concerned thereof. The insurance or reinsurance undertaking shall explain how it intends to address those liquidity risks.

2. Member States shall ensure that supervisory authorities have the necessary powers to require undertakings to reinforce their liquidity position when material liquidity risks or deficiencies are identified. Such powers shall be applied where there is sufficient evidence regarding the existence of material liquidity risks and the absence of effective remedies taken by the insurance or reinsurance undertaking.

The measures taken by a supervisory authority on the basis of this paragraph shall be reviewed by it at least every six months and be removed when the undertaking has taken effective remedies.

Where relevant, the supervisory authority shall share the evidence of vulnerabilities in terms of liquidity risks with EIOPA.

3. Member States shall ensure that, in relation to individual undertakings facing material liquidity risks that may cause an imminent threat to the protection of policy holders or to the stability of the financial system, supervisory authorities have the power to temporarily:

(a) restrict or suspend dividend distributions to shareholders and other subordinated creditors;

(b) restrict or suspend other payments to shareholders and other subordinated creditors;

(c) restrict or suspend share buy-backs and repayment or redemption of own fund items;

(d) restrict or suspend bonuses or other variable remuneration;

(e) suspend redemption rights of life insurance policy holders ('redemption rights').

The power to suspend redemption rights shall only be exercised in exceptional circumstances which affect the undertaking, as a last resort measure and where that is in the collective interest of policy holders and beneficiaries of the undertaking. Before exercising that power, the supervisory authority shall take into account potential unintended effects on financial markets and on the rights of policy holders and beneficiaries of the undertaking, including in a cross-border context. Supervisory authorities shall make public their reasons for the application of that power.

The application of any measure referred to in the first subparagraph shall last no more than three months. Member States shall ensure that a measure can be renewed if the reasons that justify it are still present and that it is no longer applied when those reasons are no longer present.

Without prejudice to Article 144c(6), Member States shall ensure that, until the suspension of redemption rights is lifted by the supervisory authorities, insurance and reinsurance undertakings concerned do not:

(a) make any distributions or other payments to shareholders or other subordinated creditors;

(b) proceed with share buy-backs or repay or redeem any own fund items; or

(c) pay bonuses or other variable remuneration to members of the administrative, management or supervisory body, key function holders or senior management.

Member States shall ensure that supervisory authorities have the necessary powers to enforce the requirements referred to in the fourth subparagraph.

Member States shall ensure that bodies and authorities with a macroprudential mandate, where different from the supervisory authorities, are duly informed in a timely manner of the supervisory authority's intention to make use of the powers referred to in this paragraph, and are involved in assessing the potential unintended effects referred to in the second subparagraph.

Member States shall ensure that supervisory authorities notify EIOPA and ESRB whenever the powers referred to in this paragraph are exercised to address a risk for the stability of the financial system.

4. When exercising the power referred to in paragraph 3 of this Article, supervisory authorities shall duly take into account the proportionality criteria referred to in Article 29(3).

Where, after consulting the ESRB, EIOPA considers that the exercise of the powers referred to in paragraph 3 by the competent authority is excessive, it shall issue an opinion to the supervisory authority concerned to the effect that the decision of that supervisory authority should be reviewed. That opinion shall not be made public.

5. When exercising the power referred to in paragraph 3 of this Article, supervisory authorities shall take into account the evidence resulting from the supervisory review process and a forward-looking assessment of the solvency and financial position of the undertakings concerned, in line with the assessment referred to in Article 45(1), second subparagraph, points (a) and (b).

6. The powers referred to in paragraph 3 may be exercised in relation to undertakings concerned operating in a given Member State where the exceptional circumstances referred to in paragraph 3 affect the whole or a significant part of the insurance market.

Member States shall appoint an authority to exercise the powers referred to in the first subparagraph.

Where the appointed authority is different from the supervisory authority, the Member State shall ensure proper coordination and exchange of information between the different authorities. In particular, all authorities shall be required to cooperate closely and to share all the information that may be necessary for the adequate performance of the duties entrusted to the authority appointed pursuant to this paragraph.

7. Member States shall ensure that the authority referred to in paragraph 6, second subparagraph, notifies in due time EIOPA, and, where the measure is taken to address a risk to the stability of the financial system, the ESRB, of the use of the powers referred to in paragraph 6.

   The notification shall include a description of the measure applied, its duration, and the reasons for the use of the power, including the reasons why the measure was considered to be effective and proportionate in relation to its negative effects on policy holders.

8. In order to ensure consistent application of this Article, EIOPA shall, after consulting the ESRB, develop guidelines further specifying:

   (a) the measures to address deficiencies in liquidity risk management and the form, activation and calibration of powers that supervisory authorities may exercise to reinforce the liquidity position of undertakings where liquidity risks are identified and not adequately remedied by those undertakings;

(b) the existence of exceptional circumstances that justify the temporary suspension of redemption rights;

(c) the conditions for ensuring the consistent application of the temporary suspension of redemption rights as a last resort measure across the Union and the aspects to consider for equally and adequately protecting policy holders in all home and host jurisdictions.

Article 144c

Supervisory measures to preserve the financial position of undertakings during exceptional sector-wide shocks

1. Without prejudice to Article 141, Member States shall ensure that supervisory authorities have the power to take measures to preserve the financial position of individual insurance or reinsurance undertakings during periods of exceptional sector-wide shocks that have the potential to threaten the financial position of the undertaking concerned or the stability of the financial system.

2. During periods of exceptional sector-wide shocks, supervisory authorities shall have the power to require undertakings with a particularly vulnerable risk profile to take at least the following measures:

(a) restrict or suspend dividend distributions to shareholders and other subordinated creditors;

(b) restrict or suspend other payments to shareholders and other subordinated creditors;

(c) restrict or suspend share buy-backs and repayment or redemption of own fund items;

(d) restrict or suspend bonuses or other variable remuneration.

Member States shall ensure that the relevant national bodies and authorities with a macroprudential mandate are duly informed of the national supervisory authority's intention to make use of the powers provided for in this Article, and are appropriately involved in the assessment of exceptional sector-wide shocks in accordance with this paragraph.

3. When exercising the power referred to in paragraph 2 of this Article, supervisory authorities shall duly take into account the proportionality criteria referred to in Article 29(3), and the existence of approved risk tolerance limits by the undertaking and thresholds in its risk management system.

4. When exercising the power referred to in paragraph 2 of this Article, supervisory authorities shall take into account the evidence resulting from the supervisory review process and a forward-looking assessment of the solvency and financial position of the undertakings concerned, in line with the assessment referred to in Article 45(1), second subparagraph, points (a) and (b).

5. The application of the measures referred to in paragraph 2 shall last for as long as the reasons that justify the measures are present. Those measures shall be reviewed at least every three months and shall be removed as soon as the reasons that justified the measures have ceased to exist.

6. For the purposes of this Article, significant intra-group transactions referred to in Article 245(2), including intra-group dividend distributions, shall only be suspended or restricted where they are a threat to the solvency or liquidity position of the group or of at least one of the undertakings within the group. The supervisory authorities of the related undertakings shall consult the group supervisor before suspending or restricting transactions with the rest of the group.

7. In order to ensure consistent application of this Article, EIOPA shall, after consulting the ESRB, develop draft regulatory technical standards to specify the criteria for the identification of exceptional sector-wide shocks. EIOPA shall submit those draft regulatory technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

   Power is conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Article 10 to 14 of Regulation (EU) No 1094/2010.

Article 144d

Application of additional macroprudential tools

1. In order to ensure consistent application of the macroprudential tools referred to in Article 45(1), point (e), Article 132(6) and Article 144a(2), EIOPA shall develop draft regulatory technical standards on the criteria to be taken into account by supervisory authorities when defining the insurance or reinsurance undertakings and groups which shall be requested to:

   (a) carry out the additional macroprudential analyses referred to in Article 45(1), point (e), taking into account the circumstances referred to in paragraph 9 of that Article;

   (b) incorporate macroprudential considerations as part of the prudent person principle referred to in Article 132(6), taking into account the circumstances referred to in paragraph 8 of that Article;

   (c) draw up and maintain a liquidity risk management plan covering liquidity analysis over the medium and long term in accordance with Article 144a(2).

   EIOPA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Article 10 to 14 of Regulation (EU) No 1094/2010.

2. In order to ensure the consistent application of the macroprudential tools referred to in Article 144a(2), EIOPA shall develop draft regulatory technical standards specifying the content and frequency of update of liquidity risk management plans, taking into account possible combination of plans as referred to in paragraph 5 of that Article. EIOPA shall submit those draft regulatory technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

3. For the purposes of paragraph 1, points (a) and (b), the criteria to be taken into account shall be proportionate to the nature, scale, and complexity of the risks, and in particular the level of interconnectedness with financial markets, the cross-border nature of insurance and reinsurance activities, and the investments of the insurance and reinsurance undertakings.

4. For the purposes of paragraph 1, point (c), the criteria to be taken into account shall be proportionate to the nature, scale, and complexity of the risks, and in particular the composition of the asset and liability portfolios, the nature and variability of insurance and reinsurance obligations and the exposure of assets' expected cash-flows to market fluctuations.';

(62) in Article 145, paragraph 2 is amended as follows:

(a) point (c) is replaced by the following:

'(c) the name of a person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking;';

(b) the second subparagraph is deleted;

(63) Article 149 is replaced by the following:

'*Article 149*
Changes in the nature of the risks or commitments

1. The procedure provided for in Articles 147 and 148 shall apply to any change which an insurance undertaking intends to make to the information referred to in Article 147.

2. Where there is a change in the business pursued by the insurance undertaking under the freedom to provide services that is materially affecting its risk profile or materially influencing the insurance activities in one or more host Member States, the insurance undertaking shall inform the supervisory authority of the home Member State immediately. The supervisory authority of the home Member State shall inform the supervisory authorities of the host Member States concerned without delay.';

(64) the title of Chapter VIII, Section 2A, is replaced by the following:

'**Notification, significant cross-border activities and collaboration platforms**';

(65) in Article 152a, paragraph 2 is replaced by the following:

'2. The supervisory authority of the home Member State shall notify EIOPA and the supervisory authority of the relevant host Member State if it identifies deteriorating financial conditions or other emerging risks, including those concerning consumer protection, posed by an insurance or reinsurance undertaking carrying out activities which are based on the freedom to provide services or the right of establishment and which may have a cross-border effect. The supervisory authority of the host Member State may also notify EIOPA and the supervisory authority of the relevant home Member State where it has serious and reasoned concerns with regard to consumer protection. The supervisory authorities may refer the matter to EIOPA and request its assistance where no bilateral solution can be found.';

(66) the following articles are inserted:

‘*Article 152aa*

Significant cross-border activities

1. For the purposes of this Section, “significant cross-border activities” means insurance and reinsurance activities carried out in a given host Member State under the right of establishment or freedom to provide services by an insurance or reinsurance undertaking which is not classified as a small and non-complex undertaking, and which meets any of the following requirements:

   (a) the total annual gross written premium income corresponding to the activities carried out by the undertaking in that host Member State under the right of establishment and under the freedom to provide services exceeds EUR 15 000 000;

   (b) the activities carried out under the right of establishment or under the freedom to provide services are considered by the supervisory authority of the host Member State to be of relevance with respect to the host Member State’s market.

2. For the purposes of paragraph 1, point (b), of this Article, EIOPA shall develop draft regulatory technical standards to further specify the conditions and criteria to be used when determining which insurance or reinsurance undertakings are of relevance with respect to the host Member State's market.

EIOPA shall submit the draft regulatory technical standards referred to in the first subparagraph to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

3. For the purposes of paragraph 1, point (b), where the supervisory authority of the host Member State considers the activities carried out under the right of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market, it shall notify the supervisory authority of the home Member State stating the reasons therefor.

4. Where the supervisory authority of the home Member State disagrees on the relevance of the activities carried out under the right of establishment or under the freedom to provide services, it shall notify the supervisory authority of the host Member State within one month, stating the reasons thereof. In the event of a disagreement on the relevance of the activities carried out under the right of establishment or under the freedom to provide services, the supervisory authorities may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that event, EIOPA may act in accordance with the powers conferred by that Article.

Article 152ab

Enhanced supervisory cooperation and information exchange between home and host supervisory authorities in relation to significant-cross-border activities

1. In the event of significant cross-border activities, the supervisory authority of the home Member State and the supervisory authority of the host Member State shall cooperate with each other to assess whether the undertaking has a clear understanding and a sound management of the risks that it faces, or may face, in the host Member State.

Cooperation shall be commensurate with the risks entailed by the significant cross-border activities and shall cover at least the following aspects:

(a) the system of governance including the ability of the administrative, management or supervisory body to understand the cross-border market specificities, risk management tools, internal controls in place and compliance procedures for the cross-border business;

(b) outsourcing and distribution partnerships;

(c) business strategy and claims handling;

(d) consumer protection.

2. The supervisory authority of the home Member State shall, in a timely manner, inform the supervisory authority of the host Member State about the outcome of its supervisory review process related to the significant cross-border activities where potential issues of compliance with the legislative and administrative provisions applicable in the host or the home Member State or material issues related to the aspects referred to in paragraph 1, second subparagraph, have been identified, and such issues affect or are likely to affect the exercise of activities in the host Member State.

The supervisory authority of the home Member State shall provide to the supervisory authority of the host Member State in which the undertaking carries out significant cross-border activities, at least annually, or more frequently in the case of a request by the supervisory authority of the host Member State concerned, the following information:

(a) the Solvency Capital Requirement and the Minimum Capital Requirement, as reported by the insurance or reinsurance undertaking;

(b) the amounts of eligible own funds to cover the Solvency Capital Requirement and the Minimum Capital Requirement, respectively, as reported by the insurance or reinsurance undertaking;

(c) an indication of potential concerns by the supervisory authority of the home Member State regarding the calculation by the insurance or reinsurance undertaking of technical provisions, as well as regarding the items referred to in points (a) and (b).

The supervisory authority of the home Member State shall inform the supervisory authority of the host Member State in which the undertaking carries out significant cross-border activities without delay where it identifies deteriorating financial conditions or a risk of non-compliance with the Solvency Capital Requirement or Minimum Capital Requirement within the next three months.

The supervisory authority of a host Member State where an insurance or reinsurance undertaking carries out significant cross-border activities may address a duly justified request to the supervisory authority of the home Member State of that undertaking for receiving information other than that mentioned in the first, second and third subparagraphs, provided that it is related to the solvency, the system of governance or the business model of that undertaking. The supervisory authority of the home Member State shall provide such information in a timely manner.

3. Where the supervisory authority of the home Member State does not provide in a timely manner the information referred to in paragraph 2 of this Article, the supervisory authority of the host Member State concerned may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

4. Where an insurance or reinsurance undertaking carrying out significant cross-border activities does not comply with or is likely not to comply with the Solvency Capital Requirement or the Minimum Capital Requirement in the following three months, the supervisory authority of the host Member State in which that undertaking has significant cross-border activities may request the supervisory authority of the home Member State to carry out with it a joint on-site inspection of the insurance or reinsurance undertaking, explaining the reasons for such a request.

The supervisory authority of the home Member State shall accept or refuse the request referred to in the first subparagraph within one month of its receipt.

5. Where the supervisory authority of the home Member State agrees to carry out a joint on-site inspection, it shall invite EIOPA to participate in that inspection.

After the conclusion of the joint on-site inspection, the supervisory authorities concerned shall reach joint conclusions, including on the most appropriate supervisory actions, within two months. The supervisory authority of the home Member State shall take those joint conclusions into account when deciding on adequate supervisory actions.

Where the supervisory authorities cannot reach a joint conclusion concerning the joint on-site inspection, either of them may, within two months of the expiry of the period referred to in the second subparagraph of this paragraph, and without prejudice to the supervisory actions and powers to be taken by the supervisory authority of the home Member State to address the non-compliance with the Solvency Capital Requirement or the non-compliance or likely non-compliance with the Minimum Capital Requirement, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. The matter shall not be referred to EIOPA after the expiry of the two-month period referred to in this subparagraph or after an agreement on joint conclusions has been reached between supervisory authorities in accordance with the second subparagraph of this paragraph.

If, within the two-month period referred to in the third subparagraph of this paragraph, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the supervisory authority of the home Member State shall defer the adoption of the final conclusions of the joint on- site inspection and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall adopt the conclusions in conformity with EIOPA's decision. All supervisory authorities concerned shall recognise those conclusions as determinative.

6. Where the supervisory authority of the home Member State refuses to carry out a joint on-site inspection, it shall explain in writing the reasons for such refusal to the supervisory authority of the host Member State.

Where supervisory authorities disagree with the reasons for refusal, they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within one month of the notification of the decision by the supervisory authority of the home Member State. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.';

(67) Article 152b is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. Without prejudice to Article 35 of Regulation (EU) No 1094/2010, at the request of EIOPA or any supervisory authority, the relevant supervisory authorities shall provide all necessary information in a timely manner to allow for the proper functioning of the collaboration platform.’;

(b) the following paragraphs are added:

‘5. Requirements on enhanced supervisory cooperation and information exchange between home and host supervisory authorities in accordance with Article 152ab shall apply also to supervisory authorities participating in a collaboration platform as of the establishment of such collaboration platform pursuant to paragraph 1 or 2 of this Article and irrespective of whether the insurance or reinsurance undertaking is carrying out significant cross-border activities. Such information shall also be shared with EIOPA when collaboration platforms are set up pursuant to paragraph 1 of this Article.

6. Where two or more relevant authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, in relation to an insurance or reinsurance undertaking, and where there are serious concerns about negative effects on policy holders, EIOPA may, at the request of any relevant authority, assist the authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1094/2010.

   Where there are serious concerns about negative effects on policy holders in Member States other than the home Member State and indication of serious deficiencies in an insurance or reinsurance undertaking for which no or insufficient remedial action was taken by the competent supervisory authority, EIOPA may call for the supervisory authority of the home Member State to carry out an on-site inspection of the insurance or reinsurance undertaking. The supervisory authority of the home Member State shall launch the on-site inspection without delay and shall invite EIOPA and other supervisory authorities concerned to participate in it. Article 152ab(5), second, third and fourth subparagraphs, shall apply.

7. Where two or more relevant authorities of a collaboration platform disagree about information sharing pursuant to paragraph 4 or 5 of this Article, EIOPA may assist them in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1094/2010 at the request of any relevant authority.

8. Where it deems it appropriate in light of the interest of policy holder protection or for financial stability purposes, EIOPA may publish information on findings, recommendations or measures stemming from supervisory work in the context of the collaboration platform.

Where EIOPA intends to publish the name of the insurance or reinsurance undertaking concerned, it shall without delay notify that undertaking of its intention to publish and grant sufficient time for that undertaking to provide written comments and to present any relevant information or arguments to EIOPA and other supervisory authorities of the collaboration platform. EIOPA shall duly assess the position of the undertaking concerned and shall take it duly into account when deciding on the publication of the name of the undertaking. EIOPA shall not publish the name of the undertaking concerned where such publication would jeopardise an ongoing investigation or would cause, insofar as it can be determined, disproportionate damage to it.';

(68) Article 153 is replaced by the following:

‘*Article 153*

Timeframe and language of information requests

1. The supervisory authority of the host Member State may require the information which it is entitled to request with regard to the business of an insurance or reinsurance undertaking operating in the territory of that Member State from the supervisory authority of the home Member State of that undertaking. That information shall be supplied within 20 working days of the date of receipt of the request, in the official language or languages of the host Member State, or in another language accepted by the supervisory authority of the host Member State.

By way of derogation from the first subparagraph, in duly justified cases, where the information requested is not readily available to the supervisory authority of the home Member State and is complex to collect, the deadline referred to in that subparagraph may be extended by 20 working days.

2. Where the supervisory authority of the home Member State fails to provide the information within the relevant time referred to in paragraph 1, the supervisory authority of the host Member State may address the request to the insurance or reinsurance undertaking directly. In that case, the supervisory authority of the host Member State shall inform the supervisory authority of the home Member State about the information request before addressing the request to the undertaking. The insurance or reinsurance undertaking shall be required to provide that information without delay.';

(69) Article 212 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) in point (a), the words 'Article 12(1) of Directive 83/349/EEC' are replaced by 'Article 22(7) of Directive 2013/34/EU';

(ii) in point (b), the words 'Article 12(1) of Directive 83/349/EEC' are replaced by 'Article 22(7) of Directive 2013/34/EU';

(iii) point (c) is replaced by the following:

‘(c) “group” means a group of undertakings that:

(i) consists of a participating undertaking, its subsidiaries, the entities in which the participating undertaking or its subsidiaries hold a participation and undertakings that are managed by the participating undertaking or its subsidiaries jointly with one or more undertakings that are not part of the group, as well as undertakings linked to each other by a relationship as set out in Article 22(7) of Directive 2013/34/EU and their related undertakings;

(ii) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:

– one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and,

– the establishment and dissolution of such relationships for the purposes of this Title are subject to prior approval by the group supervisor,

where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries; or

(iii) consists of a combination of points (i) and (ii);';

(iv) point (f) is replaced by the following:

'(f) "insurance holding company" means an undertaking fulfilling all of the following conditions:

(i) the undertaking is a parent undertaking;

(ii) the undertaking is not a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm or an institution for occupational retirement provision;

(iii) the undertaking is not a mixed financial holding company or a financial holding company within the meaning of Article 4, point (20), of Regulation (EU) No 575/2013;

(iv) at least one of its subsidiary undertakings is an insurance or reinsurance undertaking;

(v) notwithstanding its own stated corporate purpose, the main business of the undertaking is any of the following:

(1) to acquire and hold participations in insurance or reinsurance undertakings;

(2) to provide ancillary services to the principal activity of one or several related insurance or reinsurance undertakings;

(3) to pursue one or more of the activities listed in points 2 to 12 and point 15 of Annex I to Directive 2013/36/EU, or to pursue one or more of the services or activities listed in Annex I, Section B, to Directive 2014/65/EU in relation to financial instruments listed in Annex I, Section C, to Directive 2014/65/EU;.

(vi) more than 50 % of at least one of the following indicators are associated, on a steady basis, with subsidiaries that are insurance or reinsurance undertakings, third-country insurance or reinsurance undertakings, insurance holding companies or mixed financial holding companies, holding companies of third-country insurance and reinsurance undertakings or undertakings which provide services that are ancillary to the principal activity of one or several insurance or reinsurance undertakings of the group, as well as with activities performed by the undertaking itself that are not related to the acquisition or holding of participations in subsidiary undertakings that are insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, when those activities are of the same nature as the ones performed by insurance or reinsurance undertakings:

(1) the undertaking's equity on the basis of its consolidated position;

(2) the undertaking's assets on the basis of its consolidated position;

(3) the undertaking's revenues on the basis of its consolidated position;

(4) the undertaking's personnel on the basis of its consolidated position;

(5) any other indicator considered to be relevant by the national supervisory authority;';

(v) the following point is inserted:

'(fa) "holding company of third-country insurance and reinsurance undertakings" means a parent undertaking other than an insurance holding company or a mixed financial holding company within the meaning of Article 2, point (15), of Directive 2002/87/EC, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly third-country insurance or reinsurance undertakings;';

(b) in paragraph 2, the first subparagraph is replaced by the following:

'For the purposes of this Title, the supervisory authorities shall also consider as a parent undertaking any undertaking which, in the opinion of the supervisory authorities, effectively exercises a dominant influence over another undertaking, including where this influence is exercised through centralised coordination over the decisions of the other undertaking.';

(c) the following paragraphs are added:

‘3. For the purposes of this Title, the supervisory authorities shall also consider as a group within the meaning of paragraph 1, point (c), two or more undertakings which, in the opinion of the supervisory authorities, are managed on a unified basis.

Where not all the undertakings referred to in the first subparagraph of this paragraph have their head office in the same Member State, Member States shall ensure that only the supervisory authority acting as group supervisor in accordance with Article 247 may conclude, after consulting the other supervisory authorities concerned, that such undertakings form a group where it is of the opinion that those undertakings are managed on a unified basis.

4. When identifying a relationship between at least two undertakings referred to in paragraphs 2 and 3, supervisory authorities shall consider all of the following factors:

(a) control or ability of a natural person or an undertaking to influence decisions, including financial ones, of an undertaking, in particular due to the holding of capital or voting rights, representation in the administrative, management or supervisory body, or being among the persons who effectively run an undertaking or who have other key, critical or important functions;

(b) strong reliance of an undertaking on another undertaking or legal or natural person, due to the existence of material financial or non-financial transactions or operations, including outsourcing and sharing of staff between undertakings;

(c) evidence of coordination between two or more undertakings of financial or investment decisions, including joint investments in related undertakings;

(d) evidence of coordinated and consistent strategies, operations or processes between two or more undertakings, including in relation to insurance distribution channels, insurance products or brands, communication or marketing.

5. Where a group is identified on the basis of paragraph 2 or 3 of this Article, the supervisory authority acting as the group supervisor in accordance with Article 247 shall provide to the undertaking designated as the parent undertaking in accordance with Article 214(5) or (6), and to the supervisory authorities concerned a detailed explanation of the factors on the basis of which such identification is made.

In order to ensure consistent application of this Article, EIOPA shall develop draft regulatory technical standards to supplement or further specify the factors that supervisory authorities are to consider to identify a relationship between at least two undertakings referred to in paragraphs 2 and 3. EIOPA shall submit those draft regulatory technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the second subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.';

(70) Article 213 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Member States shall ensure that group supervision applies when a group includes any of the following:

(a) insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 218 to 258;

(b) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the Union, in accordance with Articles 218 to 258;

(c) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking, in accordance with Articles 260 to 263;

(d) insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 265.';

(b) in paragraph 5, the words 'Directive 2006/48/EC' are replaced by the words 'Directive 2013/36/EU';

(71) the following articles are inserted:

‘*Article 213a*

Use of proportionality measures at the level of the group

1. Groups within the meaning of Article 212 that are subject to group supervision in accordance with Article 213(2), points (a) and (b), shall be classified as small and non-complex groups by their group supervisor, following the procedure set out in paragraph 2 of this Article where they meet all the following criteria at the level of the group for the last two financial years directly prior to such classification:

   (a) where at least one insurance or reinsurance undertaking in the scope of the group is not a non-life undertaking, all of the following criteria shall be met:

      (i) the interest rate risk submodule referred to in Article 105(5), second subparagraph, point (a), calculated on the basis of consolidated data, is not higher than 5 % of the group consolidated technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, excluding undertakings to which method 2, which is laid down in Article 233, is applied;

      (ii) the total of the consolidated technical provisions from life insurance activities of the group, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, is not higher than EUR 1 000 000 000;

(b) where at least one insurance or reinsurance undertaking in the scope of the group is not a life undertaking, all of the following criteria shall be met:

(i) the averaged combined ratio for non-life insurance activities net of reinsurance of the last three financial years is less than 100 %;

(ii) the annual gross written premium income of the group is not higher than EUR 100 000 000;

(iii) the sum of the annual gross written premiums in classes 5 to 7, 11, 12, 14 and 15 in Part A of Annex I is not higher than 30 % of total annual written premiums of non-life activities of the group;

(c) annual gross written premium income from business underwritten by insurance and reinsurance undertakings in the scope of the group which have their head offices in Member States other than the Member State of the group supervisor is lower than either of the following thresholds:

(i) EUR 20 000 000;

(ii) 10 % of the group's total annual gross written premium income;

(d) annual gross written premium income from business underwritten by the group in Member States other than the Member State of the group supervisor is lower than either of the following thresholds:

(i) EUR 20 000 000;

(ii) 10 % of the group's total annual gross written premium income;

(e) the sum of the following is not higher than 20 % of total investments calculated on the basis of consolidated data:

(i) the market risk module referred to in Article 105(5);

(ii) the part of the counterparty default risk module referred to in Article 105(6) that corresponds to exposures to securitisations, derivatives, receivables from intermediaries and other investment assets which are not covered in the spread risk sub-module;

(iii) any capital requirement that is applicable to investments in intangible assets that are not covered by the market risk and the counterparty default risk modules;

(f) the reinsurance accepted by the undertakings of the group does not exceed 50 % of the total annual gross written premium income of the group;

(g) the difference referred to in Article 230(1) where method 1 is used, in Article 233(1) where method 2 is used, or in Article 233a(1) where a combination of methods is used, is positive;

(h) where method 2 or a combination of methods 1 and 2 is used, each undertaking to which method 2 is applied is a small and non-complex undertaking.

The criteria laid down in the first subparagraph, point (a)(i) and point (e), shall not apply to groups where only method 2 is used.

2. Article 29b shall apply *mutatis mutandis* at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company

3. Groups to which group supervision applies in accordance with Article 213(2), points (a) and (b), for less than two years shall take into account only the last financial year when assessing whether they meet the criteria set out in paragraph 1 of this Article.

4. The following groups shall never be classified as small and non-complex groups:

(a) groups which are financial conglomerates within the meaning of Article 2, point 14, of Directive 2002/87/EC;

(b) groups where at least one subsidiary undertaking is an undertaking referred to in Article 228(1);

(c) groups which use an approved partial or full internal model to calculate their group Solvency Capital Requirement.

5. Articles 29c, 29d and 29e shall apply *mutatis mutandis*.

6. The Commission shall supplement this Directive by adopting delegated acts, in accordance with Article 301a, specifying:

(a) the criteria laid down in paragraph 1, including the approach for calculating the sum referred to in the first subparagraph, point (e), of that paragraph;

(b) the methodology to be used when classifying groups as small and non-complex groups; and

(c) the conditions for granting or withdrawing supervisory approval for proportionality measures to be used by groups not classified as small and non-complex groups.

Article 213b

Impediments to group supervision

1. In the cases referred to in Article 213(2), point (b), the insurance holding company or mixed financial holding company shall ensure that:

   (a) the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with this Title and, in particular, are effective to:

      (i) coordinate all the subsidiary undertakings of the insurance holding company or mixed financial holding company, including, where necessary, through an adequate distribution of tasks among those undertakings;

      (ii) prevent or manage intra-group conflicts; and

      (iii) enforce the group-wide policies set by the insurance holding company or mixed financial holding company throughout the group;

(b) the structural organisation of the group of which the insurance holding company or mixed financial holding company is part does not obstruct or otherwise prevent the effective supervision of the group and its subsidiary insurance and reinsurance undertakings, taking into account, in particular:

(i) the position of the insurance holding company or mixed financial holding company in a multi-layered group;

(ii) the shareholding structure; and

(iii) the role of the insurance holding company or mixed financial holding company within the group.

2. Where the conditions set out in paragraph 1, point (a), are not satisfied, the group supervisor shall have the power to require the insurance holding company or mixed financial holding companies to change internal arrangements and distributions of tasks within the group.

Where the conditions set out in paragraph 1, point (b), of this Article are not satisfied, the insurance holding company or mixed financial holding company shall be subject to appropriate supervisory measures by the group supervisor to ensure or restore, as the case may be, continuity and integrity of group supervision and compliance with the requirements laid down in this Title. In particular, Member States shall ensure that supervisory authorities, when acting as group supervisors in accordance with Article 247, have the power to require the insurance holding company or mixed financial holding company to structure the group in a way which enables the relevant supervisory authority to effectively exercise group supervision. Supervisory authorities shall only exercise that power in exceptional circumstances, after consulting EIOPA and, where applicable, other supervisory authorities concerned, and shall provide the insurance holding company or mixed financial holding company with a justification thereof.

3. In the cases referred to in Article 213(2), points (a) and (b), of this Directive, where the structural organisation of a group which consists of undertakings linked to each other by a relationship as set out in Article 22(7) of Directive 2013/34/EU and their related undertakings, or which is identified on the basis of Article 212(3) of this Directive, is such that it obstructs or prevents the effective supervision of that group or it prevents that group from complying with this Title, the group shall be subject to appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of group supervision and compliance with this Title. In particular, Member States shall ensure that supervisory authorities when acting as group supervisors in accordance with Article 247 of this Directive have the power to require the establishment of an insurance holding company or a mixed financial holding company which has its head office in the Union, or the establishment of an undertaking in the Union which effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the insurance or reinsurance undertakings that are part of the group. In that case, that insurance holding company, mixed financial holding company or undertaking which effectively exercises centralised coordination shall be responsible for complying with this Title.';

(72) Article 214 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The exercise of group supervision in accordance with Article 213 shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking or the mixed-activity insurance holding company taken individually.

For the sole purpose of ensuring compliance with this Title, the exercise of group supervision may imply direct supervision and the exercise of supervisory powers over insurance holding companies and mixed financial holding companies by supervisory authorities.’;

(b) in paragraph 2, the following subparagraph is inserted after the first subparagraph:

‘When assessing whether an undertaking is of negligible interest with respect to the objectives of group supervision pursuant to the first subparagraph, point (b), the group supervisor shall ensure that the following conditions are met:

(a) the size of the undertaking, in terms of total assets and of technical provisions, is small in comparison with that of other undertakings of the group and the group as a whole;

(b) the exclusion of the undertaking from the scope of group supervision would have no material impact on the group solvency;

(c) the qualitative and quantitative risks, including those stemming from intragroup transactions, that the undertaking poses or may pose to the whole group, are immaterial.';

(c) the following paragraphs are added:

'3. Where the exclusion of one or more undertakings from the scope of group supervision in accordance with paragraph 2 of this Article would result in a case that would not trigger the application of group supervision under Article 213(2), points (a), (b), and (c), the group supervisor shall consult EIOPA and, where applicable, other supervisory authorities concerned before taking the decision on exclusion. Such decision shall only be taken in exceptional circumstances and shall be duly justified to EIOPA and, where applicable, to the other supervisory authorities concerned. The group supervisor shall reassess at least annually whether its decision remains appropriate. Where that is no longer the case, the group supervisor shall notify EIOPA and, where applicable, the other supervisory authorities concerned that it will start exercising group supervision.

Before excluding the ultimate parent undertaking from group supervision pursuant to paragraph 2, first subparagraph, point (b), the group supervisor shall consult EIOPA, and where applicable, other supervisory authorities concerned, and shall assess the impact of exercising group supervision at the level of an intermediate participating undertaking on the solvency position of the group. In particular, such an exclusion shall not be possible if it would result in a material improvement in the solvency position of the group.

In order to ensure the coherent and consistent application of this paragraph, EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) No 1094/2010 to further specify the exceptional circumstances referred to in the first subparagraph of this paragraph or the cases where it may be justified to exclude the ultimate parent undertaking, including insurance holding companies, from the scope of group supervision.

4. Without prejudice to paragraphs 2 and 3 of this Article, the scope of the group to which group supervision applies pursuant to Article 213(2) shall be identified in accordance with Article 212.

Where a group subject to group supervision pursuant to Article 213(2), points (a), (b) and (c), is identified in accordance with Article 212(2) and (3), and where a parent undertaking or a subsidiary undertaking of that group is also the ultimate participating undertaking of another group within the meaning of Article 212(1), point (c), that other group shall be considered to be included within the scope of the group identified in accordance with Article 212(2) and (3).

Supervisory authorities may apply Article 212(2) and (3) to extend the scope of a group within the meaning of Article 212(1), point (c).

5. Where a group identified in accordance with Article 212(3) is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c), the group shall designate one of the undertakings that are managed on a unified basis as a parent undertaking which shall be responsible for complying with this Title. The other undertakings referred to in Article 212(3), first subparagraph, shall be considered to be subsidiary undertakings.

6. Where the designation of the parent undertaking in accordance with paragraph 5 of this Article would imply significant obstacles to the exercise of group supervision, in particular in cases where the head office of the undertaking is not established in the territory of the Member State of the supervisory authority acting as the group supervisor in accordance with Article 247, or where the designation would result in the inability of the group to effectively comply with this Title, Member States shall ensure that the supervisory authority acting as the group supervisor has the power to require, after consulting other supervisory authorities concerned, the designation of another parent undertaking. The decision to designate another parent undertaking shall be duly justified by the supervisory authority acting as the group supervisor to the group and to other supervisory authorities concerned.

Where a group identified in accordance with Article 212(3) which is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c), fails to designate a parent undertaking in accordance with paragraph 5 of this Article, the supervisory authority acting as the group supervisor in accordance with Article 247 shall designate, after consulting the other supervisory authorities concerned, a parent undertaking which will be responsible for complying with this Title. The other undertakings in such a group shall be considered to be subsidiary undertakings.

When designating a parent undertaking in accordance with the first or second subparagraph of this paragraph, the supervisory authority acting as the group supervisor in accordance with Article 247 shall consider the following factors:

(a) the amount of technical provisions of each undertaking;

(b) the annual gross written premiums of each undertaking;

(c) the number of related insurance or reinsurance undertakings of each undertaking.

Supervisory authorities shall assess at least annually whether the designation remains appropriate. Where this is not the case, the supervisory authority acting as the group supervisor in accordance with Article 247 shall designate another parent undertaking after consulting the other supervisory authorities concerned. That other parent undertaking shall be responsible for complying with this Title.';

(73) Article 220 is amended as follows:

(a) in paragraph 1, the words 'set out in Articles 221 to 233' are replaced by the words 'set out in Articles 221 to 233a';

(b) in paragraph 2, the second subparagraph is replaced by the following:

'However, Member States shall allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, after consulting the other supervisory authorities concerned and the group itself, to apply to that group method 2 in accordance with Articles 233 and 234, or, where the exclusive application of method 1 would not be appropriate, a combination of methods 1 and 2 in accordance with Articles 233a and 234.';

(c) the following paragraph is added:

'3. Without prejudice to the treatment of undertakings referred to in Article 228(1), supervisory authorities may decide to apply method 2 pursuant to paragraph 2, second subparagraph, of this Article only to insurance and reinsurance undertakings, third-country insurance and reinsurance undertakings, insurance holding companies, mixed financial holding companies, and holding companies of third-country insurance and reinsurance undertakings.';

(74) Article 221 is amended as follows:

(a) the following paragraph is inserted:

‘1a. By way of derogation from paragraph 1 of this Article, for the sole purpose of Article 228, irrespective of whether method 1 or method 2 is used, “proportional share” means the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking in the related undertaking.’;

(b) in paragraph 2, the following point is added:

‘(d) where a supervisory authority has determined that two or more insurance or reinsurance undertakings form a group pursuant to Article 212(3) as they are managed on a unified basis.’;

(75) Article 222 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The sum of the own funds referred to in paragraphs 2 and 3 shall not exceed the contribution of the related insurance or reinsurance undertaking to the group Solvency Capital Requirement.’;

(b) the following paragraph is added:

‘6. For the purposes of Article 230(1), Article 233(2) and Article 233a(1), point (a), an own fund item that is issued by a participating undertaking shall not be considered to be clear of encumbrances within the meaning of Article 93(2), second subparagraph, point (c), if the repayment of this item cannot be refused to its holder when a related insurance or reinsurance undertaking which is a subsidiary undertaking is wound up.’;

(76) Article 226 is amended as follows:

(a) the title is replaced by the following:

‘*Intermediate holding companies*’;

(b) the following paragraph is added:

‘3. For the purposes of paragraphs 1 and 2, holding companies of third-country insurance and reinsurance undertakings shall also be treated as insurance or reinsurance undertakings.’;

(77) in Article 227(1), first subparagraph, the words ‘and Article 233a’ are inserted after the words ‘Article 233’;

(78) Article 228 is replaced by the following:

‘*Article 228*

Treatment of specific related undertakings from other financial sectors

1. Irrespective of the method used in accordance with Article 220 of this Directive, for the purpose of calculating the group solvency, the participating insurance or reinsurance undertaking shall take into account the contribution to the group eligible own funds and to the group Solvency Capital Requirement of the following undertakings:

   (a) credit institutions within the meaning of Article 4(1), point (1), of Regulation (EU) No 575/2013 or investment firms within the meaning of Article 4(1), point (2), of that Regulation;

   (b) UCITS management companies within the meaning of Article 2(1), point (b), of Directive 2009/65/EC and investment companies authorised pursuant to Article 27 of that Directive provided that they have not designated a management company pursuant to that Directive;

   (c) alternative investment fund managers (AIFMs) within the meaning of Article 4(1), point (b), of Directive 2011/61/EU of the European Parliament and of the Council[*];

(d) undertakings other than regulated undertakings which carry one or more of the activities referred to in Annex I to Directive 2013/36/EU where those activities constitute a significant part of their overall activity;

(e) institutions for occupational retirement provision within the meaning of Article 6, point (1), of Directive (EU) 2016/2341.

2. The contribution to the group eligible own funds of the undertakings referred to in paragraph 1 of this Article shall be calculated as the sum of the proportional share of the own funds of each undertaking, where those own funds are calculated as follows:

(a) for each related undertaking referred to in paragraph 1, point (a), of this Article in accordance with the relevant sectoral rules, as defined in Article 2, point (7), of Directive 2002/87/EC;

(b) for each related undertaking referred to in paragraph 1, point (b), of this Article in accordance with Article 2(1), point (l), of Directive 2009/65/EC;

(c) for each related undertaking referred to in paragraph 1, point (c), of this Article in accordance with Article 4(1), point (ad), of Directive 2011/61/EU;

(d) for each related undertaking referred to in paragraph 1, point (d), of this Article in accordance with the relevant sector rules as defined in Article 2, point (7), of Directive 2002/87/EC if they were regulated entities within the meaning of Article 2, point (4), of that Directive;

(e) for each related undertaking referred to in paragraph 1, point (e), of this Article the available solvency margin calculated in accordance with Article 16 of Directive (EU) 2016/2341.

For the purposes of the first subparagraph of this paragraph, the amount of own funds of each related undertaking corresponding to non-distributable reserves and other items identified by the group supervisor as having a reduced loss-absorbency capacity, as well as preference shares, subordinated mutual members accounts, subordinated liabilities, and deferred tax assets, that are included in the own funds in excess to the capital requirements calculated in accordance with paragraph 3, shall not be taken into account, unless the participating insurance or reinsurance undertaking is able to justify, to the satisfaction of the group supervisor, that those items can be made available to cover the group Solvency Capital Requirement. When determining the composition of the excess own funds, the participating insurance or reinsurance undertaking shall take into account that certain requirements of some related undertakings shall only be met with Common Equity 1 capital or Additional Tier 1 capital within the meaning of Regulation (EU) No 575/2013.

3. The contribution to the group Solvency Capital Requirement of the related undertakings referred to in paragraph 1 shall be calculated as the sum of the proportional share of the capital requirement or notional capital requirement of each related undertaking. That capital requirement or notional capital requirement shall be calculated as follows:

(a) for related undertakings as referred to in paragraph 1, point (a), of this Article, in accordance with the following:

(i) for each investment firm which is subject to own fund requirements in accordance with Regulation (EU) 2019/2033, the sum of the requirement laid down in Article 11 of that Regulation, the specific own funds requirements referred to in Article 39(2), point (a), of Directive (EU) 2019/2034 of the European Parliament and of the Council**, or the local own funds requirements in third countries;

(ii) for each credit institution, the higher of the following:

(1) the sum of the requirement laid down in Article 92(1), point (c), of Regulation (EU) No 575/2013, including measures referred to in Articles 458 and 459 of that Regulation, the specific own funds requirements to address risks other than the risk of excessive leverage referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in Article 128, point (6), of that Directive, or the local own funds requirements in third countries;

(2) the sum of the requirements laid down in Article 92(1), point (d), of Regulation (EU) No 575/2013, including measures referred to in Articles 458 and 459 of that Regulation, the specific own funds requirements to address the risk of excessive leverage referred to in Article 104 of Directive 2013/36/EU, the leverage ratio buffer requirement laid down in Article 92(1a) of Regulation (EU) No 575/2013, or the local own funds requirements in third countries insofar as those requirements are to be met by Tier 1 capital;

(b) for each related undertaking referred to in paragraph 1, point (b), of this Article, in accordance with Article 7(1), point (a), of Directive 2009/65/EC;

(c) for each related undertaking referred to in paragraph 1, point (c), of this Article, in accordance with Article 9 of Directive 2011/61/EU;

(d) for each related undertaking referred to in paragraph 1, point (d), of this Article, the capital requirement with which the related undertaking would have to comply under the relevant sector rules as defined in Article 2, point (7), of Directive 2002/87/EC if it was a regulated entity within the meaning of Article 2, point (4), of that Directive;

(e) for each related undertaking referred to in paragraph 1, point (e), of this Article, the higher of the required solvency margin calculated in accordance with Article 17 of Directive (EU) 2016/2341 and the total capital requirements imposed under national law of the Member States where the related undertaking is registered or authorised.

4. Where several related undertakings as referred to in paragraph 1 of this Article form a subgroup which is subject to a capital requirement on a consolidated basis in accordance with one of the Directives or Regulations referred to in paragraph 3 of this Article, including where a financial holding company within the meaning of Article 4(1), point (20), of Regulation (EU) No 575/2013, or a mixed financial holding company is a subsidiary undertaking of a group, the group supervisor may require calculating the contribution of those related undertakings to the group eligible own funds as the proportional share of that subgroup's own funds instead of applying paragraph 2, points (a) to (e), of this Article, to each individual undertaking belonging to that subgroup. In that case, the participating insurance or reinsurance undertaking shall also calculate the contribution of those related undertakings to the group Solvency Capital Requirement as the proportional share of that subgroup's capital requirement, instead of applying paragraph 3, points (a) to (e), of this Article, to each individual undertaking belonging to that subgroup. All financial institutions within the meaning of Article 4(1), point (26), of Regulation (EU) No 575/2013, as well as ancillary services undertakings within the meaning of point (18) of that paragraph, which are in the scope of the subgroup shall be included in the calculation of the subgroup's own funds and capital requirement.

For the purposes of the first subparagraph of this paragraph, paragraphs 2 and 3 of this Article shall apply to the specific subgroup, on the basis of its consolidated situation within the meaning of either Article 4(1), point (47), of Regulation (EU) No 575/2013 or Article 4(1), point (11), of Regulation (EU) 2019/2033, or on the basis of its consolidated position, as appropriate.

5. Notwithstanding paragraphs 1 to 4, Member States shall allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, at the request of the participating undertaking or on their own initiative, to deduct any participation as referred to in paragraph 1, points (a) to (d) from the own funds eligible for the group solvency of the participating undertaking.

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* Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

** Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64).';

(79) in Article 229, the following paragraph is added:

‘Where the deduction referred to in the first paragraph would improve the solvency position of the group compared to the position where the undertaking is kept in the scope of the group solvency calculation, the deduction shall not be applied.’;

(80) in Title III, Chapter II, Section 1, Subsection 3, the following article is added:

‘*Article 229a*
Simplified calculations

1. For the purposes of Article 230, the group supervisor, after consulting the other supervisory authorities concerned, may allow the participating insurance or reinsurance undertaking to apply a simplified approach to participations in related undertakings that are immaterial.

The application of the simplified approach referred to in the first subparagraph to one or several related undertakings shall be duly justified by the participating undertaking to the group supervisor, considering the nature, scale and complexity of the risks of the related undertaking or undertakings.

Member States shall require the participating undertaking to assess, on an annual basis, whether the use of the simplified approach is still justified, and to publicly disclose, in its report on solvency and financial condition at the level of the group as referred to in Article 256(1), the list and size of the related undertakings subject to that simplified approach.

2. For the purposes of paragraph 1, the participating insurance and reinsurance undertaking shall demonstrate, to the satisfaction of the group supervisor, that the application of the simplified approach to participations in one or several related undertakings is sufficiently prudent to avoid an underestimation of risks stemming from that undertaking or from those undertakings when calculating the group solvency.

When applied to a third-country insurance or reinsurance undertaking which has its head office in a country that is not equivalent or provisionally equivalent within the meaning of Article 227, the simplified approach shall not result in a contribution of the related undertaking to the group Solvency Capital Requirement that is lower than the capital requirement of that related undertaking, as laid down by the third country concerned.

The simplified approach shall not be applied to a related third-country insurance or reinsurance undertaking, where the participating insurance or reinsurance undertaking has no reliable information on the capital requirement as laid down in that third country.

3. For the purposes of paragraph 1, related undertakings shall be deemed immaterial where the book value of each of them represents less than 0,2 % of the group's assets calculated on the basis of consolidated data and the sum of the book values of all such undertakings represents less than 0,5 % of the group's assets calculated on the basis of consolidated data.';

(81) Article 230 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The calculation of the group solvency of the participating insurance or reinsurance undertaking shall be carried out on the basis of the consolidated accounts.

The group solvency of the participating insurance or reinsurance undertaking is the difference between the following:

(a) the sum of the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data, and the contribution to the group eligible own funds of related undertakings referred to in Article 228(1), where that contribution is calculated in accordance with Article 228(2) or (4);

(b) the sum of the Solvency Capital Requirement at group level calculated on the basis of consolidated data and the contribution to the group Solvency Capital Requirement of the related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(3) or (4).

For the purposes of the second subparagraph of this paragraph, holdings in related undertakings as referred to in Article 228(1) shall not be included in the consolidated data.

Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 and Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.';

(b) paragraph 2 is amended as follows:

(i) in the second subparagraph, the following point is added:

'(c) the proportional share of the local capital requirements, at which the authorisation would be withdrawn, for related third-country insurance and reinsurance undertakings;';

(ii) the following subparagraph is added:

'Where the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data, exceed the Solvency Capital Requirement at group level calculated on the basis of consolidated data, and the minimum consolidated group Solvency Capital Requirement is not complied with, Article 138(1) to (4) shall apply *mutatis mutandis*, whereas Article 139(1) and (2) shall not apply. For the purposes of this subparagraph, the reference to "Solvency Capital Requirement" in Article 138 shall be read as a reference to "minimum consolidated group Solvency Capital Requirement".';

(82) in Article 232, first subparagraph, introductory wording, the words ‘referred to in Article 37(1)(a) to (d)’ shall be replaced by the words ‘referred to in Article 37(1), points (a) to (e)’;

(83) Article 233 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

‘(b) the value in the participating insurance or reinsurance undertaking of related undertakings as referred to in Article 220(3) and in Article 228(1) and the aggregated group Solvency Capital Requirement, as provided for in paragraph 3 of this Article.’;

(b) paragraph 2 is amended as follows:

(i) point (b) is replaced by the following:

‘(b) the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of each individual related insurance or reinsurance undertaking.’;

(ii) the following point is added:

‘(c) the contribution to the group eligible own funds of related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(2) or Article 228(4);’;

(c) paragraph 3 is amended as follows:

(i) point (b) is replaced by the following:

‘(b) the proportional share of the Solvency Capital Requirement of each individual related insurance or reinsurance undertaking;’;

(ii) the following point is added:

‘(c) the contribution to the group Solvency Capital Requirement of related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(3) or Article 228(4).’;

(84) the following articles are inserted:

‘*Article 233a*

Combination of methods 1 and 2

1. The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:

(a) the sum of the following:

(i) for undertakings to which method 1 is applied, the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;

(ii) for each related insurance or reinsurance undertaking to which method 2 is applied, the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertaking;

(iii) the contribution of related undertakings referred to in Article 228(1), calculated in accordance with Article 228(2) or Article 228(4); and

(b) the sum of the following:

(i) for undertakings to which method 1 is applied, the consolidated group Solvency Capital Requirement, calculated in accordance with Article 230(2) on the basis of consolidated data;

(ii) for each related insurance or reinsurance undertaking to which method 2 is applied, the proportional share of its Solvency Capital Requirement;

(iii) the contribution of related undertakings referred to in Article 228(1), calculated in accordance with Article 228(3) or Article 228(4).

2. For the purposes of paragraph 1, point (a)(i), and paragraph 1, point (b)(i), of this Article, holdings in related undertakings referred to in Article 228(1) shall not be included in the consolidated data.

3. For the purposes of paragraph 1, point (a)(i), and paragraph 1, point (b)(i), of this Article, holdings in related undertakings referred to in Article 220(3) to which method 2 is applied shall not be included in the consolidated data.

For the purposes of paragraph 1, point (b)(i), of this Article, the value of holdings in undertakings referred to in Article 220(3) to which method 2 is applied, in excess of the proportional share of their own Solvency Capital Requirement, shall be included in the consolidated data when calculating the sensitivity of assets and liabilities to changes in the level or in the volatility of currency exchange rates (currency risk). However, the value of those holdings shall not be assumed to be sensitive to changes in the level or in the volatility of market prices of equities (equity risk).

4. Article 233(4) shall apply *mutatis mutandis* for the purposes of paragraph 1, points (a)(ii) and (b)(ii), of this Article.

5. Article 231 shall apply *mutatis mutandis* in the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company.

6. The minimum consolidated group Solvency Capital Requirement shall be calculated in accordance with Article 230(2).

The minimum consolidated group Solvency Capital Requirement shall be covered by eligible basic own funds as determined in accordance with Article 98(4), calculated on the basis of consolidated data. For the purposes of that calculation, holdings in related undertakings referred to in Article 228(1) shall not be included in the consolidated data.

For the purpose of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 221 to 229a shall apply *mutatis mutandis*. Article 139(1) and (2) shall apply *mutatis mutandis*.

Where the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data exceed the Solvency Capital Requirement at group level calculated on the basis of consolidated data, and the minimum consolidated group Solvency Capital Requirement is not complied with, Article 138(1) to (4) shall apply *mutatis mutandis*, whereas Article 139(1) and (2) shall not apply. For the purposes of this subparagraph, the reference to "Solvency Capital Requirement" in Article 138 shall be read as a reference to "minimum consolidated group Solvency Capital Requirement".

7. In determining whether the amount calculated in paragraph 1, point (b)(ii), of this Article appropriately reflects the risk profile of the group with regard to undertakings referred to in Article 220(3) to which method 2 is applied, the supervisory authorities concerned shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered because they are difficult to quantify.

Where the risk profile of the group with regard to undertakings referred to in Article 220(3) to which method 2 is applied deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement referred to in Article 233(3), a capital add-on to the amount calculated in paragraph 1, point (b)(ii), of this Article may be imposed.

Article 37(1) to (5), together with the delegated acts and implementing technical standards adopted in accordance with Article 37(6), (7) and (8), shall apply *mutatis mutandis*.

Article 233b

Long-term equities at group level

Where method 1 or a combination of methods is used, participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies shall be allowed to apply Article 105a to a sub-set of equity investments.

The Commission shall supplement this Directive by adopting delegated acts in accordance with Article 301a specifying:

(a) the approach to be used when assessing compliance with the conditions referred to in Article 105a(1) and when calculating the amount of equities that are treated as long-term equity investments where method 1 or a combination of methods is used;

(b) the information to be included in the report on solvency and financial condition at the level of the group referred to in Article 256(1) or the single solvency and financial condition report referred to in Article 256(2), and in the regular supervisory report at the level of the group referred to in Article 256b(1) or the single regular supervisory report referred to in Article 256b(2).';

(85) Article 234 is replaced by the following:

'*Article 234*
Delegated acts for technical principles and methods set out in Articles 220 to 229, for the simplified approach set out in Article 229a, and for the application of Articles 230 to 233a

The Commission shall supplement this Directive by adopting delegated acts in accordance with Article 301a specifying:

(a) the technical principles and methods set out in Articles 220 to 229;

(b) the technical details of the simplified approach set out in Article 229a(1), as well as the criteria on the basis of which supervisory authorities may approve the use of the simplified approach;

(c) the application of Articles 230 to 233a, reflecting the economic nature of specific legal structures.

The Commission may supplement this Directive by adopting delegated acts in accordance with Article 301a specifying the criteria on the basis of which the group supervisor may approve the application of the simplified approach set out in Article 229a(2).';

(86) in Article 244(3), the third subparagraph is replaced by the following:

'In order to identify significant risk concentration to be reported, the group supervisor, after consulting the other supervisory authorities concerned and the group, shall impose appropriate thresholds based on Solvency Capital Requirements, technical provisions, eligible own funds, other quantitative or qualitative risk-based criteria deemed appropriate, or a combination thereof.';

(87) Article 245 is amended as follows:

(a) in paragraph 1, the words 'paragraphs 2 and 3' are replaced by the words 'paragraphs 2, 3 and 3a';

(b) the following paragraph is inserted:

‘3a. In addition to intra-group transactions within the meaning of Article 13, point (19), for the purposes of paragraphs 2 and 3 of this Article, where justified, supervisory authorities may require groups to also report intra-group transactions that involve undertakings other than insurance and reinsurance undertakings, third-country insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies.’;

(88) Article 246 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The requirements set out in Title I, Chapter IV, Section 2 shall apply *mutatis mutandis* at the level of the group. The system of governance of the group shall cover participating insurance or reinsurance undertakings, parent insurance holding companies or parent mixed financial holding companies, as well as all related undertakings in the scope of the group within the meaning of Article 212 which is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c). The system of governance of the group shall also cover all undertakings that are managed by the participating undertaking or its subsidiaries jointly with one or more undertakings that are not part of the same group.

Without prejudice to the first subparagraph of this paragraph, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to Article 213(2), points (a) and (b), so that those systems and reporting procedures can be controlled at the level of the group.

Member States shall ensure that the administrative, management or supervisory body of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union, or the designated parent undertaking in accordance with Article 214(5) or (6), has the ultimate responsibility for the compliance, by the group to which group supervision applies in accordance with Article 213(2), points (a), (b) and (c), with the laws, regulations and administrative provisions adopted pursuant to this Directive. The administrative, management or supervisory body of each insurance and reinsurance undertaking within the group shall remain responsible for its own compliance with all requirements, as specified in Article 40 and Article 213(1), second subparagraph.

The risk management system shall cover at least all insurance and reinsurance activities conducted within the group, as well as material non-insurance activities. It shall also cover the risks stemming from those activities to which the group is or could be exposed, and their interdependencies.';

(b) in paragraph 2, the following subparagraphs are added:

‘The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall regularly monitor the activities of its related undertakings, including related undertakings referred to in Article 228(1) and non-regulated undertakings. That monitoring shall be commensurate with the nature, scale and complexity of the risks that the related undertakings generate or could generate at the level of the group.

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall have written policies at the level of the group, and shall ensure consistency with the group policies of the written policies of all regulated undertakings in the scope of the group. It shall also ensure that group policies are implemented in a consistent manner by all regulated undertakings in the scope of the group.’;

(c) in paragraph 4, first subparagraph, the second sentence is replaced by the following:

‘The own-risk and solvency assessment conducted at group level shall cover at least all insurance and reinsurance activities conducted within the group, as well as material non-insurance activities. It shall also cover the risks stemming from those activities to which the group is or could be exposed, and their interdependencies. It shall be subject to supervisory review by the group supervisor in accordance with Chapter III.’;

(d) the following paragraph is added:

‘5. Member States shall require the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company to ensure that the group has robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility and segregation of duties within the group. The system of governance of the group shall endeavour to prevent conflicts of interest, or where this is not possible, shall manage them.

The persons who effectively run an insurance or reinsurance group shall be deemed to be the persons who effectively run the parent undertaking referred to in paragraph 1, third subparagraph.

Member States shall require a participating insurance or reinsurance undertaking, an insurance holding company or the mixed financial holding company to identify the persons responsible for other key functions within the insurance or reinsurance group that is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c). The administrative, management or supervisory body referred to in paragraph 1, third subparagraph, of this Article shall be responsible for the activities carried out by those persons.

Where the persons who effectively run an insurance or reinsurance group or are responsible for other key functions are also the persons who effectively run one or several insurance or reinsurance undertakings or other related undertakings, or are responsible for other key functions within any of those undertakings, the participating undertaking shall ensure that the roles and responsibilities at group level are clearly segregated from those applicable at the level of each individual undertaking.';

(89) in Title III, the following chapter is inserted:

'**Chapter IIa**

Macroprudential rules at group level

Article 246a

Liquidity risk management at group level

1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to draw up and keep up to date a liquidity risk management plan at the level of the group covering liquidity analysis over the short term and, when requested by the group supervisor, covering also liquidity analysis over the medium and long-term. Article 144a shall apply *mutatis mutandis*.

2. By way of derogation from Article 144a, Member States shall ensure that insurance or reinsurance subsidiaries which are in the scope of group supervision in accordance with Article 213(2), points (a) and (b), are exempted from drawing up and keeping up to date a liquidity risk management plan at individual level whenever the liquidity risk management plan pursuant to paragraph 1 of this Article covers the liquidity management and liquidity needs of the subsidiaries concerned.

Member States shall require each individual insurance or reinsurance undertaking benefiting from the exemption pursuant to the first subparagraph to submit the parts of the liquidity risk management plan covering the situation of the whole group and their own situation to its supervisory authority.

3. Notwithstanding paragraph 2, supervisory authorities may require an insurance or reinsurance subsidiary undertaking to draw up and keep up to date a liquidity risk management plan at individual level whenever they detect a specific liquidity vulnerability or the liquidity management plan at group level does not include appropriate information which the supervisory authority having authorised the subsidiary undertaking requires comparable undertakings to provide for the purpose of monitoring their liquidity position.

4. In order to ensure consistent application of this Article, EIOPA shall develop draft regulatory technical standards to further specify the content and frequency of update of the liquidity risk management plan at group level. EIOPA shall submit those draft regulatory technical standards to the Commission by … [12 months from the date of entry into force of this amending Directive].

Power is conferred on the Commission to supplement this Directive by adopting the regulatory technical standards referred to in the first subparagraph of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Article 246b
Other macroprudential rules

Articles 144b and 144c shall apply *mutatis mutandis* at the level of the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company.';

(90) in Article 252, first paragraph, the words 'a credit institution as defined in Directive 2006/48/EC or an investment firm as defined in Directive 2004/39/EC' are replaced by the words 'a credit institution as defined in Regulation (EU) No 575/2013 or an investment firm as defined in Directive 2014/65/EU';

(91) in Article 254, the following paragraph is added:

‘3. The participating insurance and reinsurance undertaking, the insurance holding company and the mixed financial holding company shall submit to the group supervisor the information referred to in this Article on an annual basis within 22 weeks of the end of the undertaking’s financial year and, when the information referred to in this Article is required on quarterly basis, within 11 weeks of the end of each quarter.’;

(92) Article 256 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group. That report shall contain information about the group addressed to other market professionals, as referred to in Article 51(1b). Articles 51, 53, 54 and 55 shall apply *mutatis mutandis*.

Member States shall ensure that the participating insurance and reinsurance undertakings, the insurance holding company or the mixed financial holding company disclose the information referred to in this Article within 24 weeks of the end of the undertaking's financial year.';

(b) in paragraph 2, point (b) is replaced by the following:

'(b) the information for any of the subsidiaries within the group which must be individually identifiable, including both parts of the solvency and financial condition report, and must be disclosed in accordance with Articles 51, 53, 54 and 55.';

(c) paragraph 4 is replaced by the following:

'4. The Commission shall supplement this Directive by adopting delegated acts in accordance with Article 301a further specifying the information which must be disclosed in the single solvency and financial condition report referred to in paragraph 2 of this Article and the report on solvency and financial condition at the level of the group referred to in paragraph 1 of this Article.';

(93) the following articles are inserted:

‘*Article 256b*

Group regular supervisory report

1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to submit to the group supervisor, on an annual basis, a regular supervisory report at the level of the group. Article 35(5a), first subparagraph and second subparagraph, point (a), shall apply *mutatis mutandis*.

   Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in this Article on an annual or less frequent basis within 24 weeks of the end of the undertaking’s financial year.

2. A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the agreement of the group supervisor, provide a single regular supervisory report which shall comprise the following:

   (a) the information at the level of the group, which shall be reported in accordance with paragraph 1;

(b) the information for any of the subsidiaries within the group, which shall be individually identifiable, shall be reported in accordance with Article 35(5a) and shall not result in less information than the information that would be provided by insurance and reinsurance undertakings submitting a regular supervisory report in accordance with Article 35(5a).

Before granting the agreement in accordance with the first subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors. The non-agreement by the national supervisory authorities concerned shall be duly justified. If the single regular supervisory report in accordance with this paragraph is approved by the college of supervisors, each individual insurance and reinsurance undertaking shall submit the single regular supervisory report to its supervisory authority. Each supervisory authority shall have the power to supervise the part of the single regular supervisory report that is specific to the relevant subsidiary undertaking.

3. If the single regular supervisory report submitted is not satisfactory for the national supervisory authorities, the agreement referred to in paragraph 2 can be withdrawn.

4. Where the report referred to in paragraph 2 fails to include information which the supervisory authority that authorised a subsidiary undertaking within the group requires comparable undertakings to provide, and where the omission is material, the supervisory authority concerned shall have the power to require the subsidiary undertaking concerned to report the necessary additional information.

5. Where the supervisory authority having authorised a subsidiary undertaking within the group identifies any non-compliance with Article 35(5a) or requests any amendment or clarification regarding the single regular supervisory report it shall also inform the college of supervisors and the group supervisor shall submit to the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company the same request.

6. The Commission shall supplement this Directive by adopting delegated acts in accordance with Article 301a further specifying the information referred to in this Article which shall be reported.

Article 256c

Solvency and financial condition report: Audit requirement

1. Member States shall ensure that a participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company of a group is subject to an audit requirement for the group balance sheet disclosed as part of the report on solvency and financial condition at the level of the group referred to in Article 256(1) or as part of the single solvency and financial condition report referred to in Article 256(2).

2. A separate report, including the identification of the type of assurance as well as the results of the audit, prepared by the audit firm shall be submitted to the group supervisory authority together with the report on solvency and financial condition at the level of the group referred to in Article 256(1) or the single solvency and financial condition report referred to in Article 256(2) by the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company.

3. Where there is a single solvency and financial condition report as referred to in Article 256(2), the audit requirements imposed on a related insurance or reinsurance undertaking shall be complied with and the report referred to in Article 51a(6) shall be submitted to the supervisory authority of that undertaking by the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company.

4. Article 51a shall apply *mutatis mutandis*.';

(94) Article 257 is replaced by the following:

‘*Article 257*
Fit and proper requirements for persons who effectively run an insurance holding company or a mixed financial holding company or who have other key functions

Member States shall require those who effectively run the insurance holding company or the mixed financial holding company, and, where applicable, the persons who are responsible for other key functions, to be fit and proper to perform their duties.

Article 42 shall apply *mutatis mutandis*.’;

(95) Article 258 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. Supervisory authorities shall be given all supervisory powers to take measures in relation to insurance holding companies and mixed financial holding companies that are necessary to ensure that groups to which group supervision is applied in accordance with Article 213(2), points (a), (b) and (c), comply with all the requirements laid down in this Title. Those powers shall include the general supervisory powers referred to in Article 34.

Without prejudice to their provisions on criminal law, Member States shall impose sanctions on, or adopt measures relating to, insurance holding companies and mixed financial holding companies which infringe laws, regulations or administrative provisions brought into force to transpose this Title, or in relation to the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such sanctions or measures are effective, in particular where the central administration or main establishment of an insurance holding company or mixed financial holding company is not located in the same Member State as its head office.';

(b) the following paragraphs are inserted:

'2a. Where the group supervisor has established that the conditions set out in Article 213b(1) are not met or have ceased to be met, the insurance holding company or mixed financial holding company shall be subject to appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of group supervision and to ensure compliance with the requirements laid down in this Title. In the case of a mixed financial holding company, the supervisory measures shall, in particular, take into account the effects on the financial conglomerate as a whole as well as on its related regulated undertakings.

2b. For the purposes of paragraphs 1 and 2a of this Article, Member States shall ensure that the supervisory measures which may be applied to insurance holding companies and mixed financial holding companies include at least the following:

(a) suspending the exercise of voting rights attached to the shares of the subsidiary insurance or reinsurance undertaking held by the insurance holding company or mixed financial holding company;

(b) issuing injunctions, sanctions or penalties against the insurance holding company, the mixed financial holding company or the members of the administrative, management or supervisory body of those companies;

(c) giving instructions or directions to the insurance holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiary insurance and reinsurance undertakings;

(d) designating on a temporary basis another insurance holding company, mixed financial holding company or insurance or reinsurance undertaking within the group as responsible for ensuring compliance with the requirements set out in this Title;

(e) restricting or prohibiting distributions or interest payments to shareholders;

(f) requiring insurance holding companies or mixed financial holding companies to divest from or reduce holdings in insurance or reinsurance undertakings or other related undertakings referred to in Article 228(1);

(g) requiring insurance holding companies or mixed financial holding companies to submit a plan on return, without delay, to compliance.

The group supervisor shall consult the other supervisory authorities concerned and EIOPA before taking any of the measures referred to in the first subparagraph, where those measures affect undertakings which have their head offices in more than one Member State.';

(96) Article 262 is amended as follows:

(a) in paragraph 1, the first subparagraph is replaced by the following:

‘1. In the absence of equivalent supervision as referred to in Article 260, or where a Member State does not apply Article 261 in the event of temporary equivalence in accordance with Article 260(7), that Member State shall apply either of the following to insurance and reinsurance undertakings that are part of a group within the meaning of Article 212, and to which group supervision applies in accordance with Article 213(2), point (c):

(a) Articles 218 to 235, and Articles 244 to 258, *mutatis mutandis*;

(b) one of the methods set out in paragraph 3.’;

(b) paragraph 2 is replaced by the following:

‘2. Member States shall allow their supervisory authorities to apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings that are part of a group within the meaning of Article 212, and to which group supervision applies in accordance with Article 213(2), point (c). Those methods shall be agreed by the group supervisor, identified in accordance with Article 247, after consulting the other supervisory authorities concerned.

The methods referred to in the first subparagraph shall allow the objectives of the group supervision as specified in this Title to be achieved. Those objectives shall include the following:

(a) preserving the capital allocation and the composition of own funds of insurance and reinsurance undertakings and preventing material intra-group creation of capital where such intra-group creation of capital is financed out of the proceeds of debt or other financial instruments that do not qualify as own-fund items by the parent company;

(b) assessing and monitoring the risks stemming from undertakings both inside and outside the Union, and limiting the risk of contagion from those undertakings and from other non-regulated undertakings to insurance and reinsurance undertakings within the group, and to the subgroup the ultimate parent undertaking of which is an insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company that has its head office in the Union, as referred to in Article 215, where such a subgroup exists.

The methods referred to in the first subparagraph shall be appropriately justified, documented, and notified to the other supervisory authorities concerned, EIOPA and the Commission.';

(c) the following paragraph is added:

‘3. For the purposes of paragraph 2 of this Article, the supervisory authorities concerned may in particular apply one or several of the following methods to insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies that are part of a group which is subject to group supervision in accordance with Article 213(2), point (c):

(a) designating one insurance or reinsurance undertaking that shall be responsible for compliance with the requirements set out in this Title, where the insurance and reinsurance undertakings that are part of the group do not have a common parent undertaking in the Union;

(b) requiring the establishment of an insurance holding company which has its head office in the Union, or a mixed financial holding company which has its head office in the Union where the insurance and reinsurance undertakings that are part of the group do not have a common parent undertaking in the Union, and applying this Title to the insurance and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company;

(c) where several insurance and reinsurance undertakings that are part of the group form a subgroup whose parent undertaking has its head office in the Union, in addition to applying this Title to this subgroup, taking additional measures or imposing additional requirements, including requirements referred to in points (d), (e), and (f) of this subparagraph and enhanced supervision of risk concentration within the meaning of Article 244 and of intragroup transactions within the meaning of Article 245, with the aim of achieving the objective referred to in paragraph 2, second subparagraph, point (b), of this Article;

(d) requiring the members of the administrative, management or supervisory body of the ultimate parent undertaking in the Union to be independent from the ultimate parent undertaking outside the Union;

(e) prohibiting, limiting, restricting, monitoring or requiring prior notification of transactions, including dividend distributions and coupon payments on subordinated debt, where such transactions are or could be a threat to the financial or solvency position of insurance and reinsurance undertakings within the group, and involve, on the one hand, an insurance or reinsurance undertaking, an insurance holding company which has its head office in the Union or a mixed financial holding company which has its head office in the Union, and, on the other hand, an undertaking which belongs to the group and which has its head office outside the Union; where the group supervisor in the Union is not one of the supervisory authorities of the Member State in which a related insurance or reinsurance undertaking has its head office, the group supervisor in the Union shall inform those supervisory authorities of its findings with a view to enabling them to take the appropriate measures;

(f) requiring information on the solvency and financial position, the risk profile, and the risk tolerance limits of parent undertakings which have their head office outside the Union, including, where applicable, reports on those topics which are submitted to the administrative, management or supervisory body or the supervisory authorities of those third-country parent undertakings.';

(97) in Article 265, the following paragraph is inserted:

‘1a. Member States shall in particular ensure that, where the parent undertaking of one or more insurance or reinsurance undertakings is a credit institution, an investment firm, a financial institution, a UCITS management company, an AIFM, an institution for occupational retirement provision or a non-regulated undertaking which carries out one or more of the activities referred to in Annex I to Directive 2013/36/EU where those activities constitute a significant part of its overall activity, the supervisory authorities responsible for the supervision of those insurance or reinsurance undertakings exercise general supervision over transactions between those insurance or reinsurance undertakings and the parent undertaking and its related undertakings.’;

(98) in Article 267, the following paragraphs are added:

‘For the purposes of Directive (EU) 2024/…[+], in the event of an application of the resolution tools referred to in Article 26(3) of that Directive and exercise of the resolution powers referred to in Title III, Chapter IV, of that Directive, the provisions in Chapters I, II and IV of this Title shall apply to reinsurance undertakings and the entities referred to in Article 1(1), points (b) to (e), of that Directive.

Articles 270 and 272 of this Directive shall not apply where Article 63 of Directive (EU) 2024/…[+] applies.’;

[+] OJ: Please insert the number of the Directive contained in document PE-CONS 6/24 (2021/0296(COD)).

(99) Article 268(1), first subparagraph, is amended as follows:

(a) point (a) is replaced by the following:

‘(a) “competent authorities” means either the administrative or judicial authorities of the Member States that are competent for reorganisation measures or for winding-up proceedings, or a resolution authority as defined in Article 2, point (12), of Directive (EU) 2024/…[+] in respect of reorganisation measures taken pursuant to that Directive;’;

(b) point (c) is replaced by the following:

‘(c) “reorganisation measures” means measures involving any intervention by the competent authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including the suspension of payments or enforcement measures or the reduction of claims, the application of the resolution tools referred to in Article 26(3) of Directive (EU) 2024/…[+] and the exercise of resolution powers referred to in Title III, Chapter IV, of that Directive;’;

[+] OJ: Please insert the number of the Directive contained in document PE-CONS 6/24 (2021/0296(COD)).

(100) Article 301a is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the second subparagraph is replaced by the following:

‘The delegation of power referred to in Articles 29, 105, 105a, 213a, 233b, 256b and 304e shall be conferred on the Commission for a period of four years from … [the date of entry into force of this amending Directive].’;

(ii) the following subparagraphs are added:

‘The delegation of power referred to in the first and second subparagraphs shall be tacitly extended for periods of identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

The Commission shall draw up a report in respect of the delegated power by six months before the end of every four-year period.’;

(b) paragraph 3 is replaced by the following:

‘3. The delegation of power referred to in Articles 17, 29, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 105, 105a, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 213a, 216, 217, 227, 233b, 234, 241, 244, 245, 247, 248, 256, 256b, 258, 260, 304e and 308b may be revoked at any time by the European Parliament or by the Council.

A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.';

(c) paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Article 17, 29, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 105, 105a, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 213a, 216, 217, 227, 233b, 234, 241, 244, 245, 247, 248, 256, 256b, 258, 260or 308b shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

5a. A delegated act adopted pursuant to Article 304e shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of one month of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by one month at the initiative of the European Parliament or of the Council.';

(101) in Article 304, paragraph 2 is replaced by the following;

'2. As of … [the date of application of this amending Directive], life insurance undertakings may continue to apply the approach referred to in paragraph 1 only in respect of assets and liabilities to which supervisory authorities approved the application of the duration-based equity risk sub-module before … [the date of application of this amending Directive].';

(102) the following articles are inserted:

‘*Article 304c*

Report as regards sustainability risk

1. EIOPA, after consulting the ESRB, shall assess, on the basis of available data and the findings of the Platform on Sustainable Finance referred to in Article 20 of Regulation (EU) 2020/852 of the European Parliament and of the Council*, and EBA in the context of its work under the mandate set out in Article 501c(1), point (c), of Regulation (EU) No 575/2013, whether a dedicated prudential treatment of exposures related to assets or activities associated substantially with environmental or social objectives would be justified. In particular, EIOPA shall assess the potential effects of a dedicated prudential treatment of exposures related to assets and activities which are associated substantially with environmental or social objectives or which are associated substantially with harm to such objectives on the protection of policy holders and financial stability in the Union, including fossil fuel related assets.

EIOPA shall submit a report on its findings to the Commission by … [date 1 month from the entry into force of this amending Directive]. Where appropriate, the report shall consider a possible risk-based prudential treatment of exposures related to assets and activities which are associated substantially with environmental or social objectives or which are associated substantially with harm to such objectives. The report shall be accompanied by an assessment of the impact of that possible risk-based prudential treatment of such exposures on insurance and reinsurance undertakings.

2. EIOPA shall review at least every five years, with respect to natural catastrophe risk, the scope and the calibration of the standard parameters of the non-life catastrophe risk sub-module of the Solvency Capital Requirement referred to in Article 105(2), third subparagraph, point (b). For the purposes of those reviews, EIOPA shall take into account the latest available relevant evidence on climate science and the relevance of risks in terms of the risks underwritten by insurance and reinsurance undertakings that use the standard formula for the calculation of the non-life catastrophe risk sub-module of the Solvency Capital Requirement.

The first review pursuant to the first subparagraph shall be completed by … [two years from the date of entry into force of this amending Directive].

Where EIOPA finds, during a review pursuant to the first subparagraph, that, due to the scope or the calibration of the standard parameters of the non-life catastrophe risk sub-module, there is a significant discrepancy between the part of the Solvency Capital Requirement relating to natural catastrophes and the actual natural catastrophe risk that insurance and reinsurance undertakings face, EIOPA shall submit an opinion on natural catastrophe risk to the Commission.

An opinion on natural catastrophe risk submitted to the Commission pursuant to the third subparagraph shall consider the scope or the calibration of the standard parameters of the non-life catastrophe risk sub-module of the Solvency Capital Requirement in order to remedy the discrepancy found and be accompanied by an assessment of the impact of the proposed amendments on insurance and reinsurance undertakings.

3. EIOPA shall evaluate whether and to what extent insurance and reinsurance undertakings assess their material exposure to risk related to biodiversity loss as part of the assessment referred to in Article 45(1). EIOPA shall subsequently assess which actions are to be taken to ensure that insurance and reinsurance undertakings duly consider those risks. EIOPA shall submit a report with its findings to the Commission by 30 June 2025.

EBA, EIOPA and ESMA shall, through the Joint Committee referred to in Article 54 of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, develop guidelines to ensure that consistency, long-term considerations and common standards for assessment methodologies are integrated into the stress testing of environmental, social and governance risks. The Joint Committee shall publish those guidelines by 10 January 2026. EBA, EIOPA and ESMA shall, through that Joint Committee, explore how social and governance-related risks can be integrated into stress testing.

Article 304d

Review as regards separation of life and non-life activities and capital buffers

1. EIOPA shall assess whether the requirement on the separation of life and non-life insurance business referred to in Article 73(1) is still justified. In particular, EIOPA shall assess the effects of maintaining, and the potential effects of lifting, the composite ban at least with respect to policy holder protection, potential cross-subsidisation between life and non-life activities, market efficiency and competitiveness. For the purposes of the assessment, EIOPA shall take into account the supervisory experiences with composite undertakings. EIOPA shall submit a report with its findings to the Commission by … [one year from the date of application of this amending Directive].

2. EIOPA shall monitor until … [five years from the date of application of this amending Directive] the contribution to group Solvency Capital Requirements referred to in Article 228(3), point (a)(ii), of this Directive of the combined buffer requirement of related credit institutions, as defined in Article 128, point (6), of Directive No 2013/36/EU. For that purpose, EIOPA shall liaise with EBA and report to the Commission on any findings.

Article 304e

Extension of deadlines in exceptional circumstances

1. In the event of an exceptional health emergency, natural catastrophe or other extreme event, EIOPA, on its own initiative or upon request from one or more supervisory authorities or from the Commission, shall assess whether such an exceptional health emergency, natural catastrophe or other extreme event is such as to affect materially the operational capabilities of insurance and reinsurance undertakings, preventing them from submitting information within the deadlines set out in Article 35b(1), (2) and (3), Article 51(7), Article 254(3), Article 256(1) and Article 256b(1). When carrying out that assessment, EIOPA shall cooperate closely with the relevant supervisory authorities to determine the impact of the extreme event on the ability to submit information within the deadlines set out in those provisions.

   EIOPA shall submit its assessment to the Commission without undue delay and no later than one week after receipt of the request referred to in the first subparagraph.

Where EIOPA considers that an exceptional health emergency, natural catastrophe or other extreme event affects materially the operational capabilities of insurance and reinsurance undertakings preventing them from meeting the deadlines set out in Article 35b(1), (2) and (3), Article 51(7), Article 254(3), Article 256(1) and Article 256b(1), EIOPA, as well as the relevant supervisory authorities, shall publish that information on their respective websites.

The Commission may extend those deadlines by means of a delegated act adopted in accordance with this Article.

2. In order to ensure a level playing field in relation to the application of paragraph 1, the Commission may supplement this Directive by adopting delegated acts in accordance with Article 301a for individual extreme events which:

(a) define the scope of application of deadlines extension taking into account the insurance and reinsurance undertakings affected by the event;

(b) set out exceptional extended deadlines for reporting, which may be up to 10 weeks longer than those provided in Article 35b(1), (2) and (3), Article 51(7), Article 254(3), Article 256(1) and Article 256b(1); and

(c) specify which information referred to in Article 35b(1), (2) and (3), Article 51(7), Article 254(3), Article 256(1) and Article 256b(1) is to be reported under such extended deadlines.

Where EIOPA has not submitted an assessment in accordance with paragraph 1, the Commission shall seek the views of EIOPA, as appropriate, before adopting a delegated act in accordance with this Article.

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* Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).';

(103) in Article 305, paragraphs 2 and 3 are deleted;

(104) Article 308a is deleted;

(105) Article 308b is amended as follows:

(a) paragraphs 5 to 8 are deleted;

(b) paragraph 12 is replaced by the following:

’12. Notwithstanding Article 100, Article 101(3) and Article 104, Member States shall ensure that the standard parameters to be used when calculating the market risk concentration and the spread risk sub-modules in accordance with the standard formula are the same in relation to exposures to Member States’ central governments or central banks incurred before 1 January 2023 and denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their domestic currency.’;

(c) in paragraph 17, the first subparagraph is replaced by the following:

‘Notwithstanding Articles 218(2) and (3), the transitional provisions as referred to in paragraphs 9 to 12 and 15 of this Article and Articles 308c, 308d and 308e shall apply *mutatis mutandis* at the level of the group.

Where an insurance or reinsurance group, or any of its subsidiary insurance or reinsurance undertakings is applying the transitional measure on the risk-free interest rates referred to in Article 308c or the transitional measure on technical provisions referred to in Article 308d, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall publicly disclose, as part of its report on the group solvency and financial condition referred to in Article 256, and in addition to the disclosures referred to in Articles 308c(4), point (c), and Article 308d(5), point (c), the quantification of the impact on its financial position of assuming that the own funds stemming from the application of those transitional measures cannot effectively be made available to cover the Solvency Capital Requirement of the participating undertaking for which the group solvency is calculated.

Where an insurance or reinsurance group materially relies on the use of the transitional measures referred to in Articles 308c and 308d in such a manner that it misrepresents the actual solvency position of the group, even where the group Solvency Capital Requirement would be complied with without the use of those transitional measures, the group supervisor shall have the power to take appropriate measures, including the possibility to reduce the amount of own funds stemming from the use of those transitional measures that may be deemed eligible to cover the group Solvency Capital Requirement.';

(106) Article 308c is amended as follows:

(a) the following paragraph is inserted:

‘1a. After … [the date of application of this amending Directive], supervisory authorities shall only approve a transitional adjustment to the relevant risk-free interest rate term structure in the following cases:

(a) during a period of 18 months preceding the approval, the rules of this Directive applied for the first time to the insurance or reinsurance undertaking requesting the approval after being exempted from the scope of this Directive pursuant to Article 4;

(b) during a period of six months preceding the approval, the insurance or reinsurance undertaking requesting the approval received authorisation to accept a portfolio of insurance or reinsurance contracts, where the transferring insurance or reinsurance undertaking applied the transitional adjustment to the relevant risk-free interest rate term structure with respect to that portfolio of contracts prior to the transfer.’;

(b) in paragraph 4, point (c) is replaced by the following:

‘(c) within the part of their report on their solvency and financial condition consisting of information addressed to market professionals referred to in Article 51(1b), publicly disclose all of the following:

(i) the fact that they apply the transitional adjustment to the risk-free interest rate term structure;

(ii) the quantification of the impact of not applying that transitional measure on their financial position;

(iii) where the undertaking would comply with the Solvency Capital Requirement without application of that transitional measure, the reasons for its application;

(iv) an assessment of the dependency of the undertaking on that transitional measure and, where applicable, a description of the measures taken or planned by the undertaking to reduce or remove the dependency.’;

(107) Article 308d is amended as follows:

(a) the following paragraph is inserted:

‘1a. After … [the date of application of this amending Directive], supervisory authorities shall only approve a transitional deduction to technical provisions in the following cases:

(a) during a period of 18 months preceding the approval, the rules of this Directive applied for the first time to the insurance or reinsurance undertaking requesting the approval after being exempted from the scope of this Directive pursuant to Article 4;

(b) during a period of six months preceding the approval, the insurance or reinsurance undertaking requesting the approval accepted a portfolio of insurance and reinsurance contracts, where the transferring insurance or reinsurance undertaking applied the transitional adjustment to the relevant risk-free interest rate term structure with respect to that portfolio of contracts prior to the transfer.’;

(b) in paragraph 5, point (c) is replaced by the following:

‘(c) within the part of their report on their solvency and financial condition consisting of information targeted at market professionals referred to in Article 51(1b), publicly disclose all of the following:

(i) the fact that they apply the transitional deduction to the technical provisions;

(ii) the quantification of the impact of not applying that transitional deduction on their financial position;

(iii) where the undertaking would comply with the Solvency Capital Requirement without application of that transitional deduction, the reasons for its application;

(iv) an assessment of the dependency of the undertaking on that transitional deduction and, where applicable, a description of the measures taken or planned by the undertaking to reduce or remove the dependency.’;

(108) in Article 308e, the first paragraph is replaced by the following:

‘Insurance and reinsurance undertakings that apply the transitional measures referred to in Article 77a(2), Article 111(1), second subparagraph, Article 308c or Article 308d, shall inform the supervisory authority as soon as they observe that they would not comply with the Solvency Capital Requirement without application of those transitional measures. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.’;

(109) the following article is added:

‘*Article 308f*

In the part targeted at market professionals of the report on their solvency and financial condition referred to in Article 51(1), insurance and reinsurance undertakings shall publicly disclose the combined impact on their financial position of not applying the phasing-in and transitional measures set out in Article 77a(2), Articles 308c and 308d and, where relevant, Article 111(1), second subparagraph.’;

(110) in Article 309(1), the fourth subparagraph is deleted;

(111) in Article 311, the second paragraph is deleted;

(112) Annex III is amended in accordance with the Annex to this Directive.

Article 2

Amendment to Directive 2013/34/EU

In Article 19a of Directive 2013/34/EU, paragraph 6 is replaced by the following:

‘6. By way of derogation from paragraphs 2 to 4 of this Article, and without prejudice to paragraphs 9 and 10 of this Article, small and medium-sized undertakings as referred to in paragraph 1 of this Article, small and non-complex institutions as defined in Article 4(1), point (145), of Regulation (EU) No 575/2013, captive insurance undertakings as defined in Article 13, point (2), of Directive 2009/138/EC of the European Parliament and of the Council*, captive reinsurance undertakings as defined in Article 13, point (5), of that Directive, and small and non-complex undertakings as defined in Article 13, point (10a), of that Directive may limit their sustainability reporting to the following information:

(a) a brief description of the undertaking’s business model and strategy;

(b) a description of the undertaking’s policies in relation to sustainability matters;

(c) the principal actual or potential adverse impacts of the undertaking on sustainability matters, and any actions taken to identify, monitor, prevent, mitigate or remediate such actual or potential adverse impacts;

(d) the principal risks to the undertaking related to sustainability matters and how the undertaking manages those risks;

(e) key indicators necessary for the disclosures referred to in points (a) to (d).

Small and medium-sized undertakings, small and non-complex institutions, captive insurance and reinsurance undertakings and small and non-complex undertakings that rely on the derogation referred to in the first subparagraph of this paragraph shall report in accordance with the sustainability reporting standards for small and medium-sized undertakings referred to in Article 29c.

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* 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) (OJ L 335, 17.12.2009, p. 1).'.

Article 3

Amendment to Directive 2002/87/EC

In Article 31 of Directive 2002/87/EC, the following paragraph is added:

‘3. By 31 December 2027, the Commission shall in a report to the European Parliament and the Council assess the functioning of this Directive and Directive 2009/138/EC on the aspects listed below, in particular taking into account the prudential treatment of cross-sectoral participation ownerships under sectoral rules, in terms of a level playing field:

(a) whether the fact that there are financial services undertakings that are subject to financial supervision under sectoral rules, but are not listed in any of the financial sectors identified in this Directive, creates an uneven playing field among financial conglomerates;

(b) whether all financial conglomerates implement rules governing capital adequacy requirements, including those set out in Commission Delegated Regulation (EU) No 342/2014[*], in a consistent manner, and whether those rules impose comparable overall quantitative requirements to financial conglomerates, irrespective of whether the main financial sector of the financial conglomerate is the banking sector, the insurance sector or the investment services sector;

(c) whether the supervisory review processes, and the allocation of mandates and enforcement powers between coordinators and sectoral supervisors, in particular as regards capital adequacy requirements, are sufficiently clear and harmonised to ensure that capital adequacy requirements are effectively enforced in a consistent manner throughout the Union, irrespective of the main financial sector in which a financial conglomerate operates;

(d) whether the absence of identification of an undertaking that is ultimately responsible for complying with this Directive poses issues with regard to ensuring a level playing field.

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* Commission Delegated Regulation (EU) No 342/2014 of 21 January 2014 supplementing Directive 2002/87/EC of the European Parliament and of the Council and Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for the application of the calculation methods of capital adequacy requirements for financial conglomerates (OJ L 100, 3.4.2014, p. 1).'.

Article 4

Transposition

1. Member States shall adopt and publish, by … [24 months from the date of entry into force of this amending Directive], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

   They shall apply those measures from … [24 months and one day from the date of entry into force of this amending Directive].

   When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 6

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

Annex III to Directive 2009/138/EC is amended as follows:

(1) in section A (Forms of non-life insurance undertaking), point (27) is deleted;

(2) in section B (Forms of life insurance undertaking), point (27) is deleted;

(3) in section C (Forms of reinsurance undertaking), point (27) is deleted.