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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a 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, group and cross-border supervision - Confirmation of the final compromise text with a view to agreement

2021/0295 (COD)

Proposal for a

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, macroprudential tools, sustainability risks, group and cross-border supervision

(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,

Whereas:

[1] OJ C […], […], p. […].

(1) Directive 2009/138/EC of the European Parliament and of the Council[2] 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 EU economy in need of a sustainable, inclusive and fair recovery. 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.

[2] 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'[3], 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 policyholder 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.

[3] COM/2020/590 final

(4) In its Communication of 11 December 2019 on the European Green Deal[4], 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 the 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 EU on the path towards 2050 was reiterated in the 2021 Strategic Foresight Report[6], which identifies the building of resilient and future-proof economic and financial systems as a strategic area of action.

(5) 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 these climate and environmental risks. In its Communication of 6 July 2021 on a Strategy for Financing the Transition to a Sustainable Economy[7], 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.

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4 COM(2019)640 final

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).

6 COM(2021)750 final

7 COM(2021)390

(6) 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.

(7) 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 occurs in the territory of the Member State of the undertaking providing cover. That provision could mean a requirement of authorisation as insurer for providers of assistance of road vehicles in the event of an accident or breakdown that occurs just across the border and may 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 also extended to accidents or breakdowns, involving the road vehicle covered by that undertaking, that occur occasionally in a neighbouring country.

(8) Insurance and reinsurance undertakings can submit an application for authorisation in any Member State. Information on previous applications and the outcomes of the assessment of such applications could provide essential information for the assessment of their application. Therefore, the supervisory authority should be informed by the applicant insurance or reinsurance undertaking about previous rejections or withdrawals of authorisation in another Member State.

(9) Prior to the granting of authorisation to a an insurance or reinsurance undertaking that is a subsidiary 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, 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. In accordance with the principle of prudential supervision by the supervisory authority of the home Member State , the decision to grant the authorisation remains within the competence of the supervisory authority of the home Member State of the concerned undertaking. However, the results of the joint assessment should be considered when taking that decision.

(10) 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.

(11) Undertakings complying with the risk-based criteria should be able to be classified as small and non-complex undertakings pursuant to a simple notification process. Where, within a period of time not exceeding two months 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 classified as small and non-complex undertaking, in principle, it should automatically benefit from identified proportionality measures on reporting, disclosure, governance, revision of written policies own-risk, calculation of technical provisions and solvency assessment and liquidity risk management plan.

(11a) 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, the supervisory authorities should have the power to request the undertaking concerned to refrain from using one or several proportionality measures. Such power may be used where they identify that the risk profile of an undertaking changes significantly, as a result of a material deterioration of its solvency position, a deficiency in the functioning of its governance or a material change in the activities of the undertaking.

(12) 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 based on a case-by-case analysis and following prior approval by their supervisory authorities.

(13) A proper implementation of the proportionality principle is crucial to avoiding excessive burden on insurance and reinsurance undertakings. Supervisory authorities need to be regularly informed of the use of proportionality measures. For this reason, insurance and reinsurance undertakings should annually report to their supervisory authorities information on the proportionality measures they use.

(14) 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.

(15) 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 and evaluations of the system of governance of insurance and reinsurance undertakings.

(16) Cooperation 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 and to enhance the protection of policyholders across the Union. This cooperation should include contacts and exchanges between home and host authorities, including transmission of more 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. The frequency and intensity of such cooperation should be proportionate to the risks that are inherent to the significant cross-border activities.

(17) 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 this 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.

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

(19) Reporting and disclosure deadlines should be clearly laid down in Directive 2009/138/EC. However, it should be recognised that exceptional circumstances namely sanitary 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. To this end, supervisory authorities should be able to extend the deadlines after EIOPA has declared an operations-disrupting event as exceptional.

(20) 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 are fit and proper. However, those who manage the undertaking or perform a key function should be fit and proper on a continuous basis. Supervisory authorities should therefore have the power to react and, where appropriate, to remove the person concerned from the relevant position, in the case of non-compliance with the fit and proper requirements.

(21) As insurance activities may trigger or amplify risks for financial stability, insurance and reinsurance undertakings should, incorporate macroprudential considerations and analysis in their 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.

(22) Where requested by the national supervisory authority, insurance and reinsurance undertakings should factor any relevant macroprudential information provided by the supervisory authorities in their own-risk and solvency assessment. In order to ensure a consistent application of such additional macroprudential measures, EIOPA should develop guidelines regarding their scope of application that specify the criteria to be taken into account by national supervisory authorities when identifying the undertaking to which the measure applies. To ensure that the assessment of macroprudential risks is holistic in nature, these guidelines should provide methods and indicators for national supervisory authorities to weigh and combine the relevant criteria when selecting the addressees of the requests for additional macroprudential measures, without setting prescriptive thresholds in relation to individual criteria. The supervisory authorities should analyse the own-risk and solvency assessment supervisory reports of undertakings that are requested to take macroprudential considerations into account within their jurisdictions, aggregate them and provide input to 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 with a macroprudential mandate, the outcome and the findings of macroprudential assessments by the supervisory authorities are shared with that macroprudential authority.

(23) In line with the Insurance Core Principles adopted by the International Association of Insurance Supervisors, national supervisory authorities should be able to identify, monitor and analyse market and financial developments that may affect insurance and reinsurance undertakings, and 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.

(24) 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 this purpose.

(25) 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 may 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 actions.

(26) 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.

(27) Directive 2009/138/EC requires the disclosure, at least annually, of essential information through the solvency and financial condition report. That report has two main types of addressees: policyholders and beneficiaries on the one hand, and analysts and other market participants 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 policyholders and beneficiaries, should contain the key information on business, performance, capital management and risk profile. The second part, addressed to analysts and other market participants, 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.

(28) 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 addressed to policyholders should only contain the information that is expected to be relevant to the decision-making of an average policyholder. 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 policyholder. The impact of such measures should therefore be disclosed in the part of the solvency and financial condition report addressed to market participants and not in the part addressed to policyholders.

(29) 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 when they do not jeopardise the readability of the data provided by insurance and reinsurance undertakings.

(30) In order to guarantee the highest degree of accuracy of the information disclosed to the public, a relevant part 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.

(31) 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 in the proportionality measures applicable to small and non-complex 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, as some Member States have already implemented audit requirements encompassing all undertakings and other parts of the solvency and financial condition report, they should have the possibility to apply auditing to all undertakings and other parts of the solvency and financial condition report.

(32) 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 those undertakings sufficient time to produce audited reports.

(33) 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 this regard, some simplifications should be provided.

(34) 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 order to assist insurance and reinsurance undertakings that apply the volatility adjustment, EIOPA should develop and make available on its website a tool to perform the calculation of the extrapolation of the risk-free interest rate term structure at different levels of the volatility adjustment and to facilitate the calculation of any undertaking-specific components of the volatility adjustment.

(35) 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 measure and a transitional measure. The transitional measures should aim to avoid market disruption and provide a transparent path to the final extrapolation method.

(36) 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 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.

(36a) Where the 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 may overcompensate the loss of own funds caused by widening bond spreads and may lead to undue volatility in the own funds. With the objective to offset the artificial volatility caused by such overcompensations, in these cases undertakings should be able to apply for a modification of the volatility adjustment that takes into account information on the undertaking specific investments in debt instruments.

(37) Directive 2009/138/EC provides for a country component in the volatility adjustment that aims to ensure that exaggerations of asset 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 asset 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 based on 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.

(38) 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.

(39) 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 reliably reduces the currency risk.

(40) For the purposes of calculating their own funds under Regulation (EU) No 575/2013 of the European Parliament and of the Council[8], institutions which belong to financial conglomerates that are subject to Directive 2002/87/EC of the European Parliament and of the Council[9] may 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 funds 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 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.

(41) Deleted

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

[9] 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).

(42) 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. This approach should be based on common rules and subject to common criteria for the identification of immaterial risks.

(42a) Article 105(5)(a) of Directive 2009/138/EC requires that the interest rate risk sub-module reflects the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structures of interest rates, or in the volatility of interest rates. The recent experience with unprecedented low interest rates may justify significant adjustments to the calculation of the interest rate risk sub-module set out in Delegated Regulation (EU) 2015/35. Significant adjustments in this area, if introduced at once, might lead to disruptions in the insurance and reinsurance market. In order to avoid such disruptions, such significant changes to the interest rate risk sub-module drawing the consequences of this amending directive should be phased-in over a period of no more than five years and apply to all insurance or reinsurance undertakings. According to their significance, subsequent changes of the interest rate risk sub-module may not be phased-in.

(43) 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 should therefore not be 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 based on 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.

(44) As part of the supervisory review process, it is important for supervisory authorities to be able to compare information across the companies they supervise. Partial and full internal models allow to capture the individual risk of a company 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. However, partial and full internal models make comparisons across companies more difficult and supervisory authorities would therefore benefit from access to the outcome of the annual estimation of the Solvency Capital Requirement in accordance with the standard formula. Insurance and reinsurance undertakings should therefore regularly report such information to their supervisors.

(45) 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.

(46) 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.

(47) Considering the nature, scale and complexity of the risks, national supervisory authorities should be able to collect relevant macroprudential information on the investment strategy of 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 undertakings. This could include supervising risks related to specific credit cycles, economic downturns and collective or herding behaviour in investments.

(48) Directive 2009/138/EC provides for an extension of the recovery period in cases of breaches of the Solvency Capital Requirement where the European Insurance and Occupational Pensions Authority (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) 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.

(49) 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.

(50) The protection of the interests of insured persons is a general objective of the prudential framework that should be pursued by competent supervisory authorities at every stage of the supervisory process, including in case of breaches or likely breaches of requirements by insurance or reinsurance undertakings that may give rise to the withdrawal of authorisation. That objective should be pursued before the withdrawal of authorisation, and in consideration of any legal implication for insured persons that may derive from it, after the withdrawal of authorisation as well.

(51) National 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.

(52) 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 this reason, insurance and reinsurance undertakings should be required to strengthen liquidity management , especially in the context of adverse situations affecting a large part or the totality of the insurance and reinsurance market.

(52a) Insurance and reinsurance undertakings that have developed the liquidity plan in accordance with Article 44(2), third subparagraph of Directive 2009/138/EC, should be allowed to use that plan to manage liquidity risks.

(53) Whenever undertakings with particularly vulnerable profiles, such as those having liquid liabilities or 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 their liquidity position.

(54) 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 policyholders and preserve financial stability. Those powers should include the possibility to restrict or suspend distributions to shareholders and other subordinated lenders 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.

(55) As the restriction or the suspension of 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 principle 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 market and of the financial system as a whole.

(55a) In exceptional circumstances, insurance undertakings can be subject to the risk of significant liquidity constraints on the asset side, for instance resulting from imposed redemption bans from investment fund's shares which insurance and reinsurance undertakings may hold, or to the risk of mass surrenders on life insurance policies, resulting for instance from sudden changes in the level of interest rates. If not swiftly addressed, these exceptional events can generate pro- cyclical market behaviours, for instance forced selling of assets at depreciated prices, that, even if affecting directly specific undertakings, may have implications for the insurance market as a whole. Therefore, supervisory authorities should have the power to temporarily suspend redemption rights on life insurance policies of undertakings concerned by significant liquidity risks for a short period of time and only as a last resort measure. This exceptional measure should be used with the view of preserving the collective policyholder protection, namely the protection of all policyholders including those who may be indirectly affected by the liquidity stress.

(56) 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 undertakings. Therefore, insurance and reinsurance undertakings should be required to notify the supervisory authority of their home Member State 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.

(57) Under Directive 2009/138/EC, as amended by Directive (EU) 2019/2177 of the European Parliament and of the Council[10], 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 freedom of establishment. However, in view of the complexity of the supervisory issues dealt with within those platforms, in several cases, national 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.

(58) 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 may 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 in a reasonable period of time. Therefore, the supervisory authorities of the host Member States, like the supervisory authority of the home Member State, should also have the power to directly request information from insurance or reinsurance undertakings in a timely manner where the home supervisor fails to provide a response within two weeks. The new provision should not prevent voluntary transmission of information from insurance and reinsurance undertakings to the supervisory authorities of the host Member States.

[10] Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), Directive 2014/65/EU on markets in financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing (OJ L 334, 27.12.2019, p. 155).

(59) Where an insurance or reinsurance undertaking carries out significant cross-border activities in a host Member State, the supervisory authority of that Member State should have the power to request basic information from the supervisory authority of the home Member State on the solvency position of that insurance or reinsurance undertaking. Where the supervisory authority of the host Member State has serious concerns regarding that solvency position, 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 significant non-compliance with the Solvency Capital Requirement. EIOPA should be invited to participate. In this regard, EIOPA should indicate as soon as practicable whether it intends to participate. Where supervisory authorities disagree on the opportunity 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.

(60) In order to be identified as an insurance holding company, a parent company should 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 brought to the definition of a financial holding company referred to in Article 4, paragraph 1, point (20) of 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 this criterion is fulfilled irrespective of the undertaking's own stated corporate purpose or object.

(60a) 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 holding company does not have any insurance or reinsurance subsidiary 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.

(61) 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. Absent changes in their particulars, groups which are already subject to group supervision in accordance with Directive 2009/138/EC should continue being subject to such supervision.

(62) 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 decision and explain why the existing arrangements or structures obstruct and jeopardise effective group supervision.

(63) Group supervisors may 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 such cases should only occur in very exceptional circumstances and that group supervisors should notify EIOPA after 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.

(63a) Decisions not to include an undertaking in the scope of group supervision may be based on various provisions laid down in Directive 2009/138/EC. Amendments to Article 214, paragraph 2, of that Directive aiming to specify the concept of 'negligible interest' should therefore not affect such existing decisions to the extent they are based on grounds different from considerations of 'negligible interest', and as long as there is no evidence of a material change in the structure, scope of business and risk profile of the undertakings and the rationale underlying such decisions remains valid.

(64) There is a lack of clarity regarding the types of undertakings for which Method 2, namely a deduction and aggregation method as defined in Article 233 of Directive 2009/138/EC, may be applied when calculating group solvency, which is detrimental to the level-playing field in the Union and in third countries. Therefore, it should be clearly specified which undertakings may be included in the group solvency calculation through Method 2. Such method should only apply to insurance and reinsurance undertakings, third- country insurance and reinsurance undertakings, mixed financial holding companies and insurance holding companies. It is also important to ensure that prudential rules warrant a level-playing field at global level for all insurance groups which are subject to Title III of Directive 2009/138/EC and which operate in third countries. For this reason, where an international group includes insurance or reinsurance undertakings with head offices in third countries whose solvency regimes have been deemed equivalent or provisionally equivalent in accordance with Article 227 of that Directive, the group supervisor should give such a consideration priority when deciding on whether method 2 should be used instead of – or in combination with – method 1 (accounting-based consolidation method).

(65) 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 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 purpose of group solvency calculation, although the nature of their risks are very similar. Therefore, 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 purpose of group solvency calculation.

(66) Directive 2009/138/EC, and Commission Delegated Regulation (EU) 2015/35[11] 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. This 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.

(67) 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 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.

(68) The concept of encumbrance which should be taken into account when classifying own-fund items into tiers is not specified. In particular, it is unclear how that concept applies to insurance holding companies and mixed financial holding companies which do not have policyholders 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.

[11] 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).

(69) 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.(70) The formula for calculating the minimum consolidated group Solvency Capital Requirement may lead to situations where that minimum is close, or even equal, to the consolidated group Solvency Capital Requirement. Where in such cases, a group that does not comply with the minimum consolidated group Solvency Capital Requirement but still complies with its Solvency Capital Requirement , supervisory authorities should only use the powers which are available where the group Solvency Capital Requirement is not complied with. (71) For the purpose of group solvency calculation, insurance holding companies and mixed financial holding companies should be treated as insurance or reinsurance undertakings. This 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.

(72) There is no legal provision specifying how to calculate group solvency when a combination of Method 1 and Method 2 is used. This 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 as well as to preserve 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, 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.

(73) Currently, group supervisors may determine thresholds above which intra-group transactions and risk concentration are deemed significant based on Solvency Capital Requirements, technical provisions, or both. However, other risk-based quantitative or qualitative criteria, for instance eligible own funds may 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.

(74) Group supervisors may miss important information on intra-group transactions that are not required to be reported under current rules, in particular those involving third-country insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies. Therefore, the definition of 'intra-group transactions to be reported' should be reviewed. In addition, group supervisors should have the power to tailor the definition of 'intra-group transactions to be reported' so that it better fits the specificities of each group.

(75) 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[12] introduced by Directive (EU) 2019/878 of the European Parliament and of the Council[13] 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 purpose of group supervision.

[12] 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 and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

[13] 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).

(76) For the purposes of preserving the level playing field at global level and 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 may 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, this 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 policyholders 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.

(77) Commission Delegated Regulation (EU) 2019/981[14] 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 those amendments lead to adverse effects, a grandfathering clause should be provided for with respect to insurers which are currently applying the duration-based equity risk submodule.

[14] 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).

(78) Achieving the environmental and climate ambitions of the Green Deal requires the channelling of large amounts of investments from the private sector, including from insurance and reinsurance companies, towards sustainable investments. The provisions of Directive 2009/138/EC on the capital requirements should not impede sustainable investments by insurance and reinsurance undertakings but should reflect the full risk of investments in environmentally harmful activities. While there is not sufficient evidence at this stage on risk differentials between environmentally or socially harmful and other investments, such evidence may become available over the next years. In order to ensure an appropriate assessment of the relevant evidence, EIOPA should monitor and report by 2023 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. EIOPA may also inquire whether it would be appropriate that certain environmental risks, other than climate change-related, 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.

(79) Climate change is affecting and will affect at least over the next decades the frequency and severity of natural catastrophes which are likely to further aggravate due to environmental degradation and pollution. This may 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.

(80) 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 this 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.

(81) 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. This may 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. Those measures should however not affect the use by related insurance or reinsurance undertakings of those transitional measures when calculating their individual Solvency Capital Requirement.

(82) Directive 2009/138/EC provides for transitional measures for the risk-free interest rates and on technical provisions which are subject to supervisory approval and which apply with respect to contracts that give rise to the insurance and reinsurance obligations that were concluded before 2016. While the transitional measures should encourage undertakings to move as timely as possible towards compliance with that Directive, the application of transitional measures approved for the first time long after 2016 are 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 and, where an undertaking has accepted a portfolio of insurance or reinsurance contracts and the transferring undertaking applied a transitional measure with respect to the obligations relating to that portfolio, before the transfer.

(82a) The supervision of phasing-in plans for the transitional measures on risk-free interest rates and on technical provisions should be improved, in particular by strengthening the power of the supervisor to withdraw those transitional measures where progress towards compliance with the Solvency Capital Requirement at the end of the transitional period is not achieved or where such compliance is unrealistic. In particular, the compliance may be considered unrealistic where it is based on the assumption that the situation of financial markets at the end of the transitional period is improved compared to the situation at the time of the assessment.

(82b) In order to take account of market developments and supplement certain detailed technical aspects of this Directive, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the criteria for identifying small and non-complex undertakings and groups, 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 and the information to be included in the group regular supervisory report. 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.

(82c) 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.

(82d) Since the objectives of this Directive 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.

(83) 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.

(84) 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, (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 (10a), (10b), (10c) and (10d) are inserted:

‘(10a) ‘ small and non-complex undertaking’ means an insurance and 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) ‘audit firm’ means an audit firm within the meaning of Article 2, point (3), of Directive 2006/43/EC of the European Parliament and of the Council*;

(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) ‘ 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;

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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*, as well as an undertaking which supervisory authorities shall consider as parent undertaking in accordance with Article 212(2) or Article 214(5) or (6) of this Directive;

‘(16) ‘subsidiary undertaking’ means any subsidiary undertaking as referred to in Article 22(1) and (2) of Directive 2013/34/EU, including subsidiaries thereof, as well as an undertaking which supervisory authorities are to consider as 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 investment firms and amending Regulation (EU) No 648/2012, (OJ L 176, 27.6.2013, p. 338).’;

(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 point (c), point (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) the words ‘Directive 83/349/EEC’ are replaced by the words ‘Directive 2013/34/EU’;

(i) the following point (41) is added:

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

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

'(i) to indicate whether a request 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 (f) is added:

'(f) the market 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 within eight months in cases of joint assessment pursuant to Article 26(4), 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[6]' are replaced by the word 'EIOPA';

(11) in Article 26, the following paragraph 4 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 the receipt of the request for consultation, the supervisory authority that grants the authorisation to jointly assess the application for authorisation. The supervisory authority that grants the authorisation shall consider the conclusions of the joint assessment when taking its final decision.';

(12) Article 29 is amended as follows:

(a) 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 those 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.’;

(b) the following paragraphs 5 and 6 are added:

'5. The Commission shall adopt delegated acts, in accordance with Article 301a, specifying the criteria laid down in Article 29a(1) and in Article 213a (1), including specifying which investments, based on riskiness or complexity, shall be considered as traditional or non-traditional investments under Article 29a(1) and Article 213a(1).

6. In order to ensure consistent supervisory practices in the application of proportionality, EIOPA shall develop guidelines specifying the methodology to be used when:

(a) classifying undertakings or groups as small and non-complex undertakings or small and non-complex groups; and

(b) 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 or groups not classified as small and non-complex groups.';

(13) the following Articles 29a to 29e 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, according to the process set out in Article 29b, where, for two consecutive financial years 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), 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 any of the two following thresholds:

- EUR 15 000 000; or
- 5 % 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) investments in traditional investments represent more than 80 % of total investments ;

(v) the business of the undertaking does not include reinsurance operations exceeding 50 % of its annual total gross written premium income.

(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 its total annual gross written premium income and whose technical provisions related to the life activities represent less than 20 % of its 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 any of the two following thresholds:

- EUR 15 000 000; or
- 5 % 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 of Section A of Annex I is not higher than 30 % of total annual written premiums of non-life business;

(v) investments in traditional investments represent more than 80 % of total investments ;

(vi) the business of the undertaking does not include reinsurance operations exceeding 50 % of its total gross written premium income.

(c) For undertakings pursuing both life and non-life activities whose technical provisions related to the life activities represent 20 % or more of its 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 its 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), 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 any of the two following thresholds:

- EUR 15 000 000; or
- 5 % 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 of Section A of Annex I is not higher than 30 % of total annual written premiums of non-life business;

(vii) investments in traditional investments represent more than 80 % of total investments ;

(viii) the business of the undertaking does not include reinsurance operations exceeding 50 % of its annual total gross written premium income.

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 and captive reinsurance undertakings.

2. For undertakings which have obtained authorisation in accordance with Article 14 for less than two 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 for less than one year, 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 an insurance group within the meaning of Article 212, to which group supervision applies in accordance with Article 213(2), point (a) or (b), 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);

(d) undertakings that manage group pension funds within the meaning of Article 2(3)b(iii) and Article 2(3)b(iv), where the value of the assets of the group pension funds exceeds EUR 500 000 000.

Article 29b

Process of classification for undertakings complying with the criteria

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

2. The notification referred to in paragraph 1 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 conditions 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 conditions set out in Article 29a within the next three years;

   (c) an identification of the proportionality measures the undertaking will 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(7).

3. The supervisory authority may oppose the classification as 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 conditions foreseen under Article 29a;

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

(c) the undertaking represents more than 5% of the life or, as applicable, non-life insurance and reinsurance market of the home Member State of the undertaking ("market share").

A decision of the supervisory authority to oppose the classification shall be done in writing and state the reasons of the supervisory authority's disagreement. Absent such decision, the undertaking shall be classified as small and non-complex undertaking as of the end of the two months opposition period or an earlier date where the supervisory authority has issued a decision earlier confirming compliance with criteria.

The assessment of the market share of an undertaking for the purpose of point (c) shall be based on gross written premium income for a non-life insurance and reinsurance market and gross technical provisions for a life insurance market. The assessment shall also take into account the guidelines referred to in Article 35a(6).

4. With respect to requests received by supervisory authorities within the first six months of [OP please insert date = entry into application of this Directive], the period referred to in paragraph 3 shall be extended to four months.

5. An undertaking shall be classified as 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 notify the supervisory authority of this situation, and will cease to be classified as small and non-complex undertaking as from the third financial year.

When a small and non-complex undertaking no longer complies with any of the conditions set out in Article 29a(3), that undertaking shall notify the supervisory authority without delay and will cease to be classified as small and non-complex undertaking as from the following financial year.

6. A small and non-complex undertaking shall notify the supervisory authority where it intends to use more proportionality measures than those previously notified in accordance with paragraph 2(c), or where it intends to refrain from using one or more proportionality measures previously notified in accordance with paragraph 2(c).

Article 29c

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

1. Member States shall ensure that, without prejudice to specific requirements set out in each proportionality measure, undertakings classified as small and non-complex undertakings may use all the proportionality 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(7) and Article 144a(4), and any proportionality measure provided for in the delegated acts adopted pursuant to this Directive.

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 listed in paragraph 1 provided this is justified in writing with reference to the specific concerns relating to the risk profile of the undertaking. This power may be exercised where the serious concerns relate to :

   - the undertaking's solvency position, assessed with and without the use of any of the transitional measures referred to in Article 77a(2), Article 308c, Article 308d and, where relevant, Article 111(1), [second] subparagraph ; or
   - deficiencies in the functioning of the undertaking's system of governance; or
   - material changes in the activities of the undertaking that affect the undertaking's compliance with 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 use any proportionality measure provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 77(7) and Article 144a(4) and any proportionality measure provided for in the delegated acts adopted pursuant to this Directive, subject to prior approval from the supervisory authority.

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

(a) the 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, assess the request and inform the undertaking of its approval or rejection, as well as of the proportionality measures granted. 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 several proportionality measures listed in the request submitted by the undertaking shall be done 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. The assessment period referred to in paragraph 2 shall be suspended for the period between the date of 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 within the first six months of [OP please insert date = date of application of this 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. The authority shall state in writing the reasons of its decision accordingly.

6. The insurance or reinsurance undertaking shall notify the supervisory authority where it intends to refrain from using one or more proportionality measures previously requested in accordance with paragraph 1(a).

Article 29e

Monitoring of the use of proportionality measures

1. Member States shall require insurance and reinsurance undertakings using proportionality measures to report annually 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.

2. Insurance and reinsurance undertakings applying any proportionality measure referred to in Article 29c(1) or Article 29d(1) by [OP please insert date = entry into force of this Directive] may continue to apply such measures without applying requirements set out in Articles 29b, 29c and 29d , for a period not exceeding four financial years.';

(14) Deleted

(15) the following Article 33a is inserted:

'Article 33a

Supervisory cooperation between home and host supervisory authorities

1. In the event of significant cross-border activities carried out by insurance and reinsurance undertakings under the right of establishment or the freedom to provide services, the supervisory authority of the home Member State shall cooperate with the supervisory authority of the host Member State to assess whether the undertaking has a clear understanding of the risks that it faces, or may face, in the host Member State.

The intensity and frequency of this cooperation shall be commensurate to 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 arrangements 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 cross-border activity where potential issues of compliance with the provisions applicable in the host or the home Member State have been identified, provided that these issues may have an effect on the cross-border activity exercised in the host Member State.

3. For the purpose of this Article, 'significant cross-border activities' are insurance and reinsurance activities carried out by an insurance or reinsurance undertaking under the right of establishment and those carried out under the freedom to provide services in a given host Member State, which meet any of the two following requirements:

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

(b) 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, in particular when the activities are considered as relevant by the supervisory authority of the host Member State.

For the purpose of point (b), EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) 1094/2010 to further specify the conditions and cases to be used when determining which insurance or reinsurance undertakings are of relevance with respect to the host Member State's market.

For the purpose of point (b), in case 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 thereof.

In case 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 case 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 case, EIOPA may act in accordance with the powers conferred by that Article.';

(16) 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(1) and (2), and the principle of proportionality laid down in Article 29(3).';

(b) the following paragraph 5a is inserted:

'5a. Taking into account the information required in paragraphs 1 , 2(a)(i) 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) every three years, for small and non-complex undertakings;

(b) at least every three years for insurance and reinsurance undertakings other than small and non-complex undertakings.';

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

(d) paragraph 9 is replaced by the following:

'9. The Commission shall adopt 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 reinsurance captive undertakings considering the nature, scale and complexity of the risks of these specific types of undertakings 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 when applicable or any exemption of specific information for certain types of undertakings such as captive insurance and reinsurance undertakings considering the nature, scale and complexity of the risks of specific types of undertakings.';

(f) paragraph 11 is deleted;

(g) the following paragraph 12 is added:

'12. By [OP please insert date = 2 years after publication date], EIOPA shall submit to the Commission a report on potential measures, including legislative changes, to develop an integrated data collection to:

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

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

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 and shall, where relevant, involve the national competent authorities.';

(17) the following Article 35a is 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 do not represent more than 20 % of a Member State's life and non-life insurance and reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

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 do not represent more than 20 % of a Member State's life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions. 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) all insured persons and beneficiaries are any of the following:

- legal entities of the group of which the captive insurance undertaking or captive reinsurance undertaking is part,
- 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, 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, the parameters refered to in points (a) to (d) of paragraph 4 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) 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.';

(18) the following Article 35b is inserted:

'Article 35b

Reporting deadlines

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

2. Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in Article 35(1) to (4) on a quarterly basis no later than five weeks after the end of each quarter.

3. Member States shall ensure that insurance and reinsurance undertakings submit the regular supervisory report referred to in Article 35(5a) no later than 18 weeks after the undertaking's financial year ends.

4. Without prejudice to the powers of EIOPA under Article 18 of Regulation (EU) No 1094/2010, EIOPA may, at the request of one or several national supervisory authorities or on its own initiative, declare operations-disrupting events as exceptional. An operations-disrupting event may only be declared as exceptional if it is caused by a sanitary emergency, a natural catastrophe or another extreme event and if it affects materially the operational capabilities of insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business in one or several Member States.

Where EIOPA has declared an operations-disrupting event as exceptional, the national supervisory authorities concerned may, within 3 months following the declaration, temporarily extend, for affected undertakings, the deadlines referred to in paragraphs 1, 2 or 3 by up to 10 weeks. Based on the declaration by EIOPA of an operations-disrupting event as exceptional, the national supervisory authorities concerned may, where necessary, extend those deadlines for reporting obligations which are due within 6 months from the declaration by EIOPA. Where the affected undertakings are part of a group to which group supervision applies in accordance with Article 213(2), national supervisory authorities shall inform without delay the group supervisor of this extension.';

(19) 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;';

(20) Article 37 is amended as follows:

(a) in paragraph 1, the following point (e) 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 of Article 308e, second paragraph, or the required annual report as set out 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 respectively the non-compliance referred to in those points.';

(21) 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 on 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 undertaking's business.';

(b) the following paragraph 2a 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 others in order to avoid conflicts of interest.

When an undertaking has been classified as a small and non-complex undertaking, pursuant to Article 29b, and 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 critical function or be a member of the administrative, management or supervisory body provided that the following conditions are met:

(a) potential conflicts of interests 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 three years, unless the supervisory authority concludes, based on the specific circumstances of that undertaking, that a more frequent review is needed.’;

(22) Article 42 is amended as follows:

(a) 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 any 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 paragraphs 1 and 2 no longer fulfil the requirements referred to in paragraph 1 or have been replaced for that reason.;

(b) the following paragraph 4 is added:

‘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.’;

(23) 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 cyber security as defined in Article 2, point (1), of Regulation (EU) 2019/881 of the European Parliament and of the Council*;

* 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 subparagraph is 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.’;

(b) paragraph 2a is amended as follows:

(i) the first subparagraph is amended as follows:

– in point (b), 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);’;

– in point (b), point (iii) is deleted;

– 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.’;

(24) Article 45 is amended as follows:

(a) in paragraph 1, second subparagraph, the following points (d), (e) and (f) are added:

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

(e) at the 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 policyholders and other counterparties when those obligations fall due, even under stressed conditions.’;

(b) the following paragraphs 1a and 1b are inserted:

'1a. For the purpose of paragraph 1, points (d) and (e), macroeconomic and financial markets' developments shall include, at least, issues related to 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 purpose of paragraph 1, point (e), 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 undertakings that are classified as small and non-complex undertakings, are not obliged to conduct pursuant to Article 29c the analysis referred to in paragraph 1, point (e).';

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

'2.a 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 Articles 77a(2), 308c and 308d, and, where relevant, Article 111(1) [second] subparagraph, it shall perform the assessment of compliance with the capital requirements referred to in paragraph 1, point (b) with and without taking into account those adjustments and transitional measures.

However, by way of derogation, the assessment requirement for the transitional measures referred to in Article 77a, shall not apply to a currency for which one of the following applies:

i. 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 %;

ii. 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 %.

(d) the following paragraph 2b is inserted:

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

(e) 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 based on 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 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) all 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, monitoring, managing and reporting risks on a continuous basis.';

(f) the following paragraph 8 is added:

‘8. For the purpose 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 authorities with a macroprudential mandate.

Member States shall ensure that supervisory authorities cooperate with any national 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 relevant input parameters relevant for the assessment with the undertaking concerned.’;

(g) the following paragraph 9 is added:

‘9. When deciding whether to request any of the analyses referred to in paragraph 1(e) 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 the analyses referred to in paragraph 1(e) 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 ESRB the list of insurance and reinsurance undertakings and the list of groups for which they request the additional macroprudential measures.’;

(25) the following Article 45a 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 equal to or 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 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.

5. By way of derogation from paragraphs 2, 3 and 4, small and non-complex undertakings shall neither be required to specify climate change scenarios nor to assess their impact on the business of the undertaking, without prejudice of the application of Article 29c.';

(26) Article 51 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall, taking into account the information required in 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 contain two separate parts clearly identified and disclosed jointly. The first part shall consist of information addressed to policyholders and beneficiaries, and the second part shall consist of information addressed to other market participants. ';

(b) paragraph 1a is replaced by the following:

'1a. The part of the solvency and financial condition report consisting of information addressed to policyholders and beneficiaries shall contain the following information:

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

(b) a brief description of the capital management and the risk profile of the undertaking.';

(c) the following paragraphs 1b and 1c are inserted:

'1b. The part of the solvency and financial condition report consisting of information addressed to other market participants 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 financial 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.

1c. Where the matching adjustment referred to in Article 77b is applied, the description referred to in paragraph 1b, points (c), (d)(i) and (d)(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, points (b), (c)(i) and (c) (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.';

(d) paragraph 2 is replaced by the following:

'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.';

(e) the following paragraphs 3 to 10 are added:

'3. Captive insurance undertakings shall not be required to disclose the part addressed to policyholders and beneficiaries and they shall not be required to include in the part addressed to other market participants information other than the quantitative data required by the implementing technical standard referred to in Article 56 provided that these undertakings meet the following conditions:

(a) all 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 addressed to policyholders and beneficiaries and they shall not be required to include in the part addressed to other market participants information other than the quantitative data required by the implementing technical standards referred to in Article 56 provided that these undertakings meet the following conditions:

(a) all 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;

(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 not disclose the part of the solvency and financial condition report addressed to policyholders and beneficiaries.

6. By way of derogation from paragraph 1b , 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 addressed to other market participants, 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 submit the information referred to in the first paragraph of this Article within 18 weeks after the undertaking's financial year end and that supervisory authorities have the power to temporarily extend this deadline, if necessary, by up to 10 weeks for affected undertakings in case of an operations-disrupting event declared as exceptional by EIOPA, pursuant to Article 35b(4). Those deadlines may be extended where necessary for reporting obligations which are due within 6 months from the declaration by EIOPA. Where the affected undertakings are part of a group to which group supervision applies in accordance with Article 213(2), national supervisory authorities shall inform without delay the group supervisor of this extension.

8. As part of the report referred to in paragraph 1 , insurance and reinsurance undertakings shall disclose the impact of using, for the purposes of determining the technical provisions pursuant to 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 one of the following applies:

(i) 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 %;

(ii) 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 %.

9. Where relevant, insurance and reinsurance undertakings shall disclose, as part of the report referred to in paragraph 1, the impact on their financial position of any transitional measure used pursuant to Article 111(1), [second] subparagraph, and Article 77a(2).

10. As part of the report referred to in paragraph 1, insurance and reinsurance undertakings shall disclose the combined impact on their financial position of not applying the transitional measures set out in Articles 77a, 308c and 308d and, where relevant, Article 111(1) [second] subparagraph.';

(27) the following Article 51a 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 or as part of the single solvency and financial condition report shall be subject to an audit.

2. By way of derogation from Article 29c, Member States may extend the obligation laid down in paragraph 1 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 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.

In Portugal, parts of the audit may be carried out by entities registered as Atuário Responsável pursuant to national law, 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 audit, and in compliance with the duties referred to in Article 72.

5. 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.';

(28) Article 52 is amended as follows:

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

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

(b) in paragraph 2, the following points (f) and (g) are 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 and others using simplifications or other proportionality measures and the number of undertakings or groups using specific simplifications and other proportionality measures .'

(g) for each Member State separately, the number of small and non-complex insurance and reinsurance undertakings and groups and the gross written premiums income underwritten in Members States other than the Home Member states and the percentage of the latter to the total annual gross written premium income.;'

(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.';

(d) the following paragraph 4 is added:

'4. EIOPA shall monitor the appropriateness and soundness of the criteria for identifying small and non-complex undertakings and groups and assess the effects of applying those criteria, at least with respect to the objectives of policyholders' protection, financial stability and level playing field. EIOPA shall submit a report on its findings to the Commission by [OP please insert date = three years after entry into application].'.

(29) 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(1b), point (d).';

(30) Article 56 is amended as follows:

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

'The Commission shall adopt delegated acts, in accordance with Article 301a, that further specify the information that insurance and reinsurance undertakings are required to disclose. ';

(b) the following paragraph is added at the end of this Article:

'In order to ensure a coherent and consistent application of Article 51(1b)(d)(iii), EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) 1094/2010 to further specify the methods to be used when determining which insurance and reinsurance undertakings are relevant for the financial stability of the financial systems in the Union. EIOPA shall ensure consistency of the guidelines with other tools used for identifying insurance and reinsurance undertakings that are relevant for the financial stability of the financial systems in the Union for the purpose of its tasks pursuant to Regulation (EU) 1094/2010.'

(31) 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).';

(32) 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’;

(33) 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.’;

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

(35) in Article 72(1), the words ‘Article 51 of Directive 78/660/EEC, Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC’ are replaced by the words ‘Article 34 or 35 of Directive 2013/34/EU or Article 73 of Directive 2009/65/EC’;

(36) in Article 77, the following paragraphs 6 and 7 are added:

‘6. 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.

7. Notwithstanding paragraph 6, small and non-complex undertakings, pursuant to Article 29b, may use a prudent deterministic valuation of the best estimate for life obligations with options and guarantees that are not deemed material.’;

(37) 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. The relevant risk-free interest rate term structure shall be extrapolated for maturities longer than the first smoothing point. The first smoothing point for a currency shall be the longest maturity for which all of 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.

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

2. For the purpose of paragraph 1, second subparagraph, any parameters determining the speed of the convergence of the forward rates towards the ultimate forward rate of the extrapolation may be chosen such that on [OP please insert date = application date] 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 [OP please insert date = one day before date of application]. Those parameters of the extrapolation shall be decreased linearly at the beginning of each calendar year, during a transitional period. The final parameters of the extrapolation shall be applied as of 1 January 2032.

The transitional mechanism set out in the first subparagraph shall not affect the determination of the depth, liquidity and transparency of financial markets and the first smoothing point referred to in paragraph 1.';

(38) Article 77d is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that an insurance and 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.';

(b) the following paragraphs 1a, 1b and 1c are inserted:

'1a. Notwithstanding paragraph 1 of this Article, insurance and reinsurance undertakings who 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 [OP please insert date = one year before application date] may, without prior approval by the supervisory authority, continue applying a volatility adjustment provided that they comply with the conditions set out by the supervisory authority in accordance with paragraph 1, of this Article as of [OP please insert date = application date].

1b. Member States shall ensure that supervisory authorities have the power to require an insurance and 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 set out by the supervisory authority in accordance with paragraph 1 of this Article. When an undertaking restores compliance with the conditions set out by the supervisory authority in accordance with paragraph 1 of this Article, it may request prior approval to 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 this risk-corrected spread of the currency referred to in paragraph 3, under the condition that 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.

This adjustment shall correspond to the lowest between 100% 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 based on 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 lower than 100%, the volatility adjustment shall not be increased by a macro volatility adjustment as referred to in paragraph 4.';

(c) paragraphs 2 to 4 are replaced by the following:

‘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 which insurance and reinsurance undertakings are invested in 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) *RCScu* is the risk-corrected spread for the currency *cu*.

$CSSR_{cu}$ 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.

RSC_{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.

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.

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)(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 CSSRcu 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:

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

Where:

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

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

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

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

(e) w_{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 point (e) shall be calculated as follows:

$$\omega_{co} = \max\left(\min\left(\frac{RCS^{*}_{co} - 0.6\%}{0.3\%}; 1\right); 0\right)$$

Where RSC_{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*.';

(39) Article 77e is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following points (aa) and (ab) are inserted:

'(aa) the set of scenarios to be used for the prudent deterministic valuation of the best estimate for life obligations pursuant to Article 77(6);

(ab) for the purposes 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 transitional for the extrapolation as set out in Article 77a(2);';

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

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

(iii) following point (d) 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 1a is inserted:

'1a. EIOPA shall lay down and publish, at least on an annual basis, for each relevant currency and each maturity where the markets for relevant financial instruments or bonds of that maturity are deep, liquid and transparent, 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, points (a) and (ab) to (c) 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 4 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) for at least two consecutive years.';

(40) Article 86 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the following point (aa) is inserted:

'(aa) the prudent deterministic valuation referred to in Article 77(7) 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 bond markets referred to in Article 77a(1);

(iii) the percentage 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 transitional mechanism as 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 spread referred to in paragraph 2 of that Article;

(ii) a formula for the calculation of the credit spread sensitivity ratio referred to in paragraphs 3 and 4 of that Article ;

(iii) for each relevant asset class, the percentage of the spread that represents the portion attributable to a realistic assessment of expected losses or unexpected credit or other risks of the assets as referred to in Article 77d(3).

';

(b) the following paragraph 1a is inserted:

'1a. The Commission may adopt 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).';

(c) the following paragraph 2a is inserted:

'2a. In order to ensure uniform conditions of application of Article 77(7), 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 [OP please insert date = 12 months after entry into force].

Power is conferred on the Commission to adopt those implementing technical standards in accordance with Article 15 of Regulation (EU) No 1094/2010.';

(41) Article 92 is amended as follows:

(a) paragraph 1a is replaced by the following:

'1a. The Commission shall adopt 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, 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 circumstances described in point (i) or (ii) of this point:

(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);

(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) of this subparagraph or in the scope of supplementary supervision referred to in point (a)(ii) of this subparagraph;

(c) the related 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).';

(b) paragraph 2 is replaced by the following:

‘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), 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) No 2019/2033, 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.’;

(42) 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-funds items referred to in Article 97(1).’;

(43) 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.';

(44) Deleted

(45) 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 sub-module or risk module where the nature, scale and complexity of the risks they face justifies it and where it would be disproportionate to require all insurance and reinsurance undertakings to apply the standardised calculation.

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 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 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 sub-module where the simplified calculations pursuant to paragraph 2 are applied shall not exceed 10 %.

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

(46) Article 111(1) is amended as follows:

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

‘(l) the simplified calculations provided for specific risk modules and sub-modules referred to in Article 109(1) and for immaterial risk modules and 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(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;’;

(b) the following subparagraphs are added:

'Where the Commission adopts delegated acts pursuant to point (c) of the first subparagraph to specify the methods, assumptions and standard parameters to be used for calculating the interest rate risk sub-module referred to in Article 105(5)(a) with the objective to improve the sensitivity of capital requirements in line with developments in interest rates, such adjustments 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.

For the purpose of the first subparagraph, point (h), 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).';

(47) 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 with an estimate, on an annual basis, of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2.';

(48) in Article 122, the following paragraph 5 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 (i), 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 and 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 purpose 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.';

(49) 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 5, 6 , 7 and 8 are added:

'5. Insurance and reinsurance undertakings shall take account of possible macroeconomic and financial markets' developments 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 purpose of paragraphs 5 and 6, 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 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 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.

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

(51) 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.’;

(52) 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 purpose 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 from the observation of non-compliance with the Minimum Capital Requirement or from the observation of the risk of non-compliance, the insurance or reinsurance undertaking concerned shall submit, for approval by the supervisory authority, a short-term realistic 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.';

(53) in Article 144, the following paragraph 4 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, where appropriate, until all insurance or reinsurance obligations have been settled or until any winding-up proceedings are opened.';

(54) 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), point (d), ensure they maintain adequate liquidity to settle their financial obligation towards policyholders and other counterparties when they fall due, even under stressed conditions.

2. Member States shall ensure that supervisory authorities have the power to request insurance and reinsurance undertakings to draw up and maintain a liquidity risk management plan. When requested, insurance and reinsurance undertakings shall project the incoming and outgoing cash flows in relation to their assets and liabilities to assess the level of potential mismatches in the short and medium term, and develop 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. Without prejudice to Article 29c(2), Member States shall ensure that insurance and reinsurance undertakings that are classified as small and non-complex undertakings pursuant to Article 29b are not obliged to draw up a liquidity risk management plan .

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), third subparagraph.

6. In order to ensure consistent application of this Article, EIOPA shall develop guidelines to further specify the content, including the combination of plans referred in paragraph 5, and the frequency of update of the liquidity risk management plan.

Article 144b

Supervisory powers to remedy liquidity vulnerabilities in exceptional circumstances

1. As part of the regular supervisory review, supervisory authorities shall monitor the liquidity position of insurance and reinsurance undertakings. Where they identify material liquidity risks, they shall inform the concerned insurance or reinsurance undertaking of this assessment. 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 liquidity risks or deficiencies are identified. Such powers shall be applied where there is sufficient evidence regarding the existence of liquidity risks and the absence of effective remedies taken by the insurance or reinsurance undertaking.

The measures taken by supervisory authorities on the basis of this paragraph shall be reviewed at least once a year by those authorities and be removed when the undertaking has taken effective remedies.

3. Without prejudice to provisions adopted by Member States under Title IV of this Directive, Member States shall ensure that supervisory authorities have the power to temporarily suspend redemption rights of policyholders on some or all life insurance policies of undertakings facing significant liquidity risks that may cause a threat to the protection of policyholders or to the stability of the financial system.

Such a power shall only be exercised in exceptional circumstances which affect the undertakings, as a last resort measure. Before exercising such a power, the supervisory authority shall take into account potential unintended effects on financial markets, on the rights and on the collective interest of the policyholders and beneficiaries of the undertaking, including in a cross-border context.

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

Without prejudice to Article 144c(6), Member States shall ensure that the insurance and reinsurance undertakings concerned do not make any distributions or other payments to shareholders and other subordinated creditors, do not proceed to share buy-backs or repay or redeem any own fund items, and do not pay bonuses or other variable remuneration until the suspension of redemption rights is lifted by the supervisory authorities. Member States shall ensure that supervisory authorities have the necessary powers for this purpose.

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

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

4. Where in exceptional circumstances there is sufficient evidence regarding the existence of liquidity risks affecting the whole or a significant part of the market, the power to suspend redemption rights of policyholders may be exercised in accordance with the conditions of paragraph 3 in relation to all undertakings directly concerned and operating in that Member State.

Member States shall appoint an authority to exercise the power referred to in this paragraph.

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, 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.

5. Member States shall ensure that the authority referred to in paragraph 4, second subparagraph, shall notify 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 power referred to in paragraph 4.

The notification shall include a description of the measure applied, its duration, and a description of the reasons and risks that motivated the use of the power, including the reasons why it was considered effective and proportionate in relation to its negative effects on policyholders.

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

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

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

(c) specify 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 policyholders 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 which have a macroprudential mandate are duly informed of the national supervisory authority's intention to make use of the provisions of this Article, and are appropriately involved in the assessment of exceptional sector-wide shocks in accordance with this paragraph.

3. The application of the measures referred to in paragraph 2 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. The application of measures referred to in paragraph 2 of this Article 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 underlying reasons that justify the measure are present. Those measures shall be reviewed at least every three months and shall be removed as soon as the underlying conditions that motivated the measures are over.

6. For the purpose 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 conditions of application of this Article, EIOPA shall, after consulting the ESRB, develop draft implementing technical standards to specify the existence of exceptional sector-wide shocks.

EIOPA shall submit those draft implementing technical standards to the Commission by [OP please add date = 12 months after entry into force].

Power is conferred on the Commission to adopt those implementing technical standards in accordance with Article 15 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 Articles 45(1e), 132(6) and 144a(2), EIOPA shall develop two sets of guidelines on the following:

(a) the criteria to be taken into account by national supervisory authorities when defining the insurance or reinsurance undertakings and groups which shall be requested to:

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

(ii) 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;

(b) the criteria to be taken into account by national supervisory authorities when defining the insurance or reinsurance undertakings and groups which shall be requested to draw up and maintain a liquidity risk management plan in accordance with Article 144a(2), as well as the content and frequency of update of such plans, taking into account possible combination of plans as referred to in paragraph 5 of that Article.

2. For the purpose of paragraph (1), point (a), the criteria shall be commensurate to the risks entailed and in particular take into account, in conjunction, the size, nature, complexity, level of interconnectedness with financial markets and cross-border nature of insurance activities and the investments of the undertakings.

3. For the purpose of paragraph (1), point (b), the criteria shall be commensurate to the risks entailed and in particular take into account, in conjunction, the composition of the asset and liability portfolios, the nature and variability of insurance obligations and the exposure of assets' expected cash-flows to market fluctuations.';

(55) 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;

(56) 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 as soon as that change is observed. The supervisory authority of the home Member State shall inform the supervisory authorities of the host Member States concerned without delay.';

(57) 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 freedom 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.’;

(58) in Article 152b, the following paragraphs 5 and 6 are added:

‘5. 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, at the request of any relevant authority , EIOPA may assist the authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1094/2010.

6. In the event of disagreement within the platform and where there are serious concerns about negative effects on policyholders or about the content of an action or inaction to be taken in relation to an insurance or reinsurance undertaking, EIOPA may , in accordance with Article 16 of Regulation (EU) No 1094/2010, issue a recommendation to the supervisory authority of the home Member State to consider the concerns of other supervisory authorities concerned and to launch a joint on-site inspection together with other supervisory authorities concerned.

Where the supervisory authority of the home Member State launches a joint on-site inspection together with other national supervisory authorities, it shall also invite EIOPA.

In case the supervisory authorities concerned fail to reach a common view in the collaboration platform within a time limit established by EIOPA, EIOPA may, in accordance with Article 16 of Regulation (EU) No 1094/2010 issue a recommendation to the supervisory authority concerned.

Where the supervisory authority concerned does not comply with that recommendation within two months, it shall state the reasons including the steps it has taken or intends to take in order to address the concerns of the other supervisory authorities involved.

EIOPA shall assess those steps and decide whether they are sufficient and appropriate. ';

(59) Article 153 is replaced by the following:

'Article 153

Timeframe and language of information requests

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 undertaking operating in the territory of that Member State, from the supervisory authority of the home Member State of that undertaking, or where the home supervisor fails to provide a response within two weeks, from the insurance undertaking. That information shall be supplied within a reasonable period of time 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. Where the supervisory authority of the host Member State addresses the insurance undertaking directly, it shall inform the supervisory authority of the home Member State about the information request.';

(60) the following Article 159a is inserted:

'Article 159a

Additional requirements related to significant cross-border activities

1. The supervisory authority of the home Member State shall, upon the request of the supervisory authority of a host Member State, submit all of the following information received in accordance with Article 35, in relation to insurance or reinsurance undertakings with significant cross-border activities in the territory of that host Member State:

(a) the Solvency Capital Requirement;

(b) the Minimum Capital Requirement;

(c) the amount of eligible own funds to cover the Solvency Capital Requirement;

(d) the amount of eligible basic own funds to cover the Minimum Capital Requirement.

1a. For the purposes of this Article, ‘significant cross-border activities’ shall have the same meaning as in Article 33a(3) and disagreements shall be settled in accordance with the provisions referred to in that Article.

2. Where an insurance or reinsurance undertaking does not comply with or is likely not to comply with the Minimum Capital Requirement in the following three months, or where there is a significant non-compliance with the Solvency Capital Requirement, and in the absence of appropriate measures by the supervisory authority of the home Member State to appropriately remedy such situation, 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 jointly an 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.

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

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

Where the supervisory authorities disagree on the conclusions of the joint on-site inspection, either of them may, within two month following the expiry of the period referred to in the second subparagraph , 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 nor after an agreement on joint conclusions has been reached between supervisory authorities in accordance with the second subparagraph.

If, within the two-month period referred to in the third subparagraph, 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.

4. 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 requesting supervisory authority.

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 after 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. ';

(61) 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 amended as follows:

– point (i) is replaced by the following:

'(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; or';

– the following point (iii) is added:

'(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:

(a) the undertaking is a parent undertaking;

(aa) the undertaking is not a regulated undertaking, unless it is an asset management company or an alternative investment fund manager within the meaning of Article 2, points (5) and (5a) of Directive 2002/87/EC;

(b) 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;

(c) at least one subsidiary of that undertaking is an insurance or reinsurance undertaking;

(ca) notwithstanding its own stated corporate purpose the main business of the undertaking is any of the following:

- to acquire and hold participations in insurance or reinsurance undertakings;

- to provide ancillary services to the principal activity of one or several related insurance or reinsurance undertakings ;

- 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 1 or B, to Directive 2014/65/EU of the European Parliament and of the Council in relation to financial instruments listed in Section C of that Annex to that Directive.

(d) 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:

(i) the undertaking's equity on the basis of its consolidated position;

(ii) the undertaking's assets on the basis of its consolidated position;

(iii) the undertaking's revenues on the basis of its consolidated position;

(iv) the undertaking's personnel on the basis of its consolidated position ;

(v) other indicator considered relevant by the national supervisory authority;';

(v) the following point (fa) 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(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 3 and 4 are added:

‘3. For the purposes of this Title, the supervisory authorities shall also consider that two or more undertakings form a group within the meaning of paragraph 1, point (c), where in the opinion of the supervisory authorities, those undertakings are managed on a unified basis.

Where the undertakings referred to in the first subparagraph do not have their head office in the same Member State, Member States shall ensure that only the national supervisory authority acting as group supervisor in accordance with Article 247 may conclude, after consulting other supervisory authorities concerned, that such undertakings form a group based on its 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 insurance or reinsurance 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 insurance or reinsurance undertaking or who have other key, critical or important functions;

(b) strong reliance of an insurance or reinsurance undertaking on another undertaking or legal or natural person, due to the existence of material financial or non-financial transactions or operations, including outsourcing arrangements 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.

Where a group is identified on the basis of paragraphs 2 or 3, 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, paragraph 5 or 6, and to the supervisory authorities concerned a detailed explanation of the factors based on which such identification is made.

In order to ensure consistent application of this Article, EIOPA shall develop regulatory technical standards to supplement or further specify the factors that supervisory authorities shall consider to identify a relationship between at least two undertakings referred to in paragraphs 2 and 3 of this Article.

EIOPA shall submit those draft regulatory technical standards to the Commission by [PO please add date = 12 months after entry into force].

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

(62) Article 213 is amended as follows:

(a) in paragraph 2, the introductory wording is replaced by the following:

'Member States shall ensure that group supervision applies when a group includes any of the following:';

[](b) in paragraph 5, the words 'Directive 2006/48/EC' are replaced by the words 'Directive 2013/36/EU';

(63) the following Article 213a is 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:

(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), 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 is applied;

(ii) the total of the consolidated technical provisions from life insurance activities of the group defined as 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 of Section 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 any of the two following thresholds:

- EUR 15 000 000; or

- 5 % of its 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 any of the two following thresholds:

- EUR 15 000 000; or

- 5 % of its total annual gross written premium income;

(e) investments in traditional investments represent more than 80 % of total investments, excluding those investments made by undertakings to which method 2 is applied ;

(f) the business of the group does not include reinsurance operations exceeding 50 % of its total annual gross written premium income ;

(g) 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 points (a) (i) and (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.

3a. 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. The ultimate parent insurance or reinsurance undertakings, the insurance holding companies, or the mixed financial holding companies shall consider, in their assessment of compliance with the criteria defined in paragraph 1, the business plans for the next three financial years.

6. Articles 29c, 29d and 29e shall apply *mutatis mutandis*.';

[(63a) The following Article 213b is inserted:

'Article 213b

Supervisory powers to remove impediments to group supervision

1. In the cases referred to in Article 213, paragraph 2, point (b), the insurance holding company or mixed financial holding company shall ensure that all of the following conditions are fulfilled:

(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 parent insurance holding company or parent 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), 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. Such a power shall only be exercised in exceptional circumstances, after consulting EIOPA and, where applicable, other supervisory authorities concerned and shall be duly justified to the group.

3. In the cases referred to in Article 213, paragraph 2, points (a) and (b), where the structural organisation of a group which consist 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 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.';]

(64) 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 all the following conditions are met:

(i) 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;

(ii) the exclusion of the undertaking from the scope of group supervision would have no material impact on the group solvency;

(iii) 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 3, 4, 5 and 6 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 other supervisory authorities concerned before taking the decision on exclusion. Such decision shall only be taken in exceptional circumstances, shall be notified without delay to EIOPA and shall be duly justified to 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, other supervisory authorities concerned that it will start exercising group supervision.

Before excluding the ultimate parent undertaking from group supervision pursuant to paragraph 2, point (b), the group supervisor shall consult 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. The group supervisor shall notify its decision without delay to EIOPA. The group supervisor shall also reassess at least annually whether its decision remains appropriate.

In order to enhance a coherent and consistent application of paragraph 3, 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, the scope of the group to which group supervision applies pursuant to Article 213, paragraph 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, paragraphs 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 paragraph 1, point (c) of that Article, that other group shall be considered as included in the scope of the group identified in accordance with paragraphs 2 and 3 of that Article.

Supervisory authorities may apply Article 212, paragraphs 2 and 3 to extend the scope of a group within the meaning of Article 212, paragraph 1, point (c).]

[5. Where a group identified in accordance with Article 212, paragraph 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 as subsidiary undertakings.]

6. Where the designation of the parent undertaking in accordance with paragraph 5 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, paragraph 3, and 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, the supervisory authority acting as the group supervisor in accordance with Article 247 shall designate, after consulting other supervisory authorities concerned, a parent undertaking which is to be responsible for complying with this Title. The other undertakings in such group shall be considered as subsidiary undertakings.

When designating a parent undertaking in accordance with the first or second subparagraph, 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 other supervisory authorities concerned. That other parent undertaking shall be responsible for complying with this Title.’];

(65) 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 3 is added:

‘3. Without prejudice to the treatment of undertakings referred to in Article 228(1), supervisory authorities may only decide to apply method 2 pursuant to paragraph 2, second subparagraph, of this Article to insurance and reinsurance undertakings, third-country insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies.’;

(66) Article 221 is amended as follows:

(a) the following paragraph 1a 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 (d) 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.'.

(67) 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 6 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 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.]'.

(68) Article 226 is amended as follows:

(a) the title of the Article is replaced by the following: 'Intermediate holding companies';

(b) the following paragraph 3 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.';

(69) in Article 227(1), first subparagraph, the words 'and Article 233a' are inserted after the words 'Article 233';

(70) 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 or investment firms within the meaning of Article 4(1), point (1) or (2), of Regulation (EU) No 575/2013 ;

(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 within the meaning of Article 4(1), point (b), of Directive 2011/61/EU;

(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 related 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 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 1, 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(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 purpose 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 account, 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.

By way of derogation, upon decision of the group supervisor, the requirements of the second subparagraph shall not apply to groups which are not subject to supplementary supervision in accordance with Directive 2002/87/EC, where the sum of the own funds of related undertakings referred to in paragraph 1 in excess to the sum of the capital requirements of such undertakings calculated in accordance with paragraph 3 is not greater than 1% of the total group own funds, calculated in accordance with Article 230(1)(a), Article 233(2) or Article 233a(1)(a).

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, where that capital requirement or notional capital requirement is calculated as follows:

(a) for related undertakings 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, or the local own funds requirements in third countries;

(ii) for each credit institution, the higher of the following:

– 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 any the local own funds requirements in third countries;

– 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 of 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 any capital requirement imposed under national law of the Member State where the undertaking is registered or authorised.

4. Where several related undertakings referred to in paragraph 1 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, or 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 the 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), 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), 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 Article, 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, 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.';

(70a) in Article 229, the following pragraphs are added:

‘The first and second paragraphs shall not apply to related undertakings referred to in Article 229a(1).

Where the deduction referred to in the first and second paragraphs would improve the solvency position of the group, compared to the position where the undertaking is kept in the scope of group solvency calculation, the group supervisor may oppose such deduction.’;

(71) in Title III, Chapter II, Section 1, Subsection 3, the following Article 229a 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 group solvency and financial condition report, the list and size of the related undertakings subject to that simplified approach.

2. For the purpose 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 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 consolidated assets and the sum of the book values of all such undertakings represents less than 0,5 % of the group's consolidated assets.';

(72) 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 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, holdings in related undertakings 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 (c) 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) After the fourth subparagraph, the following subparagraph is added;

'By way of derogation from the previous subparagraph, where a group whose own funds referred to in paragraph 1(a) exceed the group Solvency Capital Requirement referred to in paragraph 1(b), does not comply with the minimum consolidated group Solvency Capital Requirement, Article 138(1) to (4) shall apply instead of Article 139(1) and (2). For the purpose of this subparagraph, the reference to 'Solvency Capital Requirement' shall be read as a reference to 'minimum consolidated group Solvency Capital Requirement'.'

(73) in Article 232, first subparagraph, introductory wording, the words 'referred to in Article 37(1), points (a) to (d),' shall be replaced by the words 'referred to in Article 37(1), points (a) to (e)';

(74) 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 referred to in Article 220(3) and in Article 228(1) and the aggregated group Solvency Capital Requirement, as provided for in paragraph 3.';

(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 (c) 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 (c) 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).';

(75) the following Article 233a is 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 in accordance with Article 230(1) 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 its Solvency Capital Requirement;

(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)t (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 purpose 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. Participating insurance and reinsurance undertakings shall comply with their minimum consolidated group Solvency Capital Requirement, which is the outcome of the calculation referred to in Article 230(2), second subparagraph. For that purpose, the Minimum Capital Requirement of insurance or reinsurance undertakings to which method 2 is applied shall not be taken into account.

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 purpose 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 229 shall apply *mutatis mutandis*. Article 139(1) and (2) shall apply *mutatis mutandis*.

'By way of derogation from the previous subparagraph, where a group whose own funds referred to in paragraph 1(a) exceed the group Solvency Capital Requirement referred to in paragraph 1(b) does not comply with the minimum consolidated group Solvency Capital Requirement, Article 138(1) to (4) shall apply instead of Article 139(1) and (2). For the purpose of this subparagraph, the reference to 'Solvency Capital Requirement' 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*.';

(76) Article 234 is replaced by the following:

'Article 234

Delegated acts for technical principles and methods in Articles 220 to 229, the simplified approach in Article 229a, and the application of Articles 230 to 233a

The Commission shall adopt delegated acts in accordance with Article 301a specifying the following:

(a) the technical principles and methods set out in Articles 220 to 229;

(b) the technical details to the simplified approach set out in Article 229a(1), as well as the criteria based on 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 adopt delegated acts in accordance with Article 301a specifying the criteria based on which the group supervisor may approve the application of the simplified approach set out in Article 229a(2).';

(77) 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.';

(78) 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 3a is inserted:

'3a. In addition to intragroup transactions within the meaning of Article 13, point (19), for the purpose of paragraphs 2 and 3 of this Article, where justified, supervisory authorities may require groups to also report intragroup transactions that involve undertakings other than insurance and reinsurance undertakings, third-country insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies.';

(79) 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 the participating insurance or reinsurance undertaking, the parent insurance holding company, the parent mixed financial holding company, as well as all related undertakings in the scope of the group within the meaning of Article 212 which are 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 paragraph 5 or paragraph 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 5 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 are the persons who effectively run the parent undertaking referred to in paragraph 1, third subparagraph.

Member States shall require the participating insurance or reinsurance undertaking, the insurance holding company or 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.’;

(80) in Title III, the following Chapter IIA is inserted:

'CHAPTER IIA

Macroprudential rules at group level

Article 246a

Liquidity Risk Management at group level

1. As regards liquidity risk management, Article 144a shall apply *mutatis mutandis* to participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies.

2. Where a liquidity risk management plan is required at the level of a participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union, 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 the drawing up and maintaining a liquidity risk management plan at individual level whenever the liquidity risk management plan covers the liquidity management and liquidity needs of the subsidiaries concerned.

Member States shall ensure that supervisory authorities may require individual insurance or reinsurance undertakings benefitting from the exemption pursuant to the first subparagraph to submit the information of the liquidity risk management plan concerning the consolidated situation of the group and their own situation.3.

Notwithstanding paragraph 2, supervisory authorities may require an insurance or reinsurance subsidiary to draw up and maintain a liquidity risk management plan at individual level whenever they detect liquidity risks or the liquidity management plan at group level does not include appropriate information which the supervisory authority having authorised the subsidiary requires comparable undertakings to provide for the purpose of monitoring their liquidity position.

In order to ensure consistent application of this Article, guidelines mentioned in Article 144a shall also cover requirements at group level.

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.';

(81) 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';

(82) in Article 254, the following paragraphs 3 and 4 are 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 after the undertaking's financial year end, and, when the information referred to in this Article is required on quarterly basis, within 11 weeks after the end of each quarter.

4. Where the deadlines referred to in Article 35b, paragraphs 1 and 2 are extended in accordance with paragraph 4 of that Article for an insurance or reinsurance undertaking which is part of a group to which group supervision applies in accordance with Article 213(2), the group supervisor concerned may, within 3 months following the declaration of an exceptional operations-disrupting event by EIOPA in accordance with Article 35b(4), temporarily extend, for that group, the corresponding deadlines for submitting the information referred to in paragraph 3 by up to 10 weeks. ’;(83) 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. This report shall contain information about the group addressed to other market participants, 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 on an annual within 24 weeks after the undertaking's financial year end.

Where the deadline referred to in Article 51(7) is extended in accordance with that Article, for an insurance or reinsurance undertaking which is part of a group to which group supervision applies in accordance with Article 213(2), the group supervisor concerned may, within 3 months following the declaration of an exceptional operations-disrupting event by EIOPA in accordance with Article 35b(4), temporarily extend, for that group, the corresponding deadline for making the disclosure referred to in the second subparagraph by up to 10 weeks. ';

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

'(b) the information for any of the subsidiaries within the group, which information 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 adopt 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 solvency and financial condition report at the level of the group referred to in paragraph 1 of this Article.’;(d)Deleted

(84) the following Articles 256b and 256c 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 supervisory authorities, on an annual basis, a regular supervisory report at the level of the group. Article 35(5a) 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 in 24 weeks after the undertaking's financial year end.

Where the deadline referred to in Article 35b(3) is extended in accordance with Article 35b(4), for an insurance or reinsurance undertaking which is part of a group to which group supervision applies in accordance with Article 213(2), the group supervisor concerned may, within 3 months following the declaration of an exceptional operations-disrupting event by EIOPA in accordance with Article 35b(4), temporarily extend, for that group, the corresponding deadline for the submission of information referred to in the second subparagraph by up to 10 weeks.

2. A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the agreement of the supervisory authorities concerned, 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 it shall not result in less information than the information that would be provided by insurance and reinsurance undertakings submitting 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 paragraph 2 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 specific part of the single regular supervisory report to the relevant subsidiary. *[linebreak]*

3. If the single regular supervisory report submitted is not satisfactory for the national supervisory authorities, such approval can be withdrawn.

4. Where the report referred to in paragraph 2 fails to include information which the supervisory authority that authorised a subsidiary 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 concerned to report the necessary additional information.

5. Where the supervisory authority having authorised a subsidiary 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 adopt delegated acts in accordance with Article 301a further specifying the information which shall be reported.

Article 256c

Solvency and financial condition report: Audit requirement

1. Member States shall require a participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company of a group, to subject to an audit the group balance sheet disclosed as part of the group solvency and financial condition report or as part of the single solvency and financial condition report.

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 solvency and financial condition report or the single solvency and financial condition report by the participating insurance or reinsurance undertakings, the insurance holding company or the mixed financial holding company.

3. Where there is a single solvency and financial condition report, the audit requirements imposed on a related insurance or reinsurance undertaking shall be complied with and the report referred to in Article 51a(4) 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*.';

(85) 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*.';

(86) 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 2a and 2b 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 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.';

(87) Article 262 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. In the absence of equivalent supervision 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 belonging to 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 allowing to achieve the objectives set out in paragraph 2.';

(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 belonging to 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 capital creation is financed out of the proceeds of debt or other financial instruments that do not qualify as own funds 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 3 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 belong to 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 belong to 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 belong to 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 mixed financial holding company which has their head office in the Union, and, on the other hand, an undertaking belonging to the group 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.';

(88) in Article 265, the following paragraph 1a is inserted:

'1a. As part of the obligation under paragraph 1, 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 alternative investment fund manager, an institution for occupational retirement provision or a non-regulated undertaking which carries 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.';

(89) Article 301a is amended as follows:

(a) paragraph 2 is amended as follows:

(i) in the first subparagraph the words "Articles 17, 31, 35, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 258, 260 and 308b" are replaced by the words "point (a) of Article 35 (9), points (a) and (c) to (h) of Article 86(1), points (a) and (c) of Article 234(1) and in Articles 17, 31, 37, 50, 56, 75, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 241, 244, 245, 247, 248, 256, 258, 260 and 308b";

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

'The delegation of power referred to in point (b) of Article 35(9), points (aa), (b) and (i) of Article 86(1), point (b) of Article 234 and in Articles 29, 86(1a), 234(2) and 256b shall be conferred on the Commission for a period of four years from [OP please insert date = entry into force of this amending Directive].';

(iii) the following subparagraph is added:

'The delegation of power referred to in the first and second subparagraphs shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each 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, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 256b, 258, 260 and 308b may be revoked at any time by the European Parliament or by the Council.';

(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, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 256b, 258, 260 or 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.';

(90) Article 304(2) is replaced by the following;

'2. As of [OP please insert date = date of application of this amending Directive] life insurance undertakings may continue to apply the approach referred to in paragraph 1 of this Article only in respect of assets and liabilities to which supervisory authorities approved the application of the duration-based equity risk sub-module before [OP please insert date = application date of this amending Directive].';

(91) the following Articles 304a and 304b are inserted:

'Article 304a

Mandates 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 the EBA in the context of its work under the mandate set out in Article 501c, point (c), of Regulation (EU) 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 and/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.

EIOPA shall submit a report on its findings to the Commission by [28 June 2023]. 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 and be accompanied by an assessment of the impact of the potential changes 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 sub-module of the Solvency Capital Requirement referred to in Article 105(2) , third subparagraph, point (b). For the purpose 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 companies that use the standard formula for the calculation of the non-life catastrophe sub-module of the Solvency Capital Requirement.

The first review pursuant to the first subparagraph shall be completed by [OP please insert date = two years after entry into force of this 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 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 risks related to biodiversity loss as part of the assessment referred to in Article 45(1). EIOPA shall subsequently assess which actions could be taken in order to ensure that insurance and reinsurance undertakings do so, where necessary, taking into account existing measurement tools. EIOPA shall submit a report on its findings to the Commission by [one year after the entry into force of this amending Directive].

[4. EIOPA, EBA 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. Supervisory stress testing of environmental, social and governance risks should start with climate-related factors. EIOPA, EBA 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, explore how social and governance related risks can be integrated into stress testing.]

Article 304b

Review as regards separation of life and non-life activities and capital buffers

1. EIOPA shall assess the impact of the separation of life and non-life insurance business referred to in Article 73 paragraph (1). In particular, EIOPA shall assess the effects of maintaining and the potential effects of alleviating the principle of separation of life and non-life insurance business at least with respect to policyholder protection, potential cross-subsidisation between life and non-life activities, market efficiency and level playing field. EIOPA shall submit a report on its findings to the Commission [one year after the entry into application of this amending Directive].

2. EIOPA shall monitor until [5 years after date of application] the contribution to group Solvency Capital Requirements referred to in Article 228(3)(a)(i) of this Directive of the combined buffer requirement of related credit institutions, as defined in Article 128(6) of Regulation (EU) No 575/2013. For this purpose, EIOPA shall liaise with the EBA and shall take into account the rules applicable for calculating capital adequacy referred to in Article 6 of Directive 2002/87/EC for financial conglomerates. EIOPA shall report to the Commission on any findings.

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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).';

(92) in Article 305, paragraphs 2 and 3 are deleted;

(93) Article 308a is deleted;

(94) 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 shall be 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 following subparagraphs are inserted after the first subparagraph:

'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.';

(95) Article 308c is amended as follows:

(a) the following paragraph 1a is inserted:

'1a. After [OP please insert date = 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 contracts, under the conditions laid down by national law and, where relevant, pursuant to Article 39 or Article 164, 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 other market participants referred to in Article 51(1b), publicly disclose all of the following:

(i) the fact that they apply the transitional risk-free interest rate term structure;

(ii) the quantification of the impact of not applying this transitional measure on their financial position;

(iii) where the undertaking would comply with the Solvency Capital Requirement without application of this transitional measure, the reasons for the application of this transitional measure;

(iv) an assessment of the dependency of the undertaking on this transitional measure and, where applicable, a description of the measures taken or planned by the undertaking to reduce or remove the dependency.';

(96) Article 308d is amended as follows:

(a) the following paragraph 1a is inserted:

'1a. After [OP please insert date = 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 contracts, under the conditions laid down by national law and, where relevant, pursuant to Article 39 or Article 164, 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 addressed to other market participants 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 this transitional measures, the reasons for the application of this transitional measure;

(iv) an assessment of the dependency of the undertaking on this transitional measure and, where applicable, a description of the measures taken or planned by the undertaking to reduce or remove the dependency.';

(96a) Article 308e is replaced as follows:

'*Article 308e*

Phasing-in plan on transitional measures

Insurance and reinsurance undertakings that apply the transitional measures referred to in Articles 77a(2), 308c, 308d or, where relevant, Article 111(1), [second/third] sub-paragraph shall inform the supervisory authority as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these 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.

Within two months from observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the insurance or reinsurance undertaking concerned shall submit to the supervisory authority a phasing-in plan setting out the planned measures, including the timing of those measures, to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement at the end of the transitional period. The insurance or reinsurance undertaking concerned may update the phasing-in plan during the transitional period.

The insurance and reinsurance undertakings concerned shall submit annually a report to their supervisory authority setting out the measures taken and the progress made to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

Supervisory authorities may revoke the approval for the application of the transitional measure set out in Articles 308c and 308d where the undertaking cannot demonstrate to the satisfaction of the supervisory authority that sufficient progress has been made with respect to compliance with the Solvency Capital Requirement without transitional measures at the end of the transitional period.

Supervisory authorities shall revoke the approval for the application of the transitional measure set out in Articles 308c and 308d where compliance with the Solvency Capital Requirement at the end of the transitional period is unrealistic.;'

(97) in Article 309(1), the fourth subparagraph is deleted;

(98) in Article 311, the second paragraph is deleted;

(99) Annex III is amended in accordance with the Annex to this Directive;

Article 2

Transposition

1. Member States shall adopt and publish, by [OP please insert date = 24 months after entry into force], 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 [OP please insert date = 24 months and one day after entry into force].

   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 3

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 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX

Annex III is amended as follows:

(1) in section A. “Forms of non-life insurance undertaking”, point (27) is deleted;

(1) in section B. “Forms of life insurance undertaking”, point (27) is deleted;

(2) in section C. “Forms of reinsurance undertaking”, point (27) is deleted.