

Directive 2009/138/EC of the European Parliament and of the Council
of 25 November 2009 on the taking-up and pursuit of the business of
Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance)

TITLE I

**GENERAL RULES ON THE TAKING-UP AND PURSUIT OF
DIRECT INSURANCE AND REINSURANCE ACTIVITIES**

CHAPTER IV

Conditions governing business

Section 3

Public disclosure

Article 51

Report on solvency and financial condition: contents

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

That report 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 and an assessment of its adequacy for the risk profile of the undertaking;
- c a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;
- d a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;
- e a description of the capital management, 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) the option set out in Article 304 used for the calculation of the Solvency Capital Requirement;
 - (iv) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of any internal

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model used by the undertaking for the calculation of its Solvency Capital Requirement;

- (v) 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.

[^{F1}1a Where the matching adjustment referred to in Article 77b is applied, the description referred to in paragraph 1(d) shall include a description of the matching adjustment and of 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 1(d) shall also include a statement on whether the volatility adjustment referred to in Article 77d is used by the undertaking and a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.]

2 The description referred to in point (e)(i) of paragraph 1 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 point (e)(ii) of paragraph 1 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.

[^{F2}However, and without prejudice to any disclosure that is mandatory under any other legal or regulatory requirements, Member States may provide that, although the total Solvency Capital Requirement referred to in paragraph 1(e)(ii) is disclosed, the capital add-on or the impact of the specific parameters the insurance or reinsurance undertaking is required to use in accordance with Article 110 need not be separately disclosed during a transitional period ending no later than 31 December 2020.]

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.

Textual Amendments

- F1** Inserted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)
- F2** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority](#)

(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

[^{F2}Article 52

**Information for and reports by the European
Insurance and Occupational Pensions Authority**

1 Without prejudice to Article 35 of Regulation (EU) No 1094/2010, Member States shall require the supervisory authorities to provide the following information to EIOPA on an annual basis:

- a the average capital add-on per undertaking and the distribution of capital add-ons imposed by the supervisory authority during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately for:
 - (i) insurance and reinsurance undertakings;
 - (ii) life insurance undertakings;
 - (iii) non-life insurance undertakings;
 - (iv) insurance undertakings pursuing both life and non-life activities;
 - (v) reinsurance undertakings;
- b for each of the disclosures set out in point (a) of this paragraph, the proportion of capital add-ons imposed under Article 37(1)(a), (b) and (c) respectively;
- c the number of insurance and reinsurance undertakings benefiting from the limitation from regular supervisory reporting and the number of insurance and reinsurance undertakings benefiting from the exemption of reporting on an item-by-item basis referred to in Article 35(6) and (7), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of the insurance and reinsurance undertakings of the Member State;
- d the number of groups benefiting from the limitation from regular supervisory reporting and the number of groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 254(2) together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all the groups.

2 EIOPA shall publicly disclose, on an annual basis, the following information:

- a for all Member States together, the total distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, for each of the following:
 - (i) insurance and reinsurance undertakings;
 - (ii) life insurance undertakings;
 - (iii) non-life insurance undertakings;
 - (iv) insurance undertakings pursuing both life and non-life activities;
 - (v) reinsurance undertakings;

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- b for each Member State separately, the distribution of capital add-ons, measured as a percentage of the Solvency Capital Requirement, covering all insurance and reinsurance undertakings in that Member State;
- c for each of the disclosures referred to in points (a) and (b) of this paragraph, the proportion of capital add-ons imposed under Article 37(1)(a), (b) and (c) respectively;
- d for all Member States collectively, the total number of insurance and reinsurance undertakings and groups benefiting from the limitation from regular supervisory reporting and the total number of insurance and reinsurance undertakings and groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 35(6) and (7) and Article 254(2), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all insurance and reinsurance undertakings and groups;
- e for each Member State separately, the number of insurance and reinsurance undertakings and groups benefiting from the limitation from regular supervisory reporting and the number of insurance and reinsurance undertakings and groups benefiting from the exemption of reporting on an item-by-item basis referred to in Article 35(6) and (7) and Article 254(2), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of premiums, technical provisions and assets of the insurance and reinsurance undertakings and groups of the Member State.

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

Textual Amendments

- F2** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

Article 53

Report on solvency and financial condition: applicable principles

1 Supervisory authorities shall permit insurance and reinsurance undertakings not to disclose information where:

- a by disclosing such information, the competitors of the undertaking would gain significant undue advantage;
- b there are obligations to policy holders or other counterparty relationships binding an undertaking to secrecy or confidentiality.

2 Where non-disclosure of information is permitted by the supervisory authority, undertakings shall make a statement to this effect in their report on solvency and financial condition and shall state the reasons.

3 Supervisory authorities shall permit insurance and reinsurance undertakings, to make use of – or refer to – public disclosures made under other legal or regulatory requirements, to

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the extent that those disclosures are equivalent to the information required under Article 51 in both their nature and scope.

4 Paragraphs 1 and 2 shall not apply to the information referred to in Article 51(1)(e).

Article 54

Report on solvency and financial condition: updates and additional voluntary information

1 In the event of any major development affecting significantly the relevance of the information disclosed in accordance with Articles 51 and 53, insurance and reinsurance undertakings shall disclose appropriate information on the nature and effects of that major development.

For the purposes of the first subparagraph, at least the following shall be regarded as major developments:

- a non-compliance with the Minimum Capital Requirement is observed and the supervisory authorities either consider that the undertaking will not be able to submit a realistic short-term finance scheme or do not obtain such a scheme within one month of the date when non-compliance was observed;
- b significant non-compliance with the Solvency Capital Requirement is observed and the supervisory authorities do not obtain a realistic recovery plan within two months of the date when non-compliance was observed.

In regard to point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved three months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

In regard to point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved six months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

2 Insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with Articles 51 and 53 and paragraph 1 of this Article.

Article 55

Report on solvency and financial condition: policy and approval

1 Member States shall require insurance and reinsurance undertakings to have appropriate systems and structures in place to fulfil the requirements laid down in Articles 51 and

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53 and Article 54(1), as well as to have a written policy ensuring the ongoing appropriateness of any information disclosed in accordance with Articles 51, 53 and 54.

2 The solvency and financial condition report shall be subject to approval by the administrative, management or supervisory body of the insurance or reinsurance undertaking and be published only after that approval.

[^{F2}Article 56

Solvency and financial condition report: delegated acts and implementing technical standards

The Commission shall adopt delegated acts in accordance with Article 301a further specifying the information which must be disclosed and the deadlines for the annual disclosure of the information in accordance with Section 3.

In order to ensure uniform conditions of application of this Section, EIOPA shall develop draft implementing technical standards on the procedures, formats and templates.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

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

Textual Amendments

- F2** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)