

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 V

OTHER PROVISIONS

Article 297

Right to apply to the courts

Member States shall ensure that decisions taken in respect of an insurance or a reinsurance undertaking under laws, regulations and administrative provisions implementing this Directive are subject to the right to apply to the courts.

Article 298

Cooperation between the Member States and the Commission

1 The Member States shall cooperate with each other for the purpose of facilitating the supervision of insurance and reinsurance within the Community and the application of this Directive.

2 The Commission and the supervisory authorities of the Member States shall collaborate closely with each other for the purpose of facilitating the supervision of insurance and reinsurance within the Community and of examining any difficulties which may arise in the application of this Directive.

3 Member States shall inform the Commission of any major difficulties to which the application of this Directive gives rise.

The Commission and the supervisory authorities of the Member States concerned shall examine those difficulties as quickly as possible in order to find an appropriate solution.

Article 299

Euro

Where this Directive makes reference to the *euro*, the exchange value in national currencies to be used with effect from 31 December of each year shall be the value which applies on the last day of the preceding October for which exchange values for the *euro* are available in all Community currencies.

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Article 300

Revision of amounts expressed in euro

[^{F1}The amounts expressed in euro in this Directive shall be revised every five years, by increasing the base amount in euro by the percentage change in the Harmonised Indices of Consumer Prices of all Member States as published by the Commission (Eurostat) starting from 31 December 2015 until the date of revision and rounded up to a multiple of EUR 100 000.]

If the percentage change since the previous revision is less than 5 %, the amounts will not be revised.

The Commission shall publish the revised amounts in the *Official Journal of the European Union*.

The revised amounts shall be implemented by Member States within 12 months of the publication in the *Official Journal of the European Union*.

Textual Amendments

- F1** 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 \(European Securities and Markets Authority\).](#)

[^{F1}Article 301

Committee procedure

1 The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC⁽¹⁾. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2 Where reference is made to this paragraph, Article 4 of Regulation (EU) No 182/2011 shall apply.

3 Where reference is made to this paragraph, Article 8 of Regulation (EU) No 182/2011, in conjunction with Article 4 thereof, shall apply.

Textual Amendments

- F1** 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 301a

Exercise of the delegation

1 The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2 The delegation of power referred to in 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 shall be conferred on the Commission for a period of four years from 23 May 2014.

The Commission shall draw up a report in respect of the delegated power by six months before the end of the four-year period. The delegation of power 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.

3 The delegation of power referred to in 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 may be revoked at any time by the European Parliament or by the Council.

A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4 As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5 A delegated act adopted pursuant to 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 or 308b shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and 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 the Council.

Textual Amendments

- F1** 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 \(European Securities and Markets Authority\).](#)

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Article 301b

Sunrise provision for regulatory technical standards

1 Until 24 May 2016, the Commission shall, when adopting for a first time the regulatory technical standards provided for in Articles 50, 58, 75, 86, 92, 97, 111, 135, 143, 244, 245, 248 and 249 follow the procedure laid down in Article 301a. Any amendments to such delegated acts or, after the transitional period has expired, any new regulatory technical standards shall be adopted in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

2 The delegation of power referred to in paragraph 1 may be revoked at any time by the European Parliament or by the Council in accordance with Article 12 of Regulation (EU) No 1094/2010.

3 By 24 May 2016, EIOPA may submit draft regulatory technical standards to the Commission to adjust to technical developments on the financial markets the delegated acts provided for in 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.

Those draft regulatory technical standards shall be limited to the technical aspects of the delegated acts referred to in the first subparagraph, in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

Power is delegated to 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.]

Textual Amendments

- F1** 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 302

Notifications submitted prior to entry into force of the laws, regulations and administrative provisions necessary to comply with Articles 57 to 63

The assessment procedure applied to proposed acquisitions for which notifications referred to in Article 57 have been submitted to the competent authorities prior to the entry into force of the laws, regulations and administrative provisions necessary to comply with Articles 57 to 63, shall be carried out in accordance with the national law of Member States in force at the time of notification.

^{F2}Article 303

[^{F2}Amendments to Directive 2003/41/EC]

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Textual Amendments

- F2** Deleted by [Directive \(EU\) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision \(IORPs\) \(recast\) \(Text with EEA relevance\)](#).

Article 304

Duration-based equity risk sub-module

- 1 Member States may authorise life insurance undertakings providing:
- a occupational retirement provision business in accordance with Article 4 of Directive 2003/41/EC, or
 - b retirement benefits paid by reference to reaching, or the expectation of reaching, retirement where the premiums paid for those benefits have a tax deduction which is authorised to policy holders in accordance with the national legislation of the Member State that has authorised the undertaking;

where

- (i) all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the insurance undertakings, without any possibility of transfer;
- (ii) the activities of the undertaking related to points (a) and (b), in relation to which the approach referred to in this paragraph is applied, are pursued only in the Member State where the undertaking has been authorised; and
- (iii) the average duration of the liabilities corresponding to the business held by the undertaking exceeds an average of 12 years;

to apply an equity risk sub-module of the Solvency Capital Requirement, which is calibrated using a Value-at-Risk measure, over a time period, which is consistent with the typical holding period of equity investments for the undertaking concerned, with a confidence level providing the policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101, where the approach provided for in this Article is used only in respect of those assets and liabilities referred in point (i). In the calculation of the Solvency Capital Requirement those assets and liabilities shall be fully considered for the purpose of assessing the diversification effects, without prejudice to the need to safeguard the interests of policy holders and beneficiaries in other Member States.

Subject to the approval of the supervisory authorities, the approach set out in the first subparagraph shall be used only where the solvency and liquidity position as well as the strategies, processes and reporting procedures of the undertaking concerned with respect to asset–liability management are such as to ensure, on an ongoing basis, that it is able to hold equity investments for a period which is consistent with the typical holding period of equity investments for the undertaking concerned. The undertaking shall be able to demonstrate to the supervisory authority that that condition is verified with the level of confidence necessary to provide policy holders and beneficiaries with a level of protection equivalent to that set out in Article 101.

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Insurance and reinsurance undertakings shall not revert to applying the approach set out in Article 105, except in duly justified circumstances and subject to the approval of the supervisory authorities.

[^{F12} The Commission shall submit to the European Parliament and to the Council, by 31 December 2020, a report on the application of the approach set out in paragraph 1 and the supervisory authorities' practices adopted pursuant to paragraph 1, accompanied, where appropriate, by adequate proposals. That report shall address, in particular, cross-border effects of the use of that approach with a view to preventing regulatory arbitrage by insurance and reinsurance undertakings.]

Textual Amendments

- F1** 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).

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- (1) [^{F1}Commission Decision 2004/9/EC of 5 November 2003 establishing the European Insurance and Occupational Pensions Committee (OJ L 3, 7.1.2004, p. 34).]

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Textual Amendments

- F1** 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).