COUNCIL OF THE EUROPEAN UNION

Brussels, 23 March 2009

7820/09

Interinstitutional File: 2007/0143 (COD)

SURE 4
ECOFIN 206
CODEC 385

NOTE

from :	General Secretariat of the Council
to :	Delegations
Subject :	Amended proposal for a Directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance, SOLVENCY II - Presidency compromise

Delegations will find below the draft consolidated text of the above Directive as it stands after the 17 and 18 March trialogues with the European Parliament and the meeting of the Working Party on Financial Services (attachés) of 18 March.

Changes and additions with respect to the amended Commission proposal (doc. 6996/08 + REV 1 (de, en, fr)) are underlined; deletions are denoted by (…).

Amended Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the taking-up and pursuit of the business of Insurance and Reinsurance

(SOLVENCY II)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2) and 55 thereof,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the European Economic and Social Committee[2],

After consulting the Committee of the Regions[3],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[4],

Whereas:

---

1 OJ C […].
2 OJ C […].
3 OJ C […].
4 OJ C […].

(1) A number of substantial changes are to be made to the First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance[5], Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance[6], Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance[7], the Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC[8], Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive)[9], Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group[10], Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings[11], Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance[12], Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC[13] and

---

5 OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2005/68/EC of the European Parliament and of the Council (OJ L 323, 9.12.2005, p. 1).

6 OJ L 151, 7.6.1978, p. 25.

7 OJ L 185, 4.7.1987, p. 77.

8 OJ L 172, 4.7.1988, p. 1. Directive as last amended by Directive 2005/14/EC of the European Parliament and of the Council (OJ L 149, 11.6.2005, p. 14).

9 OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

10 OJ L 330, 5.12.1998, p. 1. Directive as last amended by Directive 2005/68/EC (OJ L 323, 9.12.2005, p. 1).

11 OJ L 110, 20.4.2001, p. 28.

12 OJ L 345, 19.12.2002, p. 1. Directive as last amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

13 OJ L 323, 9.12.2005, p. 1. Directive as amended by Directive 2007/44/EC (OJ L 247, 21.9.2007, p. 1).

Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluating criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector[14]. In the interests of clarity those Directives should be recast.

(2) In order to facilitate the taking up and pursuit of the activities of insurance and reinsurance, it is necessary to eliminate the most serious differences between the laws of the Member States as regards the rules to which insurance and reinsurance undertakings are subject. A legal framework should therefore be provided for insurance and reinsurance undertakings to conduct insurance business throughout the internal market thus making it easier for insurance and reinsurance undertakings with head offices in the Community to cover commitments and risks situated therein.

(3) It is in the interests of the proper functioning of the internal market that coordinated rules be established relating to the supervision of insurance groups and, with a view to the protection of creditors, to the reorganisation and winding-up proceedings in respect of insurance undertakings.

(4) It is appropriate that certain undertakings which provide insurance services are not covered by the system established by this Directive due to their size, their legal status, their nature - as being closely linked to public insurance systems- or the specific services they offer. It is further desirable to exclude certain institutions in several Member States whose business covers a very limited sector only and is restricted by law to a specific territory or to specified persons.

[14] OJ L 247, 21.9.2007, p. 1.

(4a) Very small insurance undertakings fulfilling certain conditions, including a level of gross premium income below EUR 5 million, are excluded from the scope of this Directive. However, all insurance and reinsurance undertakings which are already licensed under the current Directives should continue to be licensed when this Directive enters into force. Undertakings which are excluded from the scope of this Directive should be able to make use of the basic freedoms granted by the Treaty. Those undertakings have the option to seek authorisation under this Directive in order to benefit from the single license as provided for by this Directive.

(4b)[15] Member States may require undertakings that carry out the business of insurance and which are excluded from the scope of this Directive to register. Member States may also subject these undertakings to prudential and legal supervision.

[15] Recital on Article 4(2)

(5) Council Directive 72/166/EEC of 24 April 1972 on the approximation of the laws of Member States relating to insurance against civil liability in respect of the use of motor vehicles, and to the enforcement of the obligation to insure against such liability[16], the Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts[17], the Second Council Directive 84/5/EEC of 30 December 1983 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles[18], Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[19] and Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[20] lay down general rules in the fields of accounting, motor insurance liability, financial instruments and credit institutions and provide for definitions in those areas. It is appropriate that certain of those definitions apply for the purposes of this Directive.

(6) The taking up of insurance or of reinsurance activities should be subject to prior authorisation. It is therefore necessary to lay down the conditions and the procedure for the granting of that authorisation as well as for any refusal.

---

16 OJ L 103, 2.5.1972, p. 1. Directive as last amended by Directive 2005/14/EC (OJ L 149, 11.6.2005, p. 14).

17 OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2006/99/EC (OJ L 363, 20.12.2006, p. 137).

18 OJ L 8, 11.1.1984, p. 17. Directive as last amended by Directive 2005/14/EC (OJ L 149, 11.6.2005, p. 14).

19 OJ L 145, 30.4.2004, p. 1. Directive as last amended by Directive 2006/31/EC (OJ L 114, 27.4.2006, p. 60).

20 OJ L 177, 30.6.2006, p. 1. Directive amended by Commission Directive 2007/18/EC (OJ L 87, 28.3.2007, p. 9).

(6a) As concerns the scope of reinsurance activities that an insurance undertaking may be authorized to carry out, the Directives repealed by this Directive do not lay down any rules in this respect. It is for the Member States to decide to lay down any rules in this regard. This Directive does not introduce any changes in this respect and does therefore not lay down any rules on the scope of reinsurance activities that an insurance undertaking may be authorized to carry out either.

(6b) References in this Directive to insurance or reinsurance undertakings, should include captive insurance and captive reinsurance undertakings, except where specific provision is made for those undertakings.

(7) Since this Directive constitutes an essential instrument for the achievement of the internal market insurance and reinsurance undertakings authorised in their home Member States should be allowed to carry on, throughout the Community, any or all of their activities by establishing branches or by providing services. It is therefore appropriate to bring about such harmonisation as is necessary and sufficient to achieve the mutual recognition of authorisations and supervisory systems, and thus a single authorisation which is valid throughout the Community and which allows the supervision of an undertaking to be carried out by the home Member State.

(8) Directive 2000/26/EC of the European Parliament and of the Council of 16 May 2000 on the approximation of the laws of the Member States relating to insurance against civil liability in respect of the use of motor vehicles and amending Council Directives 73/239/EEC and 88/357/EEC (Fourth motor insurance Directive)[21] lays down rules on the appointment of claims representatives. Those rules should apply for the purposes of this Directive.

[21] OJ L 181, 20.7.2000, p. 65. Directive as last amended by Directive 2005/14/EC(OJ L 149, 11.6.2005, p. 14).

(9) Reinsurance undertakings should limit their objects to the business of reinsurance and related operations. Such a requirement should not prevent a reinsurance undertaking from carrying on activities such as the provision of statistical or actuarial advice, risk analysis or research for its clients. It may also include a holding company function and activities with respect to financial sector activities within the meaning of Article 2 (8) of 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[22]. In any case, this requirement does not allow the carrying on of unrelated banking and financial activities.

(10) The protection of policyholders presupposes that insurance and reinsurance undertakings are subject to effective solvency requirements that result in an efficient allocation of capital in the European Union. In light of market developments the current system is no longer adequate. It is therefore necessary to introduce a new regulatory framework.

(11) In line with the latest developments in risk management, in the context of the International Association of Insurance Supervisors, the International Accounting Standards Board and the International Actuarial Association and with recent developments in other financial sectors an economic risk-based approach should be adopted which provides incentives for insurance and reinsurance undertakings to properly measure and manage their risks. Harmonisation should be increased by providing specific rules for the valuation of assets and liabilities, including technical provisions.

(…)

[22] OJ L 35, 11.2.2003, p. 1. Directive as amended by Directive 2005/1/EC (OJ L 79, 24.3.2005, p. 9).

(13) The main objective of insurance and reinsurance regulation and supervision is the adequate protection of policyholder and beneficiaries. The expression beneficiary is intended to cover any natural or legal person who is entitled to a right under an insurance contract. Financial stability and fair and stable markets are other objectives of insurance and reinsurance regulation and supervision which should also be taken into account but should not undermine the main objective.

(13a) Solvency II is expected to result in even better protection for policyholders. It will require Member States to provide supervisory authorities with the resources to fulfill their objectives as set out in this Directive. This encompasses all necessary capacities, including financial and human resources.

(14) The supervisory authorities of the Member States should therefore have at their disposal all means necessary to ensure the orderly pursuit of business by insurance and reinsurance undertakings throughout the Community whether carried on under the right of establishment or the freedom to provide services. In order to ensure the effectiveness of the supervision all actions taken by the supervisory authorities should be proportionate to the nature and the complexity of the risks inherent to the business of an insurance or reinsurance undertaking, regardless of the importance of the undertaking concerned for the over-all financial stability for the market.

(14a)[23] The new solvency regime should not be too burdensome for small and medium-sized insurance undertakings. One of the tools to achieve this objective is a proper application of the proportionality principle. This principle should apply both to the requirements on the insurance and reinsurance undertakings and on the exercise of supervisory powers.

[23] Previously recital 12

(14b)[24] In particular, the new solvency regime should not be too burdensome for insurance undertakings who specialise in providing specific types of insurance or providing services to specific customer segments, and it should recognise that specialising in this way can be a valuable tool for efficiently and effectively managing risk. In order to achieve this objective, as well as the proper application of the proportionality principle, provision should also be made to specifically allow undertakings to use their own data to calibrate the parameters in the underwriting risk modules of the standard formula of the Solvency Capital Requirement.

(14c)[25] The new solvency regime should also take account of the specific nature of captive insurance and reinsurance undertakings. As those undertakings only cover risks associated with the industrial or commercial group to which they belong, appropriate approaches should thus be provided in line with the principle of proportionality to reflect the nature, scale and complexity of their business.

(14d)[26] The supervision of reinsurance activity should take account of the special characteristics of reinsurance business, notably its global nature and the fact that the policyholders are themselves insurance or reinsurance undertakings.

(15) Supervisory authorities should be able to obtain from insurance and reinsurance undertakings the information which is necessary for the purposes of supervision, including, where appropriate, elements publicly disclosed by an insurance or reinsurance undertaking under financial reporting, listing and other legal or regulatory requirements.

(16) The supervisory authorities of the home Member State should be responsible for monitoring the financial health of insurance and reinsurance undertakings. To this end they should carry out regular reviews and evaluations.

---

24 Previosly recital 12a
25 Previosly recital 12aa
26 Previosly recital 14a

(16a) Supervisory authorities may take account of the effects on risk and asset management of voluntary codes of conduct and transparency adhered to by the relevant institutions dealing in unregulated or alternative investment instruments.

(17) The starting point for the adequacy of the quantitative requirements in the insurance sector is the Solvency Capital Requirement. Supervisory authorities should therefore have the power to impose a capital add-on to the Solvency Capital Requirement only under (…) exceptional circumstances in the cases listed in this Directive following the supervisory review process. The Solvency Capital Requirement standard formula is intended to reflect the risk profile of most insurance and reinsurance undertakings. However, there may be some cases where the standardised approach does not adequately reflect the very specific risk profile of an undertaking. (…)

(17a) The imposition of a capital add-on is exceptional in the sense that it should only be used as a last resort measure, when other supervisory measures are ineffective or inappropriate. Furthermore, the expression exceptional should be understood in the context of the specific situation of each undertaking rather than in relation to the number of capital add-ons imposed in a specific market.

(17b) The capital add-on should be kept as long as the circumstances under which it was imposed are not remedied. In case of significant deficiencies in the full or partial internal model or significant governance failures the supervisory authorities should ensure that the undertaking concerned makes all efforts to remedy the deficiencies that led to the imposition of the capital add-on. However, where the standardised approach does not adequately reflect the very specific risk profile of an undertaking the capital add-on may remain over consecutive years.

(18) Some risks may only be properly addressed through governance requirements rather than through the quantitative requirements reflected in the Solvency Capital Requirement. An effective governance system is therefore essential for the adequate management of the insurance undertaking and for the regulatory system.

(18a) The system of governance includes the risk management function, the compliance function, the internal audit function and the actuarial function.

(18b) A function is an administrative capacity to undertake particular governance tasks. The identification of a particular function does not prevent the undertaking from freely deciding how to organise this function in practice unless this is otherwise specified in this Directive. This should not lead to unduly burdensome requirements because account should be taken of the nature, complexity and scale of the operations of the undertaking. These functions can therefore be staffed by own staff or can rely on advice from outside experts or can be outsourced to experts within the limits set by this Directive.

(18c) Furthermore, except regarding the internal audit function, in smaller and less complex undertakings, more than one function can be carried out by one person or organisational unit.

(18d) The functions included in the system of governance are considered key functions and consequently also important and critical functions.

(18e) All persons that perform key functions should be fit and proper. However, only the key function holders should be subject to notification requirements to the supervisory authority.

(18f) For the purpose of assessing the required level of competence, professional qualifications and experience of those who effectively run the undertaking or have other key functions should be taken into consideration as additional factors;

(19) All insurance and reinsurance undertakings should have, as an integrated part of their business strategy, a regular practice of assessing their over-all solvency needs with a view to their specific risk profile (own risk and solvency assessment). This assessment does not require the development of an internal model nor does it serve to calculate a capital requirement different from the SCR and the MCR. The results of each assessment should be reported to the supervisory authority as part of the information to be provided for supervisory purposes.

(20) In order to ensure effective supervision of outsourced functions or activities, it is essential that the supervisory authorities of the outsourcing insurance or reinsurance undertaking have access to all relevant data held by the outsourcing service provider, regardless of whether the latter is a regulated or unregulated entity, as well as the right to conduct on-site inspections. In order to take account of market developments and to ensure that the conditions for outsourcing continue to be complied with, the supervisory authorities should be informed prior to the outsourcing of critical or important functions or activities. These requirements take into account the work of the Joint Forum and are consistent with the current rules and practices in the banking sector and the Markets in Financial Instruments Directive and its application to credit institutions.

(21) In order to guarantee transparency insurance and reinsurance undertakings should publicly disclose at least annually essential information on their solvency and financial condition. Undertakings should be allowed to publicly disclose additional information on a voluntary basis. To publicly disclose information means to make it available to the public either in printed or electronic form free of charge.

(22) Provision should be made for exchanges of information between the supervisory authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. It is therefore necessary to specify the conditions under which those exchanges of information should be possible. Moreover, where information may be disclosed only with the express agreement of the supervisory authorities, those authorities should be enabled, where appropriate, to make their agreement subject to compliance with strict conditions.

(23) It is necessary to promote supervisory convergence not only in respect of supervisory tools but also in respect of supervisory practices. The Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) established by Commission Decision 2004/6/EC should play an important role in this respect and report regularly to the European Parliament and the Commission on the progress made.

(23a) The objective of the information and report to be presented in relation to capital add-ons by the Committee of European Insurance and Occupational Pensions Supervisors is not to inhibit their use as permitted under this Directive but to contribute to an ever higher degree of supervisory convergence in the use of capital add-ons between supervisory authorities in the different Member States.

(24) In order to limit the administrative burden and avoid duplication of tasks, supervisory authorities and national statistical authorities should cooperate and exchange information.

(25) For the purposes of strengthening the supervision of insurance and reinsurance undertakings and the protection of policyholders, the statutory auditors within the meaning of 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[27] should have a duty to report promptly, any facts which are likely to have a serious effect on the financial situation or the administrative organisation of an insurance or a reinsurance undertaking.

(26) Insurance undertakings pursuing both life and non-life activities should manage those activities separately, in order to protect the interests of life policyholders. In particular, those undertakings should be subject to the same capital requirements as those applicable to an equivalent insurance group, made up of a life insurance undertaking and a non-life undertaking, taking into account the increased transferability of capital in the case of composite insurance undertakings.

(27) The assessment of the financial position of insurance and reinsurance undertakings should rely on sound economic principles and make optimal use of the information provided by financial markets, as well as generally available data on insurance technical risks. In particular, solvency requirements should be based on an economic valuation of the whole balance-sheet.

(28) Valuation standards for supervisory purposes should be compatible with international accounting developments, to the extent possible, so as to limit the administrative burden on insurance or reinsurance undertakings.

[27] OJ L 157, 9.6.2006, p. 87.

(29) In accordance with that approach, capital requirements should be covered by own funds whether, on or off the balance-sheet items. Since all financial resources do not provide full absorption of losses in the case of winding-up and on a going-concern basis, own fund items should be classified in accordance with quality criteria into three tiers, and the eligible amount of own funds to cover capital requirements should be limited accordingly. The limits applicable to own fund items should only apply to determine the solvency standing of insurance and reinsurance undertakings, and should not further restrict the freedom of those undertakings with respect to their internal capital management.

(29a) Generally, assets which are free from any foreseeable liabilities, are available to absorb losses due to adverse business fluctuations, both on a going-concern basis as well as in the case of winding-up. Therefore the vast majority of the excess of assets over liabilities, as valued in accordance with the principles set out in this Directive, should be treated as high quality capital (Tier 1).

(29b)[28] Not all assets within an undertaking are unrestricted. In some Member States, specific products origin some ring-fenced fund structures which give one class of policyholders' greater rights to assets within their own "fund". Although these assets are included in computing the excess of assets over liabilities for own-funds purposes they cannot, in fact be made available to meet the risks outside the ring-fenced fund. To be consistent with the economic approach, the assessment of own-funds needs to be adjusted to reflect the different nature of assets, which form part of a ring-fenced arrangement. Similarly the SCR calculation should reflect the reduction in pooling/diversification related to those ring fenced funds.

28 New recital: treatment of ring-fenced funds

(29c)[29] It is current practice in certain Member States that insurance companies sell life insurance products in relation to which the policy holders and beneficiaries contribute to the risk capital of the company in exchange for all or part of the return on the contributions. Those accumulated profits are surplus funds, which are the property of the legal entity in which they are generated.

(29d) [30]Surplus funds should be valued in line with the economic approach laid down in the Directive. In this respect, a mere reference to the evaluation of surplus funds in the statutory annual accounts should not be sufficient. In line with the requirements on own funds, surplus funds should be subject to the criteria laid down in the Directive on the classification into tiers. This means, inter alia, that only surplus funds which fulfil the requirements for classification into tier 1 should be considered as tier 1 capital.

(29e)[31] Mutual and mutual-type associations with variable contributions may call for supplementary contributions from their members in order to increase the amount of financial resources that they hold to absorb losses. Those contributions (supplementary members' calls) may represent a significant source of funding for mutual and mutual-type associations, including when those associations are confronted with adverse business fluctuations. Therefore those contributions should be recognised as ancillary own fund items and treated accordingly for solvency purposes. In particular, in the case of mutual or mutual-type associations of shipowners with variable contributions solely insuring maritime risks, the recourse to supplementary members' calls has been a long-established practice, subject to specific recovery arrangements, and the approved amount of those members' calls should be treated as good quality capital (Tier 2). Similarly, in the case of other mutual and mutual-type associations, where supplementary members' calls are of similar quality, the approved amount of those members' calls should also be treated as good quality capital (Tier 2).

---

29 Previously recital 29c
30 Recital on Article 90
31 Previously recital 29aa

(30) In order to allow insurance and reinsurance undertakings to meet their commitments towards policyholders and beneficiaries, Member States should require those undertakings to establish adequate technical provisions. The principles and actuarial and statistical methodologies underlying the calculation of those technical provisions should be harmonised throughout the Community in order to achieve better comparability and transparency.

(31) The calculation of technical provisions should be consistent with the valuation of assets and other liabilities, market consistent and in line with international developments in accounting and supervision.

(32) The (...) value of technical provisions should therefore correspond to the amount an insurance or reinsurance undertaking would have to pay if it transferred its contractual rights and obligations immediately to another undertaking. Consequently, the value of technical provisions should correspond to the amount another insurance or reinsurance undertaking (reference undertaking) would be expected to require to take over and meet the underlying insurance and reinsurance obligations. The amount of technical provisions should reflect the characteristics of the underlying insurance portfolio. Undertaking-specific information should therefore only be used in their calculation insofar as that information enables insurance and reinsurance undertakings to better reflect the characteristics of the underlying insurance portfolio, such as information regarding claims management and expenses.

(32a) The assumptions made about the reference undertaking assumed to take over and meet the underlying insurance and reinsurance obligations should be harmonised throughout the community. In particular, the assumptions made about the reference undertaking that determine whether or not, and if so to what extent, diversification effects should be taken into account in the calculation of the risk margin should be analysed as part of the impact assessment of implementing measures and should then be harmonised at Community level.

(32b) For the purpose of calculating technical provisions reasonable interpolations and extrapolations from directly observable market values may be applied.

(33) It is necessary that the expected present value of insurance liabilities is calculated on the basis of current and credible information and realistic assumptions, taking account of financial guarantees and options in insurance or reinsurance contracts, to deliver an economic valuation of insurance or reinsurance obligations. The use of effective and harmonised actuarial methodologies should be required.

(34) In order to reflect the specific situation of small and medium sized undertakings, simplified approaches to the calculation of technical provisions should be provided for.

(35) The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). Both capital requirements should be harmonised throughout the Community in order to achieve a uniform level of protection for policyholders. For the good functioning of the Solvency II regime, there should be an adequate ladder of intervention between the Minimum Capital Requirement and the Solvency Capital Requirement.

(35a) In order to mitigate undue potential pro-cyclical effects of the financial system and avoid that insurance and reinsurance undertakings are unduly forced to raise additional capital or sell their investments, as a result of adverse short-term movements in financial markets, the market risk module of the standard formula for the Solvency Capital Requirement should include a symmetric adjustment mechanism with respect to changes in the level of equity prices.

In addition, in the event of exceptional falls in financial markets, and where that symmetric adjustment mechanism is not sufficient to enable insurance and reinsurance undertakings to comply with their Solvency Capital Requirement, provision should be made to allow supervisory authorities to extend the time period which insurance and reinsurance undertakings have to re-establish the level of eligible own funds covering the Solvency Capital Requirement.

(36) The Solvency Capital Requirement should reflect a level of eligible own funds that enables insurance and reinsurance undertakings to absorb significant losses and that gives reasonable assurance to policyholders and beneficiaries that payments will be made as they fall due.

(36a) In order to ensure that insurance and reinsurance undertakings hold eligible own funds that cover the Solvency Capital Requirement on an on-going basis, taking into account any changes in their risk profile, those undertakings should calculate the Solvency Capital Requirement at least once a year, monitor it continuously and recalculate it whenever the risk profile alters significantly.

(37) In order to promote good risk management, and align regulatory capital requirements with industry practices, the Solvency Capital Requirement should be determined as the economic capital to be held by insurance and reinsurance undertakings in order to ensure that ruin occurs no more often than once in every 200 cases or, alternatively, that those undertakings will still be in a position, with a probability of at least 99.5%, to meet their obligations to policyholders and beneficiaries over the forthcoming 12 months. That economic capital should be calculated on the basis of the true risk profile of those undertakings, taking account of the impact of possible risk mitigation techniques, as well as diversification effects.

(38) Provision should be made to lay down a standard formula for the calculation of the Solvency Capital Requirement, to enable all insurance and reinsurance undertakings to assess their economic capital. For the structure of the standard formula, a modular approach should be adopted, which means that the individual exposure to each risk category should be assessed in a first step and then aggregated in a second step. Where the use of undertaking-specific parameters allows for the true underwriting risk profile of the undertaking to be better reflected, this should be allowed, provided such parameters are derived using a standardised methodology.

(39) In order to reflect the specific situation of small and medium sized undertakings, simplified approaches to the calculation of the Solvency Capital Requirement in accordance with the standard formula should be provided for.

(…)

(41) As a matter of principle, the new risk-based approach does not comprise the concept of quantitative investment limits and asset eligibility criteria. It should however be possible to introduce investment limits and asset eligibility criteria to address risks which are not adequately covered by a sub-module of the standard formula.

(41a)[32] In accordance with the risk-oriented approach to the Solvency Capital Requirement it should be possible, in specific circumstances, to use partial or full internal models for the calculation of that requirement instead of the standard formula. In order to provide policyholders and beneficiaries with an equivalent level of protection, such internal models should be subject to prior supervisory approval on the basis of harmonised processes and standards.

[32] Previously recital 40

(42) When the amount of eligible basic own funds falls below the Minimum Capital Requirement, the authorisation of insurance and reinsurance undertakings should be withdrawn, if those undertakings are unable to re-establish the amount of eligible basic own funds at the level of the Minimum Capital Requirement within a short period of time.

(43) The Minimum Capital Requirement should ensure a minimum level below which the amount of financial resources should not fall. It is necessary that it is calculated in accordance with a simple formula, which is subject to a defined floor and cap based on the risk-based Solvency Capital Requirement in order to allow for an escalating ladder of supervisory intervention and that it is based on the data which can be audited.

(44) Insurance and reinsurance undertakings should have assets of sufficient quality to cover their overall financial requirements. All investments held by insurance and reinsurance undertakings should be managed in accordance with the "prudent person" principle.

(45) Member States should not require insurance and reinsurance undertakings to invest their assets in particular categories of assets, as such a requirement could be incompatible with the liberalisation of capital movements provided for in Article 56 of the Treaty.

(46) It is necessary to prohibit any provisions enabling Member States to require pledging of assets covering the technical provisions of an insurance or reinsurance undertaking, whatever form this requirement might take, when the insurer is reinsured by an insurance or reinsurance undertaking authorised pursuant to this Directive, or by a third-country undertaking where the supervisory regime of that third country has been deemed equivalent.

(47) The legal framework has so far provided neither detailed criteria for a prudential assessment of a proposed acquisition nor a procedure for their application. A clarification of the criteria and the process of prudential assessment is therefore needed to provide the necessary legal certainty, clarity and predictability with regard to the assessment process, as well as to the result thereof. These criteria and procedures have been introduced by Directive 2007/44/EC. As regards insurance and reinsurance these provisions should therefore be codified and integrated into this Directive.

(48) Maximum harmonisation throughout the Community of these procedures and prudential assessments is therefore critical. However, the provisions on qualifying holdings should not prevent the Member States from requiring that the supervisory authorities are to be informed of acquisitions of holdings below the thresholds laid down in those provisions, so long as a Member State imposes no more than one additional threshold below 10 % for this purpose. Nor should it prevent the supervisory authorities from providing general guidance as to when such holdings would be deemed to result in significant influence.

(49) In view of the increasing mobility of European citizens, motor liability insurance is increasingly being offered on a cross-border basis. To ensure the continued proper functioning of the green card system and the agreements between the national bureaux of motor insurers, it is appropriate that Member States are able to require insurance undertakings providing motor liability insurance in their territory by way of provision of services to join and participate in the financing of the national bureau as well as of the guarantee fund set up in that Member State. The Member State of provision of services should require undertakings which provide motor liability insurance to appoint a representative in its territory to collect all necessary information in relation to claims and to represent the undertaking concerned.

(50) Within the framework of an internal market it is in the interest of policyholders that they should have access to the widest possible range of insurance products available in the Community. The Member State of the commitment or the Member State in which the risk is situated should therefore ensure that there is nothing to prevent the marketing within its territory of all the insurance products offered for sale in the Community as long as they do not conflict with the legal provisions protecting the general good in force in that Member State and in so far as the general good is not safeguarded by the rules of the home Member State.

(51) Provision should be made for a system of sanctions to be imposed when, in the Member State of the commitment or in which the risk is situated, an insurance undertaking does not comply with any applicable provisions protecting the general good.

(52) In an internal market for insurance, consumers have a wider and more varied choice of contracts. If they are to benefit fully from this diversity and from increased competition, they should be provided with whatever information is necessary before the conclusion of the contract and throughout the term of the contract to enable them to choose the contract best suited to their needs.

(53) An insurance undertaking offering assistance contracts should possess the means necessary to provide the benefits in kind which it offers within an appropriate period of time. Special provisions should be laid down for calculating the Solvency Capital Requirement and the absolute floor of the Minimum Capital Requirements which such undertaking should possess.

(54) The effective pursuit of Community co-insurance business for activities which are by reason of their nature or their size likely to be covered by international co-insurance should be facilitated by a minimum of harmonisation in order to prevent distortion of competition and differences in treatment. In this context, the leading insurance undertaking should assess claims and fix the amount of technical provisions. Moreover, special co-operation should be provided for in the Community co-insurance field both between the supervisory authorities of the Member States and between those authorities and the Commission.

(55) In the interest of the protection of insured persons, national law concerning legal expenses insurance should be harmonised. Any conflicts of interest arising, in particular from the fact that the insurance undertaking is covering another person or is covering a person in respect of both legal expenses and any other class of insurance should be precluded as far as possible or be able to be resolved. To this end, a suitable level of protection of policyholders can be achieved by different means. Whichever solution is adopted, the interest of persons having legal expenses cover should be protected by equivalent safeguards.

(56) Conflicts between insurance undertakings covering legal expenses and insured persons should be settled in the fairest and speediest manner possible. It is therefore appropriate that Member States provide for an arbitration procedure or a procedure offering comparable guarantees.

(57) In some Member States, private or voluntary health insurance serves as a partial or complete alternative to health cover provided for by the social security systems. The particular nature of such health insurance, distinguishes it from other classes of indemnity insurance and life insurance insofar as it is necessary to ensure that policyholders have effective access to private health cover or health cover taken out on a voluntary basis regardless of their age or risk profile. Given that nature and the social consequences of health insurance contracts, the supervisory authorities of the Member State in which a risk is situated should be able to require systematic notification of the general and special policy conditions in the case of private or voluntary health insurance in order to verify that such contracts are a partial or complete alternative to the health cover provided by the social security system. Such verification should not be a prior condition for the marketing of the products.

(58) To this end some Member States have adopted specific legal provisions. To protect the general good, it should be possible to adopt or maintain such legal provisions in so far as they do not unduly restrict the right of establishment or the freedom to provide services, it being understood that such provisions should apply in an identical manner. Those legal provisions may differ in nature according to the conditions in each Member State. The objective of protecting the general good may also be achieved by requiring undertakings offering private health cover or health cover taken out on a voluntary basis to offer standard policies in line with the cover provided by statutory social security schemes at a premium rate at or below a prescribed maximum and to participate in loss compensation schemes. As a further possibility, it may be required that the technical basis of private health cover or health cover taken out on a voluntary basis be similar to that of life insurance.

(59) Host Member States should be able to require any insurance undertaking which offers, within their territories, compulsory insurance against accidents at work at its own risk to comply with the specific provisions laid down in their national law on such insurance. However, such a requirement should not apply to the provisions concerning financial supervision, which should remain the exclusive responsibility of the home Member State.

(59a) Some Member States do not subject insurance transactions to any form of indirect taxation, while the majority apply special taxes and other forms of contribution, including surcharges intended for compensation bodies. The structures and rates of such taxes and contributions vary considerably between the Member States in which they are applied. It is desirable to prevent existing differences leading to distortions of competition in insurance services between Member States. Pending subsequent harmonization, application of the tax systems and other forms of contribution provided for by the Member States in which risks are situated or commitments entered into is likely to remedy that problem and it is for the Member States to make arrangements to ensure that such taxes and contributions are collected.

(60) Whereas those Member States not subject to the application of Regulation No 593/2008/EC should apply the provisions of that Regulation in order to determine the law applicable to contracts of insurance falling within the scope of Article 7 of the Regulation.

(...)

(...)

(63) In order to take account of the international aspects of reinsurance, provision should be made to enable the conclusion of international agreements with a third country aimed at defining the means of supervision over reinsurance entities which conduct business in the territory of each contracting party. Moreover, a flexible procedure should be provided for to make it possible to assess prudential equivalence with third countries on a Community basis, so as to improve liberalisation of reinsurance services in third countries, be it through establishment or cross-border provision of services.

(63a)[33] Due to the special nature of finite reinsurance activities, Member States should ensure that insurance and reinsurance undertakings concluding finite reinsurance contracts or pursuing finite reinsurance activities can properly identify measure and control the risks arising from those contracts or activities.

[33] Previously recital 62

(63b)[34] Appropriate rules should be provided for special purpose vehicles which assume risks from insurance and reinsurance undertakings without being an insurance or reinsurance undertaking. Recoverable amounts from a special purpose vehicle should be considered as amounts deductible under reinsurance or retrocession contracts.

(63c)[35] Special purpose vehicles authorised before 31 October 2012 should be subject to the law of the Member State having authorised the special purpose vehicle. However, in order to avoid regulatory arbitrage, any new activity commenced by such a special purpose vehicle after 31 October 2012 should be subject to the provisions of this Directive.

(63d)[36] Given the increasing cross-border nature of insurance business, divergences between Member State' regimes on special purpose vehicles, which are subject to the provisions of this Directive, should be reduced to the greatest extent possible, taking account of their supervisory structures.

(63e)[37] Further work on special purpose vehicles should be conducted taking into account the work undertaken in other financial sectors.

(64) Measures concerning the supervision of insurance and reinsurance undertakings in a group should enable the authorities supervising an insurance or reinsurance undertaking to form a more soundly based judgment of its financial situation.

(65) Such group supervision should take into account insurance holding companies and mixed-activity insurance holding companies to the extent necessary. However, this Directive should not in any way imply that Member States are required to apply supervision to those undertakings considered individually.

---

34 Previously recital 61
35 Previously recital 61a
36 Previously recital 61b
37 Previously recital 61c

(66) Whilst the supervision of individual insurance and reinsurance undertakings remains the essential principle of insurance supervision it is necessary to determine which undertakings fall under the scope of supervision at group level.

(66a)[38] Subject to Community and national law, undertakings, in particular mutuals and mutual-type associations, are able to come together by constituting concentrations or groups, not through capital ties but through formalised strong and sustainable relationships, based on contractual or other material recognition that guarantees a financial solidarity between those undertakings. Where a (…) dominant influence is exercised through a centralised coordination, those undertakings shall be supervised according to the same rules as those provided for groups constituted through capital ties in order to achieve an adequate level of protection for policyholders and a level playing field between groups.

(67) Group supervision should apply in any case at the level of the ultimate participating undertaking which has its head office in the Community. Member States should however be able to allow their supervisory authorities to apply group supervision at a limited number of lower levels, where they deem it necessary.

(68) It is necessary to calculate solvency at group level for insurance and reinsurance undertakings forming part of a group.

(68a)[39] The consolidated Solvency Capital Requirement for a group should take into account the global diversification of risks that exists across all the insurance entities in that group in order to reflect properly the risk exposures of that group.

(69) Insurance and reinsurance undertakings belonging to a group should be able to apply for the approval of an internal model to be used for the solvency calculation at both group and individual levels.

---

38 Recital on Article 210

39 Previously recital 65a

(69a)[40] Whereas some provisions of the Directive provide explicitly for a mediation or a consultation role for CEIOPS, this should not preclude CEIOPS from playing a mediation or a consultation role also with regard to other provisions.

(69b)[41] The Directive reflects an innovative supervisory model where a key role is assigned to a group supervisor, whilst recognising and maintaining an important role to the solo supervisor. The powers and responsibilities of supervisors go hand-in-hand with their accountability.

(69c)[42] All policyholders and beneficiaries should receive equal treatment regardless of their nationality or residence. For this purpose, Member States should ensure that all measures taken by supervisory authority on the basis of that supervisory authority's national mandate are not regarded as contrary to the interests of that Member State or of policyholders and beneficiaries in that Member State. In all situations of settling of claims and winding-up, assets should be distributed on an equitable basis to all relevant policy holders, regardless of their nationality or residence.

(70) It is necessary to ensure that own funds are appropriately distributed within the group and available to protect policyholders and beneficiaries where needed. To this end insurance and reinsurance undertakings within a group should have sufficient own funds to cover their solvency capital requirement (…).

---

40 Recital on Article 229

41 Recital on Article 229: key role of the group supervisor and accountability

42 Previously recital 69a

(70a)[43] All supervisors involved in group supervision should be able to understand the decisions made, in particular when those decisions are made by the group supervisor. When it becomes available to one of the supervisors, the relevant information should therefore as soon as it becomes available be shared with the other supervisors, in order for all supervisors to be able to establish an opinion based on the same relevant information. In the event that the supervisors concerned cannot reach an agreement, qualified advice from CEIOPS should be sought to resolve the situation.

(71) The solvency of a subsidiary insurance or reinsurance undertaking of an insurance holding company, third-country insurance or reinsurance undertaking may be affected by the financial resources of the group of which it is a part and by the distribution of financial resources within that group. The supervisory authorities should therefore be provided with the means of exercising group supervision and of taking appropriate measures at the level of the insurance or reinsurance undertaking where its solvency is or may be jeopardised.

(72) Risk concentrations and intra group transactions can affect the financial position of insurance or reinsurance undertakings. The supervisory authorities should therefore be able to exercise (…) supervision over (…) such risk concentrations and intra group transactions, taking into account the nature of relationships between regulated entities as well as non regulated entities, including insurance holding companies and mixed activity insurance holding companies, and take appropriate measures at the level of the insurance or reinsurance undertaking where its solvency is or may be jeopardised.

(73) Insurance and reinsurance undertakings within a group should have appropriate governance systems which should be subject to supervisory review.

(74) All insurance or reinsurance groups subject to group supervision should have a group supervisor appointed from among the supervisory authorities involved. The rights and duties of the group supervisor should comprise appropriate coordination and decision-making powers. The authorities involved in the supervision of insurance and reinsurance undertakings belonging to the same group should establish coordination arrangements.

[43] Previously recital 70b

(74a)[44] In light of the increasing competences of the group supervisor it has to be ensured that the criteria for choosing the group supervisor can not be arbitrarily circumvented. In particular in cases where the group supervisor will be designated taking into account the structure of the group and the relative importance of the insurance and reinsurance activities in different markets, internal group transactions as well as group reinsurance shall not be double-counted when assessing the relative importance within a market.

(75) Supervisors from all Member States in which undertakings of the group are established should be involved in group supervision through a college of supervisors. They should all have access to information available with other supervisory authorities within the college and they should be dynamically involved in decision-making. Cooperation between the authorities responsible for the supervision of insurance and reinsurance undertakings as well as between those authorities and the authorities responsible for the supervision of undertakings active in other financial sectors should be established.

(75a)[45] The activities of the college shall be proportionate to the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group and the cross-border dimension. The college of supervisors shall be set up to ensure that cooperation, exchange of information and consultation processes among the supervisory authorities of the college, are effectively applied in accordance with Title III of this Directive. Supervisory authorities shall use the college to promote convergence of their respective decisions and to cooperate closely to carry out their supervisory activities across the group under harmonised criteria.

(75b)[46] This Directive provides a consultative role for CEIOPS. Advice by CEIOPS to the relevant supervisor is not binding on that supervisor when taking its decision. When taking a decision, the relevant supervisor should take full account of that advice and shall explain any significant deviation therefrom. It is advice that supervisors may not wish to ignore.

---

44 Recital on article 251
45 Previously recital 74b: Recital on Article 252: objectives of the college
46 Previously recital 75a

(76) Insurance and reinsurance undertakings which are part of a group, the head of which is outside the Community should be subject to equivalent and appropriate group supervisory arrangements. It is therefore necessary to provide for transparency of rules and exchange of information with third-country authorities in all relevant circumstances. In order to ensure a harmonised approach to the determination and assessment of equivalence of third country insurance and reinsurance supervision, provision should be made for the commission to make a binding decision regarding the equivalence of third country solvency regimes. For third countries where no decision has been made by the Commission the assessment of equivalence should be made by the group supervisor after consulting with other relevant supervisory authorities.

(77) Since national legislation concerning reorganisation measures and winding-up proceedings is not harmonised it is appropriate, in the framework of the Internal Market, to ensure the mutual recognition of reorganisation measures and winding-up legislation of the Member States concerning insurance undertakings as well as the necessary cooperation taking into account the need for unity, universality, coordination and publicity for such measures and the equivalent treatment and protection of insurance creditors.

(78) It should be ensured that reorganisation measures which were adopted by the competent authority of a Member State in order to preserve or restore the financial soundness of an insurance undertaking and to prevent as much as possible a winding-up situation, produce full effects throughout the Community. However, the effects of any such reorganisation measures as well as winding-up proceedings vis-à-vis third countries should not be affected.

(79) A distinction should be made between the competent authorities for the purposes of reorganisation measures and winding-up proceedings and the supervisory authorities of the insurance undertakings.

(80) The definition of "branch" for insolvency purposes, should, in accordance with existing insolvency principles, take account of the single legal personality of the insurance undertaking. However, the legislation of the home Member State should determine the manner in which the assets and liabilities held by independent persons who have a permanent authority to act as agent for an insurance undertaking are to be treated in the winding-up of that insurance undertaking.

(81) Conditions should be laid down under which winding-up proceedings which, without being founded on insolvency, involve a priority order for the payment of insurance claims, fall within the scope of this Directive. Claims by the employees of an insurance undertaking arising from employment contracts and employment relationships should be capable of being subrogated to a national wage guarantee scheme. Such subrogated claims should benefit from the treatment determined by the home Member State's law (lex concursus).

(82) Reorganisation measures do not preclude the opening of winding-up proceedings. Winding-up proceedings should therefore be able to be opened in the absence of, or following, the adoption of reorganisation measures and they may terminate with composition or other analogous measures, including reorganisation measures.

(83) Only the competent authorities of the home Member State should be empowered to take decisions on winding-up proceedings concerning insurance undertakings. The decisions should produce their effects throughout the Community and should be recognised by all Member States. The decisions should be published in accordance with the procedures of the home Member State and in the Official Journal of the European Union. Information should also be made available to known creditors who are resident in the Community who should have the right to lodge claims and submit observations.

(84) All the assets and liabilities of the insurance undertaking should be taken into consideration in the winding-up proceedings.

(85) All the conditions for the opening, conduct and closure of winding-up proceedings should be governed by the law of the home Member State.

(86) In order to ensure coordinated action amongst the Member States the supervisory authorities of the home Member State and those of all the other Member States should be informed as a matter of urgency of the opening of winding-up proceedings.

(87) It is of utmost importance that insured persons, policyholders, beneficiaries and any injured party having a direct right of action against the insurance undertaking on a claim arising from insurance operations be protected in winding-up proceedings, it being understood that such protection does not include claims which arise not from obligations under insurance contracts or insurance operations but from civil liability caused by an agent in negotiations for which, according to the law applicable to the insurance contract or operation, the agent himself is not responsible under such insurance contract or operation. In order to achieve that objective, Member States should be provided with a choice between equivalent methods to ensure special treatment for insurance creditors, neither of those methods impeding a Member State from establishing a ranking between different categories of insurance claims. Furthermore, an appropriate balance should be ensured between the protection of insurance creditors and other privileged creditors protected under the legislation of the Member State concerned.

(88) The opening of winding-up proceedings should involve the withdrawal of the authorisation to conduct business granted to the insurance undertaking unless this has already occurred.

(89) Creditors should have the right to lodge claims or to submit written observations in winding-up proceedings. Claims by creditors resident in a Member State other than the home Member State should be treated in the same way as equivalent claims in the home Member State without any discrimination on the grounds of nationality or residence.

(90) In order to protect legitimate expectations and the certainty of certain transactions in Member States other than the home Member State, it is necessary to determine the law applicable to the effects of reorganisation measures and winding-up proceedings on pending lawsuits and on individual enforcement actions arising from lawsuits.

(91) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[47]. In particular power should be conferred on the Commission to adopt measures concerning the adaptation of Annexes and measures specifying in particular the supervisory powers and actions to be taken and laying down more detailed requirements in areas such as the governance system, public disclosure, assessment criteria in relation to qualifying holdings, calculation of technical provisions and capital requirements, investment rules and group supervision. Since those measures are of general scope and are designed to amend non-essential elements of this Directive, and to supplement it by the addition of new non-essential elements they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. The Commission should also be empowered to adopt implementing measures granting to third countries the status of equivalence with the provisions of this directive. While these measures have to be in accordance with criteria determined beforehand they still merit a certain level of control. It is therefore appropriate that they are adopted under the regulatory procedure.

(92) Since the objectives of the action to be taken cannot be sufficiently achieved by the Member States and can therefore, by reason of their scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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.

---

[47] OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

(93) The provisions of Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession[48], Council Directive 73/240/EEC of 24 July 1973 abolishing restrictions on freedom of establishment in the business of direct insurance other than life insurance[49], Council Directive 76/580/EEC of 29 June 1976 amending Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance[50] and Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards tourist assistance, the First Directive (73/239/EEC) on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life[51] have become obsolete and should therefore be repealed.

(94) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive change as compared with the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(95) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of the Directives set out in Annex VI, Part B,

(95a) The Commission will review the adequacy of existing guarantee schemes in the insurance sector and make an appropriate legislative proposal.

---

48 OJ 56, 4.4.1964, p. 878. Directive as amended by the Act of Accession 1972.
49 OJ L 228, 16.8.1973, p. 20.
50 OJ L 189, 13.7.1976, p. 13.
51 OJ L 339, 27.12.1984, p. 21.

(95b)[52] Article 17(2) of Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision refers to the existing legislative provisions on solvency margins. Those references should be retained in order to maintain the status quo. The Commission should conduct its review of Directive 2003/41/EC under Article 21(4) thereof, as quickly as possible. The Commission, supported by CEIOPS, should develop a proper system of solvency rules for pension provision, whilst fully reflecting the essential distinctiveness of insurance and, therefore, should not prejudge the application of the Solvency II rules to be imposed upon them.

(95c)[53] Adoption of this Directive changes the risk profile of the insurance company vis-à-vis the policy holder. The European Commission shall as soon as possible but no later than at the end of 2010 come forward with the proposal for revision of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation taking into account the consequences for policy holders of this Directive.

(95d)[54] Further wide-ranging reforms of the regulatory and supervisory model of the EU financial sector are highly needed and should be put forward swiftly by the European Commission with due consideration of the conclusions presented by the group of experts chaired by Jacques de Larosière of February 25th 2009. The Commission should propose legislation needed to tackle the shortcomings identified regarding the provisions related to supervisory coordination and cooperation arrangements.

---

52 Previously recital 93a
53 New recital on IMD
54 New recital on the De Larosière report

(95e)[55] It is necessary to seek advice from CEIOPS on how best to address the issues of an enhanced group supervision and capital management within a group of insurance or reinsurance undertakings. CEIOPS should be invited to provide advice that will help the Commission to develop its proposals under conditions that are consistent with high level of policyholder (and beneficiary) protection and safeguarding of financial stability. In that regard CEIOPS should be invited to advise Commission on the structure and principles which could guide potential future amendments to this Directive which may be needed to give effect to the changes that may be proposed. The Commission should submit a report followed by appropriate proposals to the European Parliament and the Council for alternative regimes for the prudential supervision of insurance and reinsurance undertakings within groups which enhance the efficient capital management within groups if it is satisfied that and adequate supportive regulatory framework for the introduction of such a regime is in place. In particular, it is desirable that a group support regime operates on sound foundations based on the existence of harmonised and adequately funded insurance guarantee schemes, harmonised and legally binding framework between competent authorities, central banks and ministries of finance concerning crisis management, resolution and fiscal burden-sharing which aligns supervisory powers and fiscal responsibilities, legally binding framework for the mediation of supervisory disputes, harmonised framework on early intervention, harmonised framework on asset transferability, insolvency and winding up procedures which eliminates the relevant national company or corporate law barriers to asset transferability. In its report the Commission should also take into account, the behaviour of diversification effects over time and risk associated with being part of a group, practices in centralized group risk management, functioning of group internal models as well as supervision of intra-group transactions and risk concentrations.

[55] Recital on article 246

HAVE ADOPTED THIS DIRECTIVE:

TITLE I

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

CHAPTER I

SUBJECT MATTER, SCOPE AND DEFINITIONS

SECTION 1 - SUBJECT MATTER AND SCOPE

Article 1

Subject matter

This Directive lays down rules concerning the following:

(1). the taking-up and pursuit, within the Community, of the self-employed activities of direct insurance and reinsurance;

(2) the supervision in the case of insurance and reinsurance groups;

(3) the reorganisation and winding-up of direct insurance undertakings.

Article 2

Scope

1. This Directive shall apply to direct life and non-life insurance undertakings which are established in the territory of a Member State or which wish to become established there.

   It shall also apply to reinsurance undertakings~~,~~ which conduct only reinsurance activities, and which are established in the territory of a Member State or which wish to become established there with the exception of Title IV.

2. As far as non-life insurance is concerned, this Directive shall apply to non-life insurance activities of the classes set out in part A of Annex I. For the purposes of the first subparagraph of paragraph 1 non-life insurance shall include the activity which is assistance provided for persons who get into difficulties while travelling, while away from home or while away from their permanent (…) residence. It shall consist in undertaking, against the prior payment of a premium, to make aid immediately available to the beneficiary under an assistance contract where that person is in difficulties following the occurrence of a chance event, in the cases and under the conditions set out in the contract.

The aid may consist in the provision of benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of the person providing them.

The assistance activity shall not cover servicing, maintenance, after-sales service or the mere indication or provision of aid as an intermediary.

3. As far as life insurance is concerned this Directive shall apply to the following:
   (a) the following life insurance activities where they are on a contractual basis:
      (i) life insurance which comprises, assurance on survival to a stipulated age only, assurance on death only, assurance on survival to a stipulated age or on earlier death, life assurance with return of premiums, marriage assurance, birth assurance;
      (ii) annuities;
      (iii) supplementary insurance underwritten in addition to life insurance, in particular, insurance against personal injury including incapacity for employment, insurance against death resulting from an accident and insurance against disability resulting from an accident or sickness;
      (iv) the type of permanent health insurance not subject to cancellation currently existing in Ireland and the United Kingdom known as permanent health insurance not subject to cancellation

(b) the following operations, where they are on a contractual basis, in so far as they are subject to supervision by the authorities responsible for the supervision of private insurance:

(i) operations whereby associations of subscribers are set up with a view to jointly capitalising their contributions and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased (tontines);

(ii) capital redemption operations based on actuarial calculation whereby, in return for single or periodic payments agreed in advance, commitments of specified duration and amount are undertaken;

(iii) management of group pension funds, comprising the management of investments, and in particular the assets representing the reserves of bodies that effect payments on death or survival or in the event of discontinuance or curtailment of activity;

(iv) the operations referred to in point (iii) where they are accompanied by insurance covering either conservation of capital or payment of a minimum interest;

(v) the operations carried out by life insurance undertakings such as those referred to in Chapter 1, Title 4 of Book IV of the French «Code des assurances».

(c) operations relating to the length of human life which are prescribed by or provided for in social insurance legislation, in so far as they are effected or managed by life insurance undertakings at their own risk in accordance with the laws of a Member State.

SECTION 2 - EXCLUSIONS FROM SCOPE

SUBSECTION 1 - GENERAL

Article 3

Statutory systems

Without prejudice to point (c) of Article 2(3), this Directive shall not apply to insurance forming part of a statutory system of social security;

Article 4

Exclusion from scope due to size

1. Without prejudice to Articles 3 and 5 to 10, this Directive shall not apply to insurance undertakings which fulfil all of the following conditions:

(a) the annual gross written premium income does not exceed EUR 5 million;

(b) total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and Special Purpose Vehicles, as referred to in Article 75, does not exceed EUR 25 million;

(c) where they belong 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 25 million;

(d) business of the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks within the meaning of Article 16(1);

(e) business of the undertaking does not include reinsurance operations exceeding EUR 0.5 million of their gross written premium income or EUR 2.5 million of their technical provisions gross of the amounts recoverable from reinsurance contracts and Special Purpose Vehicles or more than 10% of their gross written premium income or more than 10% of their technical provisions gross of the amounts recoverable from reinsurance contracts and Special Purpose Vehicles.

3. If any of the amounts set out in paragraph 1 is exceeded for three consecutive years this Directive shall apply from the fourth year.

4. By way of derogation from paragraph 1, this Directive shall apply to all undertakings seeking authorisation to carry on insurance and reinsurance activities whose annual gross written premium income or technical provisions gross of the amounts recoverable from reinsurance contracts and Special Purpose Vehicles are expected to exceed any of the amounts set out in paragraph 1 within the following 5 years.

5. This Directive shall cease to apply to those insurance undertakings for which the supervisory authority has verified that all of the following conditions are met:

(a) any of the amounts set out in paragraph 1 has not been exceeded for the three last consecutive years; and

(b) any of the amounts set out in paragraph 1 is not expected to be exceeded within the following 5 years.

As long as the insurance undertaking concerned carries on activities in accordance with of Articles 143 to 147, the first subparagraph shall not apply.

6. Paragraphs 1 and 5 shall not prevent any undertaking from applying for authorisation or continuing to be authorised under this Directive.

SUBSECTION 2 – NON – LIFE

Article 5

Operations

For non-life insurance (…), this Directive shall not apply to the following operations:

(1) capital redemption operations, as defined by the law in each Member State;

(2) operations of provident and mutual benefit institutions whose benefits vary according to the resources available and in which the contributions of the members are determined on a flat-rate basis;

(3) operations carried out by organizations not having a legal personality with the purpose of providing mutual cover for their members without there being any payment of premiums or constitution of technical reserves;

(4) export credit insurance operations for the account of or guaranteed by the State, or where the State is the insurer.

Article 6

Assistance

1. This Directive shall not apply to assistance activity which fulfils all the following conditions:

   (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;

   (b) the liability for the assistance is limited to the following operations:

      (i) an on-the-spot breakdown service for which the undertaking providing cover uses, in most circumstances, its own staff and equipment;

      (ii) the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means;

(iii) if provided for by the Member State of the undertaking providing cover, the conveyance of the vehicle, possibly accompanied by the driver and passengers, to their home, point of departure or original destination within the same State;

(c) the assistance is not carried out by an undertaking subject to this Directive.

2. In the cases referred to in points (i) and (ii) of paragraph 1(b), 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, or, in the case of Ireland and the United Kingdom, where the assistance operations are provided by a single body operating in both States.

3. This Directive shall not apply in the case of operations as referred to in point (iii) of paragraph 1(b), where the accident or the breakdown has occurred in the territory of Ireland or, in the case of the United Kingdom, in the territory of Northern Ireland and the vehicle, possibly accompanied by the driver and passengers, is conveyed to their home, point of departure or original destination within either territory.

4. This Directive shall not apply to assistance operations carried out by the Automobile Club of the Grand Duchy of Luxembourg where the accident or the breakdown of a road vehicle has occurred outside the territory of the Grand Duchy of Luxembourg and the assistance consists in conveying the vehicle which has been involved in that accident or breakdown, possibly accompanied by the driver and passengers, to their home.

Article 7

Mutual undertakings

This Directive shall not apply to mutual undertakings carrying on non-life insurance activities and which have concluded with other mutual undertakings an agreement which provides for the full reinsurance of the insurance policies issued by them or under which the accepting undertaking is to meet the liabilities arising under such policies in the place of the ceding undertaking. In such a case the accepting undertaking shall be subject to the rules of this Directive.

Article 8

Institutions

This Directive shall not apply to the following institutions carrying on non-life insurance activities unless their statutes or the law are amended as regards capacity:

(1) *In Denmark*, Falcks Danmark;

(2) *In Germany,* the following semi-public institutions:

  (a) Postbeamtenkrankenkasse,

  (b) Krankenversorgung der Bundesbahnbeamten;

(3) *In Ireland*, the Voluntary Health Insurance Board;

(4) *In Spain*, the Consorcio de Compensación de Seguros,

(5) (…)

SUBSECTION 3 - LIFE

Article 9

Operations and activities

(…) For life insurance (…), this Directive shall not apply to the following operations and activities:

(1) operations of provident and mutual-benefit institutions whose benefits vary according to the resources available and which require each of their members to contribute at the appropriate flat rate;

(2) operations carried out by organisations other than undertakings referred to in Article 2, whose object is to provide benefits for employed or self-employed persons belonging to an undertaking or group of undertakings, or a trade or group of trades, in the event of death or survival or of discontinuance or curtailment of activity, whether or not the commitments arising from such operations are fully covered at all times by mathematical provisions;

(3) the pension activities of pension insurance undertakings prescribed in the Employees Pension Act (TyEL) and other related Finnish legislation provided that:

(a) pension insurance companies which already under Finnish law are obliged to have separate accounting and management systems for their pension activities, as from 1 January 1995, set up separate legal entities for carrying out these activities;

(b) the Finnish authorities allow in a non-discriminatory manner all nationals and companies of Member States to perform according to Finnish legislation the activities specified in Article 2 related to this exemption whether by means of ownership or participation in an existing insurance company or group or by means of creation or participation of new insurance companies or groups, including pension insurance companies.

Article 10

Organisations, undertakings and institutions

As far as life insurance is concerned this Directive shall not apply to the following organisations, undertakings and institutions:

(1) organisations which undertake to provide benefits solely in the event of death, where the amount of such benefits does not exceed the average funeral costs for a single death or where the benefits are provided in kind;

(2) the «Versorgungsverband deutscher Wirtschaftsorganisationen» in Germany unless its statutes are amended as regards the scope of its capacity.

(3) the «Consorcio de Compensación de Seguros» in Spain unless its statutes are amended as regards the scope of its activities capacity.

SUBSECTION 4 - REINSURANCE

Article 11

Reinsurance

As far as reinsurance is concerned this Directive shall not apply to the activity of reinsurance conducted or fully guaranteed by the government of a Member State when this is acting, for reasons of substantial public interest, in the capacity of reinsurer of last resort, including in circumstances where such a role is required by a situation in the market in which it is not feasible to obtain adequate commercial cover.

Article 12

Reinsurance undertakings closing their activity

1. Reinsurance undertakings which by 10 December 2007 have ceased to conduct new reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity shall not be subject to this Directive.
2. Member States shall draw up a list of the reinsurance undertakings concerned and communicate that list to all the other Member States.

SECTION 3 - DEFINITIONS

Article 13

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) *insurance undertaking* means a direct life or non-life insurance undertaking which has received authorisation in accordance with Article 14;

(1a) captive insurance undertaking means an insurance undertaking owned either by a financial undertaking other than an insurance or a reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of point (c) of Article 210(1), or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which the captive insurance undertaking is a member;

(2) *third country insurance undertaking* means an insurance undertaking which would require authorisation in accordance with Article 14, if it had its head office in the Community;

(3) *reinsurance undertaking* means an undertaking, which has received authorisation in accordance with Article 14 to carry on reinsurance activities;

(3a) captive reinsurance undertaking means a reinsurance undertaking owned either by a financial undertaking other than an insurance or a reinsurance undertaking or a group of insurance or reinsurance undertakings within the meaning of point (c) of Article 210(1) or by a non-financial undertaking, the purpose of which is to provide reinsurance cover exclusively for the risks of the undertaking or undertakings to which it belongs or of an undertaking or undertakings of the group of which the captive reinsurance undertaking is a member;

(4) *third country reinsurance undertaking* means a reinsurance undertaking which would require authorisation in accordance with Article 14 if it had its head office in the Community;

(5) *reinsurance* means either of the following:

(a) the activity consisting in accepting risks ceded by an insurance undertaking, a third country insurance undertaking or by another reinsurance undertaking or third country reinsurance undertaking;

(b) in the case of the association of underwriters known as Lloyd's, the activity consisting in accepting risks, ceded by any member of Lloyd's, by an insurance or reinsurance undertaking other than the association of underwriters known as Lloyd's;

(6) *home Member State* means any of the following:

(a) for non-life insurance, the Member State in which the head office of the insurance undertaking covering the risk is situated;

(b) for life insurance, the Member State in which the head office of the insurance undertaking covering the commitment is situated;

(c) for reinsurance, the Member State in which the head office of the reinsurance undertaking is situated;

(7) *host Member State* means the Member State other than the home Member State in which an insurance or a reinsurance undertaking has a branch or provides services; for life and non-life insurance the Member State of the provision of services means respectively the Member State of the commitment and the Member State in which the risk is situated, if the commitment or risk is covered by an insurance undertaking or a branch situated in another Member State;

(8) *supervisory authorities* means the national authorities which are empowered by law or regulation to supervise insurance or reinsurance undertakings;

(9) *branch* means an agency or a branch of an insurance or reinsurance undertaking which is located in the territory of a Member State other than the home Member State;

(9a) *establishment* means the head office or branch of an undertaking.

(10) *Member State where the risk is situated* means any of the following: (…)

(a) the Member State in which the property is situated, where the insurance relates either to buildings or to buildings and their contents, in so far as the contents are covered by the same insurance policy;

(b) the Member State of registration, where the insurance relates to vehicles of any type;

(c) the Member State where the policy holder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks, whatever the class concerned;

(d) in all cases not explicitly covered by points (a), (b) or (c), the Member State in which either of the following is situated:

(i) the habitual residence of the policyholder;

(ii) if the policyholder is a legal person, that policyholder's establishment to which the contract relates;

(11) *Member State of the commitment* means the Member State in which any of the following is situated (…):

(a) the habitual residence of the policyholder;

(b) if the policyholder is a legal person, that policyholder's establishment, to which the contract relates;

(12) *parent undertaking* means a parent undertaking within the meaning of Article 1 of Council Directive 83/349/EEC[56]

(13) *subsidiary undertaking* means any subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC, including subsidiaries thereof;

[56] OJ L 193, 18.7.1983, p. 1.

(14) *close links* means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship ;

(15) *control* means the relationship between a parent undertaking and a subsidiary undertaking, as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

(15a) 'intra-group transaction' means any transaction by which an insurance or reinsurance undertaking 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.

(16) *participation* means the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking;

(17) *qualifying holding* means a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking

(18) *regulated market* means either of the following:

(a) in the case of a market situated in a Member State, a regulated market as defined in Article (1)(14) of Directive 2004/39/EC of the European Parliament and of the Council[57];

(b) in the case of a market situated in a third country, a financial market which fulfils the following conditions:

(i) it is recognised by the home Member State of the insurance undertaking and meets requirements comparable to those under Directive 2004/39/EC;

(ii) the financial instruments dealt in on that market are of a quality comparable to that of the instruments dealt in on the regulated market or markets of the home Member State;

[57] OJ L 145, 30.4.2004, p. 1.

(19) *national bureau* means a national insurers' bureau as defined in Article 1(3) of Council Directive 72/166/EEC[58];

(20) *national guarantee fund* means the body referred to in Article 1(4) of Council Directive 84/5/EEC[59];

(21) *financial undertaking* means any of the following entities:

(a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 4(5) and (21) of Directive 2006/48/EC of the European Parliament and of the Council[60];

(b) an insurance undertaking~~,~~ or a reinsurance undertaking or an insurance holding company within the meaning of point (e) of Article 219(1);

(c) an investment firm or a financial institution within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC ;

(d) a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC of the European Parliament and of the Council[61];

(22) *special purpose vehicle* means any undertaking, whether incorporated or not, other than an existing insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or any other financing mechanism where the repayment rights of the providers of such debt or financing mechanism are subordinated to the reinsurance obligations of such an undertaking;

---

58 OJ L 103, 2.5.1972, p. 1.
59 OJ L 8, 11.1.1984, p. 17.
60 OJ L 177, 30.6.2006, p. 1.
61 OJ L 35, 11.2.2002, p. 1.

(22a) large risks means[62]:

a) risks classified under classes 4,5,6,7,11 and 12 in point A of Annex I;

b) risks classified under classes 14 and 15 in point A of Annex I, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions, and the risks relate to such activity;

c) risks classified under classes 3,8,9,10,13 and 16 in point A of Annex I in so far as the policyholder exceeds the limits of at least two of the following three criteria:

(i) balance-sheet total: EUR 6 200 000;

(ii) net turnover: EUR 12 800 000;

(iii) average number of employees during the financial year: 250.

If the policyholder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC are drawn up, the criteria set out in point (c) of the first subparagraph shall be applied on the basis of the consolidated accounts.

Member States may add to the category mentioned in point (c) of the first subparagraph risks insured by professional associations, joint ventures or temporary groupings.

(23) *outsourcing* means an arrangement of any form between an insurance or reinsurance undertaking and a service provider, whether a supervised entity or not, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself;

(23a) A governance function means an internal capacity to undertake practical tasks. The risk management function, compliance function, internal audit function and actuarial function are governance functions.

[62] All references to applicable law, included in ROME I, are deleted in this Directive. But the term »large risks« is still used in Article 182(1) and Article 188(1a). There the definition of large risks in Article 13 shall be introduced with the wording of Article 5d) of Directive 73/239/EEC.

(24) *underwriting risk* means the risk of loss, or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions;

(25) *market risk* means the risk of loss, or of adverse change in the financial situation, resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments;

(26) *credit risk* means the risk of loss, or of adverse change in the financial situation, resulting from fluctuations in the credit standing of issuers of securities, counterparties and any debtors to which insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentrations;

(27) *operational risk* means the risk of loss arising from inadequate or failed internal processes, or from personnel and systems, or from external events;

(28) *liquidity risk* means the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial obligations when they fall due;

(29) *concentration risk* means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position of insurance and reinsurance undertakings;

(30) *risk mitigation techniques* means all techniques, which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party;

(31) *diversification effects* means the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated;

(32) *probability distribution forecast* means a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation;

(33) *risk measure* means a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast;

CHAPTER II - TAKING UP OF BUSINESS

Article 14

Principle of authorisation

1. The taking up of the business of direct insurance or of reinsurance covered by this Directive shall be subject to prior authorisation.

2. The authorisation referred to in paragraph 1 shall be sought from the supervisory authorities of the home Member State by the following:
   a) any undertaking which is establishing its head office within the territory of that State;
   b) any insurance undertaking which, having received an authorisation pursuant to paragraph 1, wishes to extend its business to an entire class or to insurance classes other than those already authorised;

3. (…)

Article 15

Scope of authorisation

1. An authorisation pursuant to Article 14 shall be valid for the entire Community. It shall permit insurance and reinsurance undertakings to carry on business there, that authorisation covering also the right of establishment and the freedom to provide services.
2. Subject to Article 14, authorisation shall be granted for a particular class of direct insurance as listed in point A of Annex I or in Annex II. It shall cover the entire class, unless the applicant wishes to cover only some of the risks pertaining to that class.
   The risks included in a class may not be included in any other class except in the cases referred to in Article 16(1).
   Authorisation may be granted for two or more of the classes, where the national law of a Member State permits such classes to be carried on simultaneously.

3. As far as non-life insurance is concerned, Member States may grant authorisation for the groups of classes listed in point B of Annex I

The supervisory authorities may limit authorisation requested for one of the classes to the operations set out in the scheme of operations referred to in Article 23.

4. Undertakings subject to this Directive may engage in the activity referred to in Article 6 only if they have received authorisation for class 18 in point A of Annex I without prejudice to Article 16(1). In that event this Directive shall apply to the operations in question.

5. As far as reinsurance is concerned, authorisation shall be granted for non-life reinsurance activity, life reinsurance activity or all kinds of reinsurance activity.

The application shall be considered in the light of the scheme of operations to be submitted pursuant to point (c) of Article 18(1) and the fulfilment of the conditions laid down for authorisation by the Member State from which the authorisation is sought.

Article 16

Ancillary risks

1. An insurance undertaking which has obtained an authorisation for a principal risk belonging to one class or a group of classes as set out in Annex I may also insure risks included in another class without the need to obtain authorisation in respect of such risks provided that the risks fulfil all the following conditions:

(a) they are connected with the principal risk~~.~~;

(b) they concern the object which is covered against the principal risk;

(c) they are covered by the contract insuring the principal risk.

2. By way of Derogation from paragraph 1, the risks included in classes 14, 15 and 17 in point A of Annex I may not be regarded as risks ancillary to other classes.
However, legal expenses insurance as set out in class 17 may be regarded as risk ancillary to class 18, where the conditions laid down in the paragraph 1 and either of the following are fulfilled:

(a) the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent (…) residence;

(b) the insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels

Article 17

Form of the insurance or reinsurance undertaking

1. The home Member State shall require every undertaking for which authorisation is sought under Article 14 to adopt one of the forms set out in Annex III.

2. Member States may set up undertakings in any public-law form provided that such bodies have as their object insurance or reinsurance operations under conditions equivalent to those under which private-law undertakings operate.

3. The Commission may adopt implementing measures relating to the extension of the forms set out in Annex III.

Those implementing measures designed to amend non-essential elements of this Directive inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 18

Conditions for authorisation

1. The home Member State shall require every undertaking for which authorisation is sought to:

(a) as far as insurance undertakings are concerned, limit their objects to the business of insurance and (…) operations arising directly there from, to the exclusion of all other commercial business;

(b) as far as reinsurance undertakings are concerned, limit their objects to the business of reinsurance and related operations; this requirement may include a holding company function and activities with respect to financial sector activities within the meaning of Article 2(8) of Directive 2002/87/EC;

(c) submit a scheme of operations in accordance with Article 23;

(d) hold the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement provided for in point (d) of Article 127(1);

(e) show evidence that it will be in a position to hold eligible own funds to cover the Solvency Capital Requirement, as provided for in Article 100, going forward;

(f) show evidence that it will be in a position to hold eligible basic own funds to cover the Minimum Capital Requirement, as provided for in Article 125, going forward;

(g) (…) show evidence that it will be in a position to comply with the system of governance referred to in Chapter IV, Section 2;

(h) as far as non-life insurance is concerned communicate the name and address of all claims representatives appointed pursuant to Article 4 of Directive 2000/26/EC of the European Parliament and of the Council in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A of Annex I, other than carrier's liability.

2. An insurance undertaking seeking authorisation to extend its business to other classes or to extend an authorisation covering only some of the risks pertaining to one class shall be required to submit a scheme of operations in accordance with Article 23.
It shall, in addition, be required to show proof that it possesses the eligible own funds to cover the Solvency Capital Requirement and Minimum Capital Requirement provided for in Articles 100(1) and 126.

3. Without prejudice to paragraph 2, an insurance undertaking carrying on life activities, and seeking authorisation to extend its business to the risks listed in classes 1 or 2 in point A of Annex I as referred to in Article 72, shall demonstrate the following:

(a) that it possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in point (d) of Article 127(1);

(b) that it undertakes to cover the minimum financial obligations referred to in Article 73(3), going forward.

4. Without prejudice to paragraph 2, an insurance undertaking carrying on non-life activities for the risks listed in classes 1 or 2 in point A of Annex I, and seeking authorisation to extend its business to life insurance risks as referred to in Article 72, shall demonstrate that the following:

(a) that it possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in point (d) of Article 127(1);

(b) that it undertakes to cover the minimum financial obligations referred to in Article 73(3) going forward.

Article 19

Close links

Where close links exist between the insurance undertaking or reinsurance undertaking and other natural or legal persons, the supervisory authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The supervisory authorities shall refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the insurance or reinsurance undertaking has close links, or difficulties involved in the enforcement of those laws, prevent the effective exercise of their supervisory functions.

The supervisory authorities shall require insurance or reinsurance undertakings to provide them with the information they require to monitor compliance with the conditions referred to in the first paragraph on a continuous basis.

Article 20

Head office of the insurance or reinsurance undertaking

Member States shall require that the head offices of insurance or reinsurance undertakings be situated in the same Member State as their registered offices.

Article 21

Policy conditions and scales of premiums

1. Member States shall not require the prior approval or systematic notification of general and special policy conditions, of scales of premiums, of the technical bases, used in particular for calculating scales of premiums and technical provisions, or of forms and other printed documents which an undertaking intends to use in its dealings with policyholder or ceding or retro-ceding undertakings.

   However, for life insurance and for the sole purpose of verifying compliance with national provisions concerning actuarial principles, the home Member State may require systematic notification of the technical bases used for calculating scales of premiums and technical provisions. That requirement shall not constitute a prior condition for the authorisation of a life insurance undertaking.

2. Member States shall not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

3. Member States may subject undertakings seeking or having obtained authorisation for class 18 in point A of Annex I to checks on their direct or indirect resources in staff and equipment, including the qualification of their medical teams and the quality of the equipment available to such undertakings to meet their commitments arising out of that class.

4. States may maintain in force or introduce laws, regulations or administrative provisions requiring approval of the memorandum and articles of association and communication of any other documents necessary for the normal exercise of supervision.

Article 22

Economic requirements of the market

Member States shall not require that any application for authorisation be considered in the light of the economic requirements of the market.

Article 23

Scheme of operations

1. The scheme of operations referred to in point (c) of Article 18(1) shall include particulars or evidence of the following:
   (a) the nature of the risks or commitments which the insurance or reinsurance undertaking concerned proposes to cover;
   (b) the kind of reinsurance arrangements which the reinsurance undertaking proposes to make with ceding undertakings;
   (c) the guiding principles as to reinsurance and to retrocession;
   (d) the basic own fund items constituting the absolute floor of the Minimum Capital Requirement ;
   (e) estimates of the costs of setting up the administrative services and the organization for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in point A of Annex I, the resources at the disposal of the insurance undertaking for the provision of the assistance promised.
2. In addition to the requirements set out in paragraph 1, for the first three financial years the scheme shall include the following:
   (a) a forecast balance sheet;
   (b) estimates of the future Solvency Capital Requirement, as provided for in Chapter VI, Section 4, Subsection 1, on the basis of the forecast balance sheet referred to in point (a), as well as the method of calculation used to derive those estimates;
   (c) estimates of the future Minimum Capital Requirement, as provided for in Articles 126 and 127, on the basis of the forecast balance sheet referred to in point (a), as well as the method of calculation used to derive those estimates;
   (d) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement

(e) for non-life insurance and reinsurance also the following:

(i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;

(ii) estimates of premiums or contributions and claims;

(f) for life insurance also a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

Article 24

Shareholders and members with qualifying holdings

1. The supervisory authorities of the home Member State shall not grant to an undertaking an authorisation to take up the business of insurance or reinsurance before they have been informed of the identities of the shareholders or members, direct or indirect, whether natural or legal persons, who have qualifying holdings in that undertaking and of the amounts of those holdings.

   Those authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of an insurance or reinsurance undertaking, they are not satisfied as to the qualifications of the shareholders or members.

2. For the purposes of paragraph 1, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

   Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of the acquisition.

Article 25

Refusal of authorisation

Any decision to refuse an authorisation shall be accompanied by the precise grounds for doing so and notified to the undertaking concerned.

Each Member State shall make provision for a right to apply to the courts where an authorisation is refused.

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 of the date of its receipt.

Article 26

Prior consultation with the (…) *authorities of other Member States*

1. The supervisory authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to an undertaking, which is any of the following:

   (a) a subsidiary of an insurance or reinsurance undertaking authorised in another Member State;

   (b) a subsidiary of the parent undertaking of an insurance or reinsurance undertaking authorised in another Member State;

   (c) an undertaking controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another Member State.

2. The authorities of a Member State involved which are responsible for the supervision of credit institutions or investment firms shall be consulted prior to the granting of an authorisation to an insurance or reinsurance undertaking which is any of the following:

   (a) a subsidiary of a credit institution or investment firm authorised in the Community

   (b) a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community;

   (c) an undertaking controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

3. The relevant authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions involved in the management of another entity of the same group.

4. They shall inform each other of any information regarding the suitability of shareholders and the fit and proper requirements of all persons who effectively run the undertaking or have other key functions which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

CHAPTER III

SUPERVISORY AUTHORITIES AND GENERAL RULES

Article 27

Main objective of supervision

Member States shall ensure that the supervisory authorities are provided with the necessary means, and have the relevant expertise and capacity, and mandate to achieve the main objective of supervision, namely the protection of policyholders and beneficiaries.

Article 27a

Maintaining financial stability and pro-cyclicality

Without prejudice to the main objective of supervision as set out in Article 27 Member States shall ensure that, in the exercise of their general duties, supervisory authorities shall duly consider the potential impact of their decisions on the stability of the financial systems concerned in the European Union, in particular in emergency situations, taking into account the information available at the relevant time.

In times of exceptional movements in the financial markets supervisory authorities shall take into account the potential procyclical effects of their actions.

Article 28

General principles of supervision

1. Supervision shall be based on a prospective and risk-based approach. It shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.
2. Supervision of insurance and reinsurance undertakings shall comprise an appropriate combination of off-site activities and on-site inspections.

3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, complexity and scale of the risks inherent in the business of an insurance or reinsurance undertaking.

3a. The Commission shall ensure implementing measures include the principle of proportionality, thus ensuring the proportionate application of the Directive, in particular to very small insurance undertakings.

Article 29

Supervisory authorities and scope of supervision

1. The financial supervision of insurance and reinsurance undertakings, including that of the business they carry on either through branches or under the freedom to provide services, shall be the sole responsibility of the home Member State.

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

Where the insurance undertaking concerned is authorised to cover the risks classified in class 18 in point A of Annex I, supervision shall extend to monitoring of the technical resources which the insurance undertaking has at its disposal for the purpose of carrying out the assistance operations it has undertaken to perform, where the law of the home Member State provides for the monitoring of such resources.

3. If the supervisory authorities of the Member State where the risk is situated or of the commitment or, in case of a reinsurance undertaking, of the host Member State have reason to consider that the activities of an insurance or reinsurance undertaking might affect its financial soundness, they shall inform the supervisory authorities of the home Member State of that undertaking.

The supervisory authorities of the home Member State shall determine whether the undertaking is complying with the prudential principles laid down in this Directive.

Article 30

Transparency and accountability

1. The supervisory authorities shall conduct their tasks in a transparent and accountable manner with due respect for the protection of confidential information.

2. Member States shall ensure that the following information is disclosed:
   a) the texts of laws, regulations, administrative rules and general guidance in the field of insurance regulation;
   b) the general criteria and methods, including the tools developed in accordance with Article 34(4), used in the supervisory review process as set out in Article 36;
   c) aggregate statistical data on key aspects of the application of the prudential framework;
   d) the manner of exercise of the options (…) provided for in this Directive;
   e) the objectives of the supervision and its main functions and activities.

   The disclosure, provided for in the first subparagraph shall be sufficient to enable a comparison of the supervisory approaches adopted by the supervisory authorities of the different Member States.
   The disclosure shall be made in a common format and be updated regularly. The information referred to in points (a) to (e) shall be accessible at a single electronic location in each Member State.

3. Member States shall provide for transparent procedures regarding the appointment and dismissal of the members of the governing and managing bodies of their supervisory authorities.

4. The Commission shall adopt implementing measures relating to paragraph 2 specifying the key aspects on which aggregate statistical data are to be disclosed, and the format, structure, contents list and publication date of the disclosures.
   Those measures designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 31

Prohibition of refusal of reinsurance contracts or retrocession contracts

1. The home Member State of an insurance undertaking shall not refuse a reinsurance contract concluded with a reinsurance undertaking or an insurance undertaking authorised in accordance with Article 14 on grounds directly related to the financial soundness of that reinsurance undertaking or that insurance undertaking.
2. The home Member State of the reinsurance undertaking shall not refuse a retrocession contract concluded by a reinsurance undertaking with a reinsurance undertaking or an insurance undertaking authorised in accordance with Article 14 on grounds directly related to the financial soundness of that reinsurance undertaking or that insurance undertaking.

Article 32

Supervision of branches established in another Member State

Member States shall provide that, where an insurance or reinsurance undertaking authorised in another Member State carries on business through a branch, the supervisory authorities of the home Member State may, after having informed the supervisory authorities of the host Member State concerned, carry out themselves, or through the intermediary of persons appointed for that purpose, on-site verifications of the information necessary to ensure the financial supervision of the undertaking.

The authorities of the host Member State concerned may participate in those verifications.

(...)

Article 34

General supervisory powers

1. Member States shall ensure that the supervisory authorities have the power to take preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions with which they have to comply with in each Member State (…).
2. The supervisory authorities shall have the power to take any necessary measures, including where appropriate, those of an administrative or financial nature, with regard to insurance or reinsurance undertakings, and the members of their administrative or management body or the persons who control that body.
3. Member States shall ensure that supervisory authorities have the power to require all information necessary to conduct supervision in accordance with Article 35.
4. Member States shall ensure that supervisory authorities have the power to develop, in addition to the calculation of the Solvency Capital Requirement and where appropriate, and necessary quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. The supervisory authorities shall have the power to require that such tests are performed by the undertakings.
5. The supervisory authorities shall have the power to carry out on-site investigations at the premises of the insurance and reinsurance undertakings.
6. Supervisory powers shall be applied in a timely and proportionate manner.
7. The powers with regard to insurance and reinsurance undertakings referred to in paragraphs 1 to 5 shall also be available with regard to outsourced activities of insurance and reinsurance undertakings.
8. The measures set out in paragraphs 1 to 5 and 7 shall be carried out, if need be by enforcement, where appropriate, through judicial channels.

Article 35

Information to be provided for supervisory purposes

1. Member States shall require insurance and reinsurance undertakings to submit to the supervisory authorities the information which is necessary for the purposes of supervision. That information shall include at least the information necessary for the following when performing the process referred to in Article 36:
   (a) to assess the system of governance applied by the undertakings, the business they are carrying on, the valuation principles applied for solvency purposes, the risks faced and the risk management systems, and their capital structure, needs and management;
   (b) to make any appropriate decisions resulting from the exercise of their supervisory rights and duties.
2. Member States shall ensure that the supervisory authorities have the following powers:
   (a) to determine the nature, the scope and the format of the information referred to in paragraph 1 which they require insurance and reinsurance undertakings to submit at the following points in time:
      (i) at predefined periods;
      (ii) upon occurrence of predefined events;
      (iii) during enquiries regarding the situation of an insurance or reinsurance undertaking;
   (b) to obtain any information regarding contracts which are held by intermediaries or regarding contracts which are entered into with third parties;
   (c) to require information from external experts, such as auditors and actuaries.

3. The information referred to in paragraphs 1 and 2 shall comprise the following:

   (a) qualitative or quantitative elements, or any appropriate combination thereof;
   (b) historic, current or prospective elements, or any appropriate combination thereof;
   (c) data from internal or external sources, or any appropriate combination thereof.

4. The information referred to in paragraphs 1 and 2 shall comply with the following principles:
   (a) it must reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent to that business.
   (b) it must be accessible, complete in all material respects, comparable and consistent over time;
   (c) it must be relevant, reliable and comprehensible.

5. Member States shall require insurance and reinsurance undertakings to have appropriate systems and structures in place to fulfil the requirements laid down in paragraphs 1 to 4 as well as a written policy, approved by the administrative or management body of the insurance or reinsurance undertaking, ensuring the on-going appropriateness of the information submitted.

6. The Commission shall adopt implementing measures specifying the information referred to in paragraphs 1 to 4, with a view to ensuring to the appropriate extent convergence of supervisory reporting.

   Those measures, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 36

Supervisory review process

1. Member States shall ensure that the supervisory authorities review and evaluate the strategies, processes and reporting procedures which are established by the insurance and reinsurance undertakings to comply with the laws, regulations and administrative provisions adopted pursuant to this Directive.

   That review and evaluation shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which the undertakings concerned face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment the undertakings are operating in.

2. The supervisory authorities shall in particular review and evaluate compliance with the following:

   (a) the system of governance, <u>including the own risk and solvency assessment</u>, as set out in Chapter IV, Section 2;

   (b) the technical provisions as set out in Chapter VI, Section 2;

   (c) the capital requirements as set out in Chapter VI, Sections 4 and 5;

   (d) the investment rules as set out in Chapter VI, Section 6;

   (e) the quality and quantity of own funds as set out in Chapter VI, Section 3;

   (f) where the insurance or reinsurance undertaking uses a full or partial internal model, on-going compliance with the requirements for full and partial internal models set out in Chapter VI, Section 4, Subsection 3.

3. The supervisory authorities shall have in place appropriate monitoring tools that enable them to identify deteriorating financial conditions in an insurance or reinsurance undertaking and to monitor how that deterioration is remedied.

4. The supervisory authorities shall assess the adequacy of the methods and practices of the insurance and reinsurance undertakings designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of the undertaking concerned.

   The supervisory authorities shall assess the ability of the undertakings to withstand those possible events or future changes in economic conditions.

5. The supervisory authorities shall have the necessary powers to require insurance and reinsurance undertakings to remedy weaknesses or deficiencies identified in the supervisory review process.

6. The reviews, (…) evaluations and assessments referred to in paragraphs 1, 2 and 4 shall be conducted regularly.

   The supervisory authorities shall establish the minimum frequency and scope of the reviews, evaluations and assessments referred to in paragraphs 1, 2 and 4 having regard to the nature, scale and complexity of the activities of the insurance or reinsurance undertaking concerned.

Article 37

Capital add-on

1. Following the supervisory review process supervisory authorities may in exceptional circumstances set a capital add-on for an insurance or reinsurance undertaking by a decision stating the reasons. That possibility shall only exist in the following cases:

   (a) the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with Chapter VI, Section 4, Subsection 2 and:

      (i) the requirement to use an internal model under Article 117 is inappropriate or has been ineffective; or

      (ii) (…) while a partial or full internal model is being developed in accordance with (…) Article 117.

   (b) the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with Chapter VI, Section 4, Subsection 3, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

   (c) the supervisory authority concludes that the system of governance of an insurance or reinsurance undertaking deviates significantly from the standards laid down in Chapter IV, Section 2, that those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to and the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe.

2. In the cases set out in points (a) and (b) of paragraph 1 of this Article the capital add-on shall be calculated in such a way as to ensure that the undertaking complies with Article 101(3). In the cases set out in point (c) of paragraph 1 of this Article the capital add-on shall be proportionate to the material risks arising from the deficiencies which gave rise to the decision of the supervisory authority to set the add-on.

3. In the cases set out in points (b) and (c) of paragraph 1 the supervisory authority shall ensure that the insurance or reinsurance undertaking makes all efforts to remedy the deficiencies that led to the imposition of the capital add-on.

4. The capital add-on referred to in paragraph 1 shall be reviewed at least once a year by the supervisory authority and be removed when the undertaking has remedied the deficiencies which led to its imposition.
(…)

5. The Solvency Capital Requirement including the capital add-on imposed (…) shall replace the inadequate Solvency Capital Requirement.
Notwithstanding subparagraph 1 the Solvency Capital Requirement should not include the capital add-on imposed in accordance with point (c) of paragraph 1 for the purposes of the calculation of the risk margin referred to in Article 76(5).
(…)

6. The Commission shall adopt implementing measures laying down further specifications for the circumstances under which a capital add-on may be imposed and the methodologies for the calculation thereof.
Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 38

Supervision of outsourced functions and activities

1. Without prejudice to Article 48, Member States shall ensure that insurance or reinsurance undertakings which outsource a function or an insurance or reinsurance activity (…) take the necessary steps to ensure that the following conditions are satisfied:
   (a) the service provider must cooperate with the supervisory authorities of the insurance and reinsurance undertaking in connection with the outsourced function or activity;
   (b) the insurance and reinsurance undertakings, their auditors and the (…) supervisory authorities must have effective access to data related to the outsourced functions or activities;
   (c) the supervisory authorities must have effective access to the business premises of the service provider (…) and (…) must be able to exercise those rights of access.

2. The Member State where the service provider is located shall permit the supervisory authorities of the insurance or reinsurance undertaking to carry out themselves, or through the intermediary of persons they appoint for that purpose, on-site inspections at the premises of the service provider (…). The supervisory authority of the insurance or reinsurance undertaking shall inform the appropriate authority of the Member State of the service provider prior to conducting the on-site inspection. In the case of a non-supervised entity the appropriate authority shall be the supervisory authority.
   The supervisory authorities of the Member State of the insurance or reinsurance undertaking may delegate such on-site inspections to the supervisory authorities of the Member State where the service provider is located.

Article 39

Transfer of portfolio

1. Under the conditions laid down by national law, Member States shall authorise insurance and reinsurance undertakings with head offices within their territory to transfer all or part of their portfolios of contracts, concluded either under the right of establishment or the freedom to provide services, to an accepting undertaking established within the Community.

   Such transfer may only be authorised if the supervisory authorities of the home Member State of the accepting undertaking certify that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in Article 100 subparagraph 1.

2. In the case of insurance undertakings paragraphs 3 to 6 shall apply.

3. Where a branch proposes to transfer all or part of its portfolio of contracts, the Member State where that branch is situated shall be consulted.

4. In the circumstances referred to in paragraphs 1 and 3, the supervisory authorities of the home Member State of the transferring insurance undertaking shall authorise the transfer after obtaining the agreement of the (…) authorities of the Member States **(…)** where the contracts were concluded either under the right of establishment or the freedom to provide services.

5. The (…) authorities of the Member States consulted shall give their opinion or consent to the (…) authorities of the home Member State of the transferring insurance undertaking within three months of receiving a request for consultation.

   The absence of any response within that period from the authorities consulted shall be considered as tacit consent.

6. A transfer of portfolio authorised in accordance with paragraphs 1 to 5 shall be published either prior to or following authorisation as laid down by national law of the home Member State or in Member State in which the risk is situated, or in the Member State of the commitment.

Such transfers shall automatically be valid against policyholders, the insured persons and any other person having rights or obligations arising out of the contracts transferred. The first and second subparagraphs of this paragraph shall not affect the right of the Member States to give policyholders the option of cancelling contracts within a fixed period after a transfer.

CHAPTER IV - CONDITIONS GOVERNING BUSINESS

SECTION 1 – RESPONSIBILITY OF THE ADMINISTRATIVE OR MANAGEMENT BODY

Article 40

Responsibility of the administrative or management body

Member States shall ensure that the administrative or management body of the insurance or reinsurance undertaking has the ultimate responsibility for the compliance, by the undertaking concerned, with the laws, regulations and administrative provisions adopted pursuant to this Directive.

SECTION 2 - SYSTEM OF GOVERNANCE

Article 41

General governance requirements

1. Member States shall require all insurance and reinsurance undertakings to have in place an effective system of governance which provides for sound and prudent management of the business.

   That system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. It shall include compliance with the requirements laid down in Articles 42 to 48.

   The system of governance shall be subject to regular internal review.

2. The system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

3. Insurance and reinsurance undertakings shall have written policies in relation to at least risk management, internal control, internal audit 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 or management body and be adapted in view of any significant change in the system or area concerned.

3a. Insurance and reinsurance undertakings shall take reasonable steps to ensure continuity and regularity in the performance of their activities, including the development of contingency plans. To this end the undertaking shall employ appropriate and proportionate systems, resources and procedures.

4. The supervisory authorities shall have appropriate means, methods and powers for verifying the system of governance of the insurance and reinsurance undertakings and for evaluating emerging risks identified by those undertakings which may affect their financial soundness. The Member States shall ensure that the supervisory authorities have the powers necessary to require that the system of governance be improved and strengthened to ensure compliance with the requirements set out in Articles 42 to 48.

Article 42

Fit and proper requirements for persons who effectively run the undertaking or have other key functions

1. Insurance and reinsurance undertakings shall ensure that all persons who effectively run the undertaking or have other key functions meet at all times the following requirements:
   (a) their professional qualifications, knowledge and experience are adequate to enable sound and prudent management (fit);
   (b) they are of good repute and integrity (proper).
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 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 mentioned in paragraphs 1 and 2 have been replaced because they no longer fulfil the requirements referred to in (…) paragraph 1.

Article 42a

Proof of good repute [63]

1. Where a Member State requires of its own nationals proof of good repute and proof of no previous bankruptcy, or proof of either of these, that Member State shall accept as sufficient evidence in respect of nationals of other Member States the production of an extract from the «judicial record» or, failing this, of an equivalent document issued by a competent judicial or administrative authority in the home Member State or the Member State from which the foreign national comes showing that these requirements have been met.
2. Where the home Member State or the Member State from which the foreign national concerned comes does not issue the document referred to in paragraph 1, it may be replaced by a declaration on oath – or in Member States where there is no provision for declaration on oath by a solemn declaration – made by the foreign national concerned before a competent judicial or administrative authority or, where appropriate, a notary in the home Member State or the Member State from which that foreign national comes.

   Such authority or notary shall issue a certificate attesting the authenticity of the declaration on oath or solemn declaration.

   The declaration referred to in the first subparagraph in respect of no previous bankruptcy may also be made before a competent professional or trade body in the Member State concerned.
3. The documents and certificates referred to in paragraphs 1 and 2 shall not be presented more than three months after their date of issue.
4. Member States shall designate the authorities and bodies competent to issue the documents referred to in paragraphs 1 and 2 and shall forthwith inform the other Member States and the Commission thereof.

[63] Transferred from Article 299.

Each Member State shall also inform the other Member States and the Commission of the authorities or bodies to which the documents referred to in paragraphs 1 and 2 are to be submitted in support of an application to carry on in the territory of this Member State the activities referred to in Article 2.

Article 43

Risk management

1. Insurance and reinsurance undertakings shall have in place an effective risk management system comprising strategies, processes and reporting procedures necessary to identify, measure, monitor, manage and report, on a continuous basis the risks, on an individual and aggregated level, to which they are or could be exposed, and their interdependencies.

   That risk management system shall be effective and well integrated into the organisational structure and in the decision making processes of the insurance or reinsurance undertaking with proper consideration of the persons who effectively run the undertaking or have other key functions.

2. The risk management system shall cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in Article 101(4) as well as the risks which are not or not fully included in the calculation thereof.
   It shall cover at least the following areas:
   (a) underwriting and reserving;
   (b) asset – liability management;
   (c) investment, in particular derivatives and similar commitments;
   (d) liquidity and concentration risk management;
   (d*bis*)operational risk management;
   (e) reinsurance and other risk mitigation techniques.
   The written policy on risk management referred to in Article 41(3) shall comprise policies relating to points (a) to (e) of the second subparagraph of this paragraph.
3. As regards investment risk, insurance and reinsurance undertakings shall demonstrate that they comply with Chapter VI, Section 6.

4. Insurance and reinsurance undertakings shall provide for a risk management function which shall be structured in such a way as to facilitate the implementation of the risk management system.

5. For insurance and reinsurance undertakings using a partial or full internal model approved in accordance with Articles 110 and 111 the risk management function shall cover the following additional tasks:

(a) to design and implement the internal model;

(b) to test and validate the internal model;

(c) to document the internal model and any subsequent changes made to it;

(d) to inform the administrative or management body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses;

(e) to analyse the performance of the internal model and to produce summary reports thereof.

Article 44

Own risk and solvency assessment

1. As part of its risk management system every insurance or reinsurance undertaking shall conduct its own risk and solvency assessment.

That assessment shall include at least the following:

(a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

(b) the compliance, on a continuous basis, with the capital requirements, as laid down in Chapters VI, Sections 4 and 5 and with the requirements regarding technical provisions, as laid down in Chapter VI, Section 2;

(c) the significance with which the risk profile of the undertaking concerned deviates from the assumptions underlying the Solvency Capital Requirement as laid down in Article 101(3), calculated with the standard formula in accordance with Chapter VI, Section 4, Subsection 2 or with its partial or full internal model in accordance with Chapter VI, Section 4, Subsection 3.

2. For the purposes of point (a) of paragraph 1, the undertaking concerned shall have in place processes, which are proportionate to the nature, scale and complexity of the risks inherent to its business, and which enable it to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed. The undertaking shall demonstrate the methods used in this assessment.
3. In the case referred to in point (c) of paragraph 1 when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.
4. The own risk and solvency assessment shall be an integral part of the business strategy and shall be taken into account on an ongoing basis in the strategic decisions of the undertaking.
5. Insurance and reinsurance undertakings shall perform the assessment referred to in paragraph 1 regularly and without any delay following any significant change in their risk profile.
6. The insurance and reinsurance undertakings shall inform the supervisory authorities of the results of each own risk and solvency assessment as part of the information reported under Article 35.

6a. The own risk and solvency assessment shall not serve to calculate a capital requirement. The Solvency Capital Requirement can only be adjusted in accordance with Articles 37, 229, 230, 231 and 236.

Article 45

Internal control

1. Insurance and reinsurance undertakings shall have in place an effective internal control system.

   That system shall at least include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a (…) compliance function.

2. The compliance function shall include advising the administrative or management body on compliance with the laws, regulations and administrative provisions adopted pursuant to this Directive. It shall also include an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking concerned and the identification and assessment of compliance risk.

Article 46

Internal audit

1. Insurance and reinsurance undertakings shall provide for an effective (…) internal audit function.
2. (…)

   The internal audit function shall (…) include an evaluation of the adequacy and effectiveness of the internal control system and other elements of the system of governance (…).
3. The internal audit function shall be objective and independent from the operational functions.
4. Any findings and recommendations of the internal audit shall be reported to the administrative or management body which shall determine what actions shall be taken with respect to each of the internal audit findings and recommendations and shall ensure that these actions are carried out.

Article 47

Actuarial function

1. Insurance and reinsurance undertakings shall provide for an effective actuarial function to undertake the following:
   (a) to coordinate the calculation of technical provisions;
   (b) to ensure the appropriateness of the methodologies and underlying models used as well as the assumptions made in the calculation of technical provisions;
   (c) to assess the sufficiency and quality of the data used in the calculation of technical provisions;
   (d) to compare best estimates against experience;
   (e) to inform the administrative or management body of the reliability and adequacy of the calculation of technical provisions;
   (f) to oversee the calculation of technical provisions in the cases set out in Article 81;
   (g) to express an opinion on the overall underwriting policy;
   (h) to express an opinion on the adequacy of reinsurance arrangements;
   (i) to contribute to the effective implementation of the risk management system referred to in Article 43, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Chapter VI, Sections 4 and 5 and the assessment referred to in Article 44.
2. The actuarial function shall be carried out by persons who have knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the insurance or reinsurance undertaking, and who are able to demonstrate their relevant experience with applicable professional and other standards.

Article 48

Outsourcing

1. Member States shall ensure that, when insurance and reinsurance undertakings outsource (…) functions or any insurance or reinsurance activities, the undertakings remain fully responsible for discharging all of their obligations under this Directive.

2. Outsourcing of critical or important operational functions or activities shall not be undertaken in such a way as to lead to any of the following:
   (a) impairing materially the quality of the governance system of the undertaking concerned;
   (b) increasing unduly the operational risk;
   (c) impairing the ability of the supervisory authorities to monitor the compliance of the undertaking with its obligations;
   (d) undermining continuous and satisfactory service to policyholders.
3. Insurance and reinsurance undertakings shall, in a timely manner, notify the supervisory authorities prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those activities.

Article 49

Implementing measures

1. The Commission shall adopt implementing measures to further specify the following:

(1) the elements of the systems referred to in Articles 41, 43, 45 and 46, and in particular the areas to be covered by the asset – liability management and investment policy, as referred to in Article 43(2), of insurance and reinsurance undertakings;

(2) the functions referred to in Articles 43, 45, 46 and 47;

(3) the requirements set out in Article 42 and the functions subject thereto;

(4) the conditions under which outsourcing, in particular to service providers located in third countries, may be performed.

2. Where it is necessary to ensure appropriate convergence of the assessment referred to in Article 44 (1)(a), the Commission may adopt implementing measures to further specify the elements of that assessment.

3. Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

SECTION 3 – PUBLIC DISCLOSURE

Article 50

Report on solvency and financial condition: contents

1. Member States shall, taking into account the principles set out in paragraphs 3 and 4 of Article 35, require insurance and reinsurance undertakings to publicly disclose, 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 Minimum Capital Requirement and of the Solvency Capital Requirement;

(iibis) the option set out in Article 305b used for the calculation of its Solvency Capital Requirement;

(iii) 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;

(iv) 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.

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 108bis, together with concise information on its justification by the supervisory authority concerned.

However, and without prejudice to any disclosure mandatory under any other legal or regulatory requirements, Member States may provide that, although the total Solvency Capital Requirement referred to in point (e)(ii) of paragraph 1 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 108bis need not be separately disclosed during a transitional period not exceeding five years after the date referred to in Article 310.

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.

Article 51

Information for and reports by the Committee of European Insurance and Occupational Pensions Supervisors

1. Member States shall require the supervisory authorities to provide the following information to the Committee of European Insurance and Occupational Pensions Supervisors 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 as follows:

(i) for all insurance and reinsurance undertakings together;

(ii) for life insurance undertakings;

(iii) for non-life insurance undertakings (…);

(iv) for insurance undertakings carrying on both life and non-life activities;

(v) for reinsurance undertakings;

(b) for each of the disclosures set out in point (a), the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.

2. The Committee of European Insurance and Occupational Pensions Supervisors 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) all insurance and reinsurance undertakings;

(ii) life insurance undertakings;

(iii) non-life insurance undertakings (…);

(iv) insurance undertakings carrying on both life and non-life activities;

(v) reinsurance undertakings;

(…)

(…)

(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), the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 37(1) respectively.

3. The Committee of European Insurance and Occupational Pensions Supervisors 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.

Article 52

Report on solvency and financial condition: applicable principles

1. Supervisory authorities shall permit insurance and reinsurance undertakings not to disclose information in the following cases:
   (a) if, by disclosing such information, the competitors of the undertaking gain significant undue advantage;
   (b) if there are obligations to policyholders 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 state this in the report on solvency and financial condition and explain 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 the extent that those disclosures are equivalent to the information required under Article 50 in both their nature and scope.
4. Paragraphs 1 and 2 shall not apply to the information referred to in point (e) of Article 50(1).

Article 53

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 50 and 52, insurance and reinsurance undertakings shall disclose appropriate information on its nature and effects.

   For the purposes of the first subparagraph, at least the following shall be regarded as major developments:
   (a) where 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;
   (b) where a significant non-compliance with the Solvency Capital Requirement is observed and the supervisory authorities do not obtain a realistic recovery plan (…) within two months.

In the cases referred to in point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the 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, a 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 the case referred to in point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the 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 50 and 52 and paragraph 1 of this Article.

Article 54

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 50, 52 and 53(1), as well as to have a written policy ensuring the on-going appropriateness of any information disclosed in accordance with Articles 50, 52 and 53.
2. The solvency and financial condition report shall be subject to approval by the administrative or management body of the insurance or reinsurance undertaking and be published only after that approval.

Article 55

Solvency and financial condition report: implementing measures

The Commission shall adopt implementing measures further specifying the information which must be disclosed and the means by which this is to be achieved.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

SECTION 4 - QUALIFYING HOLDINGS

Article 56

Acquisitions

1. Member States shall require any natural or legal person or such persons acting in concert (hereinafter referred to as the proposed acquirer), who have taken a decision either to acquire, directly or indirectly, a qualifying holding in an insurance or reinsurance undertaking or to further increase, directly or indirectly, such a qualifying holding in an insurance or reinsurance undertaking as a result of which the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the insurance or reinsurance undertaking would become its subsidiary (hereinafter referred to as the proposed acquisition), first to notify in writing the supervisory authorities of the insurance or reinsurance undertaking in which they are seeking to acquire or increase a qualifying holding, indicating the size of the intended holding and relevant information,

as referred to in Article 58(4). Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

2. Member States shall require any natural or legal person who has taken a decision to dispose, directly or indirectly, of a qualifying holding in an insurance or reinsurance undertaking first to notify in writing the supervisory authorities of the home Member State, indicating the size of his intended holding. Such a person shall likewise notify the supervisory authorities if he has taken a decision to reduce his qualifying holding so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the insurance or reinsurance undertaking would cease to be his subsidiary. Member States need not apply the 30 % threshold where, in accordance with Article 9(3)(a) of Directive 2004/109/EC, they apply a threshold of one-third.

Article 57

Assessment period

1. The supervisory authorities shall, promptly and in any event within two working days following receipt of the notification required under Article 56(1), as well as following the possible subsequent receipt of the information referred to in paragraph 2, acknowledge receipt thereof in writing to the proposed acquirer.

The supervisory authorities shall have a maximum of 60 working days as from the date of the written acknowledgement of receipt of the notification and all documents required by the Member State to be attached to the notification on the basis of the list referred to in Article 58 (4) (hereinafter referred to as the assessment period), to carry out the assessment provided for in Article 58(1) (hereinafter referred to as the assessment).

The supervisory authorities shall inform the proposed acquirer of the date of the expiry of the assessment period at the time of acknowledging receipt.

2. The supervisory authorities may, during the assessment period, if necessary, and no later than on the 50th working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information needed.

   For the period between the date of request for information by the supervisory authorities and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed 20 working days. Any further requests by the supervisory authorities for completion or clarification of the information shall be at their discretion but may not result in an interruption of the assessment period.

3. The supervisory authorities may extend the interruption referred to in the second subparagraph of paragraph 2 up to 30 working days if the proposed acquirer is:
   (a) situated or regulated outside the Community; or
   (b) a natural or legal person not subject to supervision under this Directive or Directives 85/611/EEC[64], 2004/39/EC or 2006/48/EC.

4. If the supervisory authorities, upon completion of the assessment, decide to oppose the proposed acquisition, they shall, within two working days, and not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. Subject to national law, an appropriate statement of the reasons for the decision may be made accessible to the public at the request of the proposed acquirer. This shall not prevent a Member State from allowing the supervisory authority to make such disclosure in the absence of a request by the proposed acquirer.

5. If the supervisory authorities do not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

[64] OJ L 375, 31.12.1985, p. 3.

6. The supervisory authorities may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

7. Member States may not impose requirements for the notification to and approval by the supervisory authorities of direct or indirect acquisitions of voting rights or capital that are more stringent than those set out in this Directive.

8. The Commission shall adopt implementing measures further specifying the adjustments of the criteria set out in Article 58 (1), in order to take account of future developments and to ensure the uniform application of Articles 56 to 62.

Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 58

Assessment

1. In assessing the notification provided for in Article 56(1) and the information referred to in Article 57 the supervisory authorities shall, in order to ensure the sound and prudent management of the insurance or reinsurance undertaking in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the insurance or reinsurance undertaking, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

(a) the reputation of the proposed acquirer;

(b) the reputation and experience of any person who will direct the business of the insurance or reinsurance undertaking as a result of the proposed acquisition;

(c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the insurance or reinsurance undertaking in which the acquisition is proposed;

(d) whether the insurance or reinsurance undertaking will be able to comply and continue to comply with the prudential requirements based on this Directive and, where applicable, other Directives, notably, Directive 2002/87/EC, in particular, whether the group of which it will become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the supervisory authorities and determine the allocation of responsibilities among the supervisory authorities;

(e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Article 1 of Directive 2005/60/EC is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

2. The supervisory authorities may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in paragraph 1 or if the information provided by the proposed acquirer is incomplete.

3. Member States shall neither impose any prior conditions in respect of the level of holding that must be acquired nor allow their supervisory authorities to examine the proposed acquisition in terms of the economic needs of the market.

4. Member States shall make publicly available a list specifying the information that is necessary to carry out the assessment and that must be provided to the supervisory authorities at the time of notification referred to in Article 56(1). The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition. Member States shall not require information that is not relevant for a prudential assessment.

5. Notwithstanding Article 57 (1), (2) and (3), where two or more proposals to acquire or increase qualifying holdings in the same insurance or reinsurance undertaking have been notified to the supervisory authority, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Article 59

Acquisitions by regulated financial undertakings

1. The relevant supervisory authorities shall work in full consultation with each other when carrying out the assessment if the proposed acquirer is one of the following:
   (a) a credit institution, insurance or reinsurance undertaking, investment firm or management company within the meaning of Article 1a, point 2 of Directive 85/611/EEC (hereinafter referred to as the "UCITS management company") authorised in another Member State or in a sector other than that in which the acquisition is proposed;
   (b) the parent undertaking of a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed; or
   (c) a natural or legal person controlling a credit institution, insurance or reinsurance undertaking, investment firm or UCITS management company authorised in another Member State or in a sector other than that in which the acquisition is proposed.

2. The supervisory authorities shall, without undue delay, provide each other with any information which is essential or relevant for the assessment. In this regard, the supervisory authorities shall communicate to each other upon request all relevant information and shall communicate on their own initiative all essential information. A decision by the supervisory authority that has authorised the insurance or reinsurance undertaking in which the acquisition is proposed shall indicate any views or reservations expressed by the supervisory authority responsible for the proposed acquirer.

Article 60

Information to the supervisory authority by the insurance or reinsurance undertaking

On becoming aware of them, insurance or reinsurance undertaking shall inform the supervisory authorities of their home Member States of any acquisitions or disposals of holdings in their capital that cause those holdings to exceed or fall below any of the thresholds referred to in Articles 56 and 57 (1) to (7).

They shall also, at least once a year, inform the supervisory authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders or members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

Article 61

Qualifying holdings, powers of the supervisory authority

Member States shall require that, where the influence exercised by the persons referred to in Article 56 is likely to operate against the prudent and sound management of an insurance or reinsurance undertaking, the supervisory authorities of the home Member State of that undertaking in which a qualifying holding is sought or increased take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, penalties against directors and managers, or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the notification obligation referred to in Article 56.

If a holding is acquired despite the opposition of the supervisory authorities, the Member States shall, regardless of any other sanctions to be adopted, provide for any of the following:

(1) the suspension of the exercise of the corresponding voting rights;

(2) the nullity of any votes cast or the possibility of their annulment.

Article 62

Voting rights

For the purposes of this Section, the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC, as well as the conditions regarding aggregation thereof laid down in Article 12(4) and (5) of that Directive, shall be taken into account.

Member States shall not take into account voting rights or shares which investment firms or credit institutions may hold as a result of providing the underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis included under point 6 of Section A of Annex I to Directive 2004/39/EC, provided that those rights are, on the one hand, not exercised or otherwise used to intervene in the management of the issuer and, on the other, disposed of within one year of acquisition.

SECTION 5 - PROFESSIONAL SECRECY, EXCHANGE OF INFORMATION AND PROMOTION OF SUPERVISORY CONVERGENCE

Article 63

Obligation

Member States shall provide that all persons who are working or who have worked for the supervisory authorities, as well as auditors and experts acting on behalf of those authorities, are bound by the obligation of professional secrecy.

Without prejudice to cases covered by criminal law, any confidential information received by such persons whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual insurance and reinsurance undertakings cannot be identified.

However, where an insurance or reinsurance undertaking has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that undertaking may be divulged in civil or commercial proceedings.

Article 64

Exchange of information between supervisory authorities of Member States

Article 63 shall not preclude the exchange of information between supervisory authorities of different Member States. Such information shall be subject to the obligation of professional secrecy laid down in Article 63.

Article 65

Cooperation agreements with third countries

Member States may conclude cooperation agreements providing for the exchange of information with the supervisory authorities of third countries or with authorities or bodies of third countries as defined in Article 67 (1) and (2) only if the information to be disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Section. Such exchange of information must be intended for the performance of the supervisory task of those authorities or bodies.

Where the information to be disclosed by a Member State to a third country originates in another Member State, it may not be disclosed without the express agreement of the supervisory authorities of that Member State and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Article 66

Use of confidential information

Supervisory authorities which receive confidential information under Articles 63 or 64 may use it only in the course of their duties and for the following purposes:

(1) to check that the conditions governing the taking up of the business of insurance or reinsurance are met and to facilitate the monitoring of the conduct of such business, especially with regard to the monitoring of the technical provisions, the Minimum Capital Requirement, the Solvency Capital Requirement and the governance system;

(2) to impose sanctions;

(3) in administrative appeals against decisions of the supervisory authorities;

(4) in court proceedings under this Directive.

Article 67

Exchange of information with other authorities

1. Articles 63 and 66 shall not preclude any of the following:

(a) the exchange of information between several supervisory authorities in the same Member State in the discharge of their supervisory functions;

(b) the exchange of information, in the discharge of their supervisory functions, between supervisory authorities and any of the following which are situated in the same Member State:

(i) authorities responsible for the supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;

(ii) bodies involved in the liquidation and bankruptcy of insurance undertakings, (…) or reinsurance undertakings and in other similar procedures;

(iii) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings and other financial institutions;

(c) the disclosure to bodies which administer compulsory winding-up proceedings or guarantee funds, of information necessary to the performance of their duties.

The exchange of information referred to in points (b) and (c) of the first subparagraph may also take place between different Member States.

The information received by those authorities, bodies and persons shall be subject to the obligation of professional secrecy laid down in Article 63.

2. Articles 63 to 66 shall not preclude Member States from authorising exchanges of information between the supervisory authorities and any of the following:

(a) the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of insurance undertakings, reinsurance undertakings and other similar procedures;

(b) the authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of insurance undertakings, reinsurance undertakings, credit institutions, investment firms and other financial institutions;

(c) independent actuaries of insurance undertakings or reinsurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

Member States which apply the first subparagraph shall require at least that the following conditions are met:

(a) the information must be for the purpose of carrying out the overseeing or legal supervision referred to in the first subparagraph;

(b) the information received must be subject to the conditions of professional secrecy laid down in Article 63;

(c) where the information originates in another Member State, it may not be disclosed without the express agreement of the supervisory authorities from which it originates and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons and bodies which may receive information pursuant to the first and second subparagraphs.

3. Articles 63 to 66 shall not preclude Member States from authorising, with the aim of strengthening the stability, and integrity, of the financial system, the exchange of information between the supervisory authorities and the authorities or bodies responsible for the detection and investigation of breaches of company law.

Member States which apply the first subparagraph shall require that at least the following conditions are met:

(a) the information must be intended for the purpose of detection and investigation as referred to in the first subparagraph;

(b) information received must be subject to the obligation of professional secrecy laid down in Article 63;

(c) where the information originates in another Member State, it may not be disclosed without the express agreement of the supervisory authorities from which it originates and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid of persons appointed , in view of their specific competence, for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions set out in the second subparagraph.

In order to implement point (c) of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the supervisory authorities from which the information originates the names and precise responsibilities of the persons to whom it is to be sent.

4. Member States shall communicate to the Commission and to the other Member States the names of the authorities, persons or bodies which may receive information pursuant to paragraph 3.

Article 68

Disclosure of information to government administrations responsible for financial legislation

Articles 63 and 66 shall not preclude Member States from authorising, under provisions laid down by law, the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and insurance or reinsurance undertakings and to inspectors acting on behalf of those departments.

Such disclosures may be made only where necessary for reasons of prudential control. Member States shall, however, provide that information received under Articles 64 and 67(1) and information obtained by means of on-site verification referred to in Article 32 may only be disclosed with the express consent of the supervisory authorities from which the information originated or of the supervisory authorities of the Member State in which the on-site verification was carried out.

Article 69

Transmission of information to central banks and monetary authorities

Without prejudice to this Section a supervisory authority may transmit information intended for the performance of their tasks to the following:

(1) central banks and other bodies with a similar function in their capacity as monetary authorities;

(2) where appropriate, other public authorities responsible for overseeing payment systems.

Such authorities or bodies may also communicate to the supervisory authorities such information as they may need for the purposes of Article 66. Information received in this context shall be subject to the obligation of professional secrecy imposed in this Section.

Article 70

Supervisory convergence

1. Member States shall ensure that the mandates of supervisory authorities take account, in an appropriate way, a European Union dimension.

2. Member States shall ensure that in the exercise of their duties, supervisory authorities have regard to the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For this purpose, Member States shall ensure that the supervisory authorities participate in the activities of the Committee of European Insurance and Occupational Pensions Supervisors pursuant to Commission Decision 2009/79/EC and take duly into account their guidelines and recommendations referred to in paragraph 3.

3. The Committee of European Insurance and Occupational Pensions Supervisors shall, where necessary, provide for non-legally binding guidelines and recommendations of the provisions of this Directive and its implementing measures in order to enhance the convergence of supervisory practices. In addition, the Committee of European Insurance and Occupational Pensions Supervisors shall report regularly and at least every two years to the Council, the European Parliament and European Commission on the progress of the supervisory convergence in the Community.

SECTION 6- DUTIES OF AUDITORS

Article 71

Duties of auditors

1. Member States shall provide at least that persons authorised within the meaning of Council Directive 84/253/EEC[65], who perform in an insurance or reinsurance undertaking the statutory audit referred to in Article 51 of Council Directive 78/660/EEC[66], Article 37 of Council Directive 83/349/EEC or Article 31 of Directive 85/611/EEC or any other statutory task, shall have a duty to report promptly to the supervisory authorities any fact or decision concerning that undertaking of which they have become aware while carrying out that task and which is liable to bring about any of the following:
   (a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of insurance and reinsurance undertakings;
   (b) the impairment of the continuous functioning of the insurance or reinsurance undertaking;
   (c) the refusal to certify the accounts or to the expression of reservations;
   (d) the non-compliance with the Solvency Capital Requirement;
   (e) the non-compliance with the Minimum Capital Requirement.

   The persons referred to in the first subparagraph shall likewise have a duty to report any facts and decisions of which they have become aware in the course of carrying out a task as described in the first subparagraph in an undertaking which has close links resulting from a control relationship with the insurance or reinsurance undertaking within which they are carrying out that task.

2. The disclosure in good faith to the supervisory authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

---

65 OJ L 126, 12.5.1984, p. 20.
66 OJ L 222, 14.8.1978, p. 11.

CHAPTER V - PURSUIT OF LIFE AND NON-LIFE INSURANCE ACTIVITY

Article 72

Pursuit of life and non-life insurance activity

1. Insurance undertakings may not be authorised to carry on life and non-life insurance activities simultaneously.

2. By way of derogation from paragraph 1, Member States may provide the following:

   (a) undertakings authorised to carry on life insurance activity may also obtain authorisation for non-life insurance activities for the risks listed in classes 1 and 2 in point A of Annex I;

   (b) undertakings authorised solely for the risks listed in classes 1 and 2 in point A of Annex I may obtain authorisation to carry on life insurance activity.

   However, each activity shall be separately managed in accordance with Article 73.

3. Member States may provide that the undertakings referred to in paragraph 2 shall comply with the accounting rules governing life insurance undertakings for all of their activities. Pending coordination in this respect, Member States may also provide that, with regard to rules on winding-up, activities relating to the risks listed in classes 1 and 2 in point A of Annex I carried on by the those undertakings shall be governed by the rules applicable to life insurance activities.

4. Where a non-life insurance undertaking has financial, commercial or administrative links with a life insurance undertaking the supervisory authorities of the home Member States shall ensure that the accounts of the undertakings concerned are not distorted by agreements between these undertakings or by any arrangement which could affect the apportionment of expenses and income.

5. Undertakings which on the following dates carried on simultaneously both life and non-life insurance activities covered by this Directive may continue to carry on those activities simultaneously, provided that each activity is separately managed in accordance with Article 73:

(a) 1 January 1981 for undertakings authorised in Greece~~,~~;

(b) 1 January 1986 for undertakings authorised in Spain and Portugal~~,~~;

(c) 1 January 1995 for undertakings authorised in Austria, Finland and Sweden~~,~~;

(d) 1 May 2004 for undertakings authorised in the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia~~,~~ and Slovenia;

(e) 1 January 2007 for undertakings authorised in Bulgaria and Romania;

(f) 15 March 1979 for all other undertakings~~,~~.

The home Member State may require insurance undertakings to cease, within a period to be determined by that Member State, the simultaneous pursuit of life and non-life insurance activities in which they were engaged on the dates referred to in the first subparagraph.

Article 73

Separation of life and non-life insurance management

1. The separate management referred to in Article 72 shall be organised in such a way that the life insurance activity is distinct from non-life insurance activity.

   The respective interests of life and non-life policyholders may not be prejudiced and, in particular, profits from life insurance shall benefit life policyholders as if the life insurance undertaking only carried on the activity of life insurance.

2. Without prejudice to Articles 100 and 126, the insurance undertakings referred to in Article 72(2) and (5) shall calculate both of the following:

   (a) a notional life Minimum Capital Requirement with respect to their life insurance or reinsurance activity, calculated as if the undertaking concerned only carried on that activity, on the basis of the separate accounts referred to in paragraph 6;

   (b) a notional non-life Minimum Capital Requirement with respect to their non-life insurance or reinsurance activity, calculated as if the undertaking concerned only carried on that activity, on the basis of the separate accounts referred to in paragraph 6.

3. As a minimum, the insurance undertakings referred to in Article 72(2) and (5) shall cover the following by an equivalent amount of eligible basic own fund items:

   (a) the notional life Minimum Capital Requirement, in respect of the life activity;

   (b) the notional non-life Minimum Capital Requirement, in respect of the non-life activity.

   The minimum financial obligations referred to in the first subparagraph in respect of the life insurance activity and the non-life insurance activity, may not be borne by the other activity.

4. As long as the minimum financial obligations referred to in paragraph 3 are fulfilled and provided the supervisory authority is informed, the undertaking may use to cover the Solvency Capital Requirement referred to in Article 100, the explicit eligible own fund items which are still available for one or the other activity.

5. The supervisory authorities shall analyse the results in both life and non-life insurance activities so as to ensure that paragraphs 1 to 5 is complied with.

6. Accounts shall be drawn up so as to show the sources of the results for life and non-life insurance separately. All income, in particular premiums, payments by re-insurers and investment income, and expenditure, in particular insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business~~)~~, shall be broken down according to origin. Items common to both activities shall be entered in the accounts in accordance with methods of apportionment to be accepted by the supervisory authority.

Insurance undertakings shall, on the basis of the accounts, prepare a statement in which the eligible basic own fund items covering each notional Minimum Capital Requirement as referred to in paragraph 2 are clearly identified, in accordance with Article 98(5).

7. If the amount of eligible basic own fund items with respect to one of the activities is insufficient to cover the minimum financial obligations referred to in first subparagraph of paragraph 3, the supervisory authorities shall apply to the deficient activity the measures provided for in this Directive, whatever the results in the other activity.

By way of derogation from the second subparagraph of paragraph 3, those measures may involve the authorisation of a transfer of explicit eligible basic own fund items from one activity to the other.

CHAPTER VI - RULES RELATING TO THE VALUATION OF ASSETS AND LIABILITIES, TECHNICAL PROVISIONS, OWN FUNDS, SOLVENCY CAPITAL REQUIREMENT, MINIMUM CAPITAL REQUIREMENT AND INVESTMENT RULES

SECTION 1 - VALUATION OF ASSETS AND LIABILITIES

Article 74

Valuation of assets and liabilities

1. Member States shall ensure that, unless otherwise stated, insurance and reinsurance undertakings value assets and liabilities as follows:

   (a) assets shall be valued at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;

   (b) liabilities shall be valued at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm's length transaction.

   When valuing liabilities, no adjustment to take account of the own credit standing of the insurance or reinsurance undertaking shall be made.

2. The Commission shall adopt, implementing measures to set out the methods and assumptions to be used in the valuation of assets and liabilities as laid down in paragraph 1.

   Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

SECTION 2 - RULES RELATING TO TECHNICAL PROVISIONS

Article 75

General provisions

1. Member States shall ensure that insurance and reinsurance undertakings establish technical provisions with respect to all of their insurance and reinsurance obligations towards policyholders and beneficiaries of insurance or reinsurance contracts.
2. The (...) value of technical provisions shall (...) correspond to the current amount insurance and reinsurance undertakings would have to pay if they were to transfer their insurance and reinsurance obligations immediately to another insurance or reinsurance undertaking.
3. The calculation of technical provisions shall make use of and be consistent with information provided by the financial markets and generally available data on (…) underwriting risks (market consistency).
4. Technical provisions shall be calculated in a prudent, reliable and objective manner.
5. Following the principles set out in paragraphs 2, 3 and 4 and taking into account the principles set out in paragraph 1 of Article 74, the calculation of technical provisions shall be carried out in accordance with Articles 76 to 81 and 85.

Article 76

Calculation of technical provisions

1. The value of technical provisions shall be equal to the sum of a best estimate and a risk margin as set out in paragraphs 2 and 3.

2. The best estimate shall correspond to the probability-weighted average of future cash-flows, taking account of the time value of money (expected present value of future cash-flows), using the relevant risk-free interest rate term structure.

   The calculation of the best estimate shall be based upon (…) up-to-date and credible information and realistic assumptions and be performed using adequate, applicable and relevant actuarial and statistical methods (…).

   The cash-flow projection used in the calculation of the best estimate shall take account of all the cash in- and out-flows required to settle the insurance and reinsurance obligations over the lifetime thereof.

   The best estimate shall be calculated gross, without deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles. Those amounts shall be calculated separately, in accordance with Article 80.

3. The risk margin shall be such as to ensure that the value of the technical provisions is equivalent to the amount insurance and reinsurance undertakings would be expected to require in order to take over and meet the insurance and reinsurance obligations.

4. Insurance and reinsurance undertakings shall value the best estimate and the risk margin separately

   However, where (…) future cash flows associated with insurance or reinsurance obligations can be replicated reliably using financial instruments for which a reliable market value is (…) observable, the value of technical provisions associated with those future cash flows shall be determined on the basis of the market value of those financial instruments. In this case, separate calculations of the best estimate and the risk margin shall not be required.

5. Where insurance and reinsurance undertakings value the best estimate and the risk margin separately, the risk margin shall be calculated by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over the lifetime thereof.

The rate used in the determination of the cost of providing that amount of eligible own funds (Cost-of-Capital rate) shall be the same for all insurance and reinsurance undertakings and shall be reviewed periodically.

The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking would incur holding an amount of eligible own funds, as set out in Section 3, equal to the Solvency Capital Requirement (…) necessary to support the insurance and reinsurance obligation over the lifetime of that obligation.

Article 77

Other elements to be taken into account in the calculation of technical provisions

In addition to Article 76, when calculating technical provisions, insurance and reinsurance undertakings shall take account of the following:

(1) all expenses that will be incurred in servicing insurance and reinsurance obligations;

(2) inflation, including expenses and claims inflation;

(3) all payments to policyholders and beneficiaries, including future discretionary bonuses, which insurance and reinsurance undertakings expect to make, whether or not these payments are contractually guaranteed, unless those payments fall under Article 90**(2).**

Article 78

Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts

When calculating technical provisions, insurance and reinsurance undertakings shall take account of the value of financial guarantees and any contractual options included in insurance and reinsurance policies.

Any assumptions made by insurance and reinsurance undertakings with respect to the likelihood that policyholders will exercise contractual options, including lapses and surrenders, shall be realistic and based on current and credible information. The assumptions shall take account, either explicitly or implicitly, of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

Article 79

Segmentation

Insurance and reinsurance undertakings shall segment their insurance and reinsurance obligations into homogeneous risk groups, and as a minimum by lines of business, when calculating their technical provisions.

Article 80

Recoverables from reinsurance contracts and special purpose vehicles

The calculation by insurance and reinsurance undertakings of amounts recoverable from reinsurance contracts and special purpose vehicles shall comply with Articles 75 to 79.

When calculating amounts recoverable from reinsurance contracts and special purpose vehicles, insurance and reinsurance undertakings shall take account of the time difference between recoveries and direct payments.

The result from that calculation shall be adjusted to take account of expected losses due to default of the counterparty. That adjustment shall be based on an assessment of the probability of default of the counterparty and the average loss resulting therefrom (loss-given-default).

Article 81

Data quality and application of approximations, including case-by-case approaches, for technical provisions

Member States shall ensure that insurance and reinsurance undertakings have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of their technical provisions.

(…)Where, in specific circumstances, insurance and reinsurance undertakings have insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of their insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and special purpose vehicles, appropriate approximations, including (…) case-by-case approaches, may be (…) used in the calculation of the best estimate.

Article 82

Comparison against experience

Insurance and reinsurance undertakings shall have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.

Where the comparison identifies systematic deviation between experience and the best estimate calculations of insurance or reinsurance undertakings, the undertaking concerned shall make appropriate adjustments to the actuarial methods being used or the assumptions being made.

Article 83

Appropriateness of the level of technical provisions

Upon request from the supervisory authorities, insurance and reinsurance undertakings shall demonstrate the appropriateness of the level of their technical provisions, as well as the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used.

Article 84

Increase of technical provisions

To the extent that the calculation of technical provisions of insurance and reinsurance undertakings does not comply with Articles 75 to 82, the supervisory authorities may require insurance and reinsurance undertakings to increase the amount of technical provisions so that they correspond to the level determined pursuant to those Articles.

Article 85

Implementing measures

The Commission shall adopt implementing measures laying down the following:

(a) actuarial and statistical methodologies (…) to calculate the best estimate referred to in Article 76(2);

(b) the relevant risk-free interest rate term structure to be used to calculate the best estimate referred to in Article 76(2);

(c) the circumstances in which technical provisions shall be calculated as a whole, or as a sum of a best estimate and a risk margin, and the methods to be used in the case where technical provisions are calculated as a whole;

(d) the methods and assumptions to be used in the calculation of the risk margin including the determination of the amount of eligible own funds necessary to support the insurance and reinsurance obligations and the calibration of the Cost-of-Capital rate;

(e) the lines of business on the basis of which insurance and reinsurance obligations are to be segmented in order to calculate technical provisions;

(f) the standards to be met with respect to ensuring the appropriateness, completeness and accuracy of the data used in the calculation of technical provisions, and the (…) specific circumstances in which it would be appropriate to use approximations, including (…) case-by-case approaches, to calculate (…) the best estimate;

(g) the methodologies to be used when calculating the counterparty default adjustment referred to in Article 80 designed to capture expected losses due to default of the counterparty;

(h) where necessary, simplified methods and techniques to calculate technical provisions, in order to ensure the actuarial (…) and statistical methodologies (…) referred to in point (a) and (d) are proportionate to the nature, scale and complexity of the risks supported by insurance and reinsurance undertakings including captive insurance and reinsurance undertakings.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in of Article 304(3).

SECTION 3 - OWN FUNDS

SUBSECTION 1 - DETERMINATION OF OWN FUNDS

Article 86

Own funds

Own funds shall comprise the sum of basic own funds, referred to in Article 87 and ancillary own funds referred to in Article 88.

Article 87

Basic own funds

Basic own funds shall consist of the following items:

(1) the excess of assets over liabilities, valued in accordance with Article 74 and Section 2;

(2) subordinated liabilities.

The excess amount referred to in point (1) shall be reduced by the amount of own shares (…) held by the insurance or reinsurance undertaking.

Article 88

Ancillary own funds

1. Ancillary own funds shall consist of items other than basic own funds which can be called up to absorb losses.

   Ancillary own funds may comprise the following items to the extent that they are not basic own fund items:

   (a) unpaid share capital or initial fund that has not been called up (…)

   (b) letters of credit and guarantees;

   (c) any other legally binding commitments received by insurance and reinsurance undertakings.

   In the case of a mutual or mutual-type association with variable contributions, ancillary own funds may also comprise any future claims which that association may have against its members by way of a call for supplementary contribution, within the (…) next twelve months.

2. Where an ancillary own fund item has been paid in or called up, it shall be treated as an asset and cease to form part of ancillary own fund items.

Article 89

Supervisory approval of ancillary own funds

1. The amounts of ancillary own fund items to be taken into account when determining own funds shall be subject to prior supervisory approval.

2. The amount ascribed to each ancillary own fund item shall reflect the loss-absorbency of the item and shall be based upon prudent and realistic assumptions. Where an ancillary own fund item has a fixed nominal value, the amount of that item shall be equal to its nominal value, where it appropriately reflects its loss-absorbency.

3. Supervisory authorities shall approve either of the following:

   (a) a monetary amount for each ancillary own fund item;

   (b) a method to determine the amount of each ancillary own fund item, in which case supervisory approval of the amount determined in accordance with that method shall be granted for a specified period of time.

4. For each ancillary own fund item, supervisory authorities shall base their approval on an assessment of the following:

   (a) the status of the counterparties concerned, in relation to their ability and willingness to pay;

   (b) the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up;

   (c) any information on the outcome of past calls which insurance and reinsurance undertakings have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

Article 90

Surplus funds

1. Surplus funds shall be deemed to be accumulated profits, which have not been made available for distribution to policyholders and beneficiaries.
2. In so far as authorised under national law, surplus funds shall not be considered as insurance and reinsurance liabilities to the extent that they fulfil the criteria set out in Article 94(1).

(…)[67]

Article 92

Implementing measures

1. The Commission shall adopt implementing measures specifying the following:
   (a) the criteria for granting supervisory approval in accordance with Article 89*;*
   (b) the treatment of participations, within the meaning of the third subparagraph of Article 210(2), in financial and credit institutions with respect to the determination of own funds.

   Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article.

2. Participations in financial and credit institutions as referred to in point (b) of paragraph 1 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) and (5) of Directive 2006/48/EC,
      (ii) investment firms within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC;
   (b) subordinated claims and instruments referred to in Article 63 and Article 64(3) of Directive 2006/48/EC which insurance and reinsurance undertakings hold in respect of the entities defined in point (a) of this paragraph in which they hold a participation.

[67] Article 91 was deleted

SUBSECTION 2 - CLASSIFICATION OF OWN FUNDS

Article 93

Characteristics and features used to classify own funds into tiers

1. Own fund items shall be classified into three tiers. The classification of those items shall depend upon whether they are basic own fund or ancillary own fund items and the extent to which they possess the following characteristics:

   (a) the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis, as well as in the case of winding-up (permanent availability);

   (b) in the case of winding-up, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations towards policyholders and beneficiaries of insurance and reinsurance contracts, have been met (subordination);

2. When assessing the extent to which own fund items possess the characteristics set out in points (a) and (b) in paragraph 1, currently and in the future, due consideration shall be given to the duration of the item, in particular whether the item is dated or not. Where an own fund item is dated, the relative duration of the item as compared to the duration of the insurance and reinsurance obligations of the undertaking shall be considered (sufficient duration).

   In addition, the following features shall be considered:

   (a) whether the item is free from requirements or incentives to redeem the nominal sum (absence of incentives to redeem);

   (b) whether the item is free from mandatory fixed charges (absence of mandatory servicing costs);

   (c) whether the item is clear of (…) encumbrances (absence of encumbrances).

Article 94

Main criteria for the classification into tiers

1. Basic own fund items shall be classified in Tier 1 where they substantially possess the characteristics set out in points (a) and (b) of Article 93(1), taking into consideration the features set out in Article 93(2).

2. Basic own fund items shall be classified in Tier 2 where they substantially possess the characteristic set out in point (b) of Article 93(1), taking into consideration the features set out in Article 93(2).

   Ancillary own fund items shall be classified in Tier 2 where they substantially possess the characteristics set out in points (a) and (b) of Article 93(1), taking into consideration the features set out in Article 93(2).

3. Any basic and ancillary own fund items which do not fall under paragraphs 1 and 2 shall be classified in Tier 3.

Article 95

Classification of own funds into tiers

Member States shall ensure that insurance and reinsurance undertakings classify their own fund items on the basis of the criteria laid down in Article 94.

For that purpose, insurance and reinsurance undertakings shall refer to the list of own funds referred to in point (a) of Article 97(**1**), where applicable.

Where an own fund item is not covered by that list, it shall be assessed and classified by insurance and reinsurance undertakings, in accordance with the first paragraph. This classification shall be subject to approval by the supervisory authority.

Article 96

Classification of specific insurance own fund items

Without prejudice to Article 95 and point (**a**) of Article 97(1) for the purposes of this Directive the following classifications shall be applied:

(1) surplus funds falling under Article 90**(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 2006/48/EC, (…) 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 point A of Annex I (…) may have against their members by way of a call for supplementary contributions, within the (…) next twelve months, shall be classified in Tier 2.

In accordance with sub-paragraph 2 of Article 94(2), any future claims which mutual or mutual-type associations with variable contributions may have against their members by way of a call for supplementary contributions, within the next twelve months, not falling under point 3 of sub-paragraph 1 shall be classified in Tier 2 where they substantially possess the characteristics set out in points (a) and (b) of Article 93(1), taking into consideration the features set out in Article 93(2)

Article 97

Implementing measures

1. The Commission shall adopt implementing measures laying down the following:

(…)

(…)

(a) a list of own fund items, including those referred to in Article 96, deemed to meet the criteria, set out in Article 94, which contains for each own fund item a precise description of the features which determined its classification;

(b) the methods to be used by supervisory authorities, when approving the assessment and classification of own fund items which are not covered by the list referred to in point (a).

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

2. The Commission shall regularly review and, where appropriate, update the list referred to in point (a) of paragraph 1 in the light of market developments.

SUBSECTION 3 - ELIGIBILITY OF OWN FUNDS

Article 98

Eligibility and limits applicable to Tier 1, Tier 2 and Tier 3

1. As far as the compliance with the Solvency Capital Requirement is concerned, the eligible amounts of Tier 2 and Tier 3 items shall be subject to (…) quantitative limits. Those limits shall be such as to ensure that at least the following conditions are met:

   (a) (…) the proportion of Tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds (…);

   (b) (…) the eligible amount of Tier 3 items is less (…) than one third of the total amount of eligible own funds (…).

2. As far as the compliance with the Minimum Capital Requirement is concerned, (…) the amount of basic own fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 shall be subject to quantitative limits. Those limits shall be such as to ensure, as a minimum, that (…) the proportion of Tier 1 items in the eligible basic own funds is higher than one half of the total amount of eligible basic own funds.

(…)

4. The eligible amount of own funds to cover the Solvency Capital Requirement set out in Article 100 shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.

5. The eligible amount of basic own funds to cover the Minimum Capital Requirement set out in Article 126 shall be equal to sum of the amount of Tier 1 and the eligible amount of basic own fund items classified in Tier 2.

Article 99

Implementing measures

The Commission shall adopt implementing measures laying down:

(…)

a) the quantitative limits referred to in paragraphs 1 and 2 of Article 98;

b) the adjustments that should be made to reflect the lack of transferability of those own funds items that can only be used to cover losses arising from a particular segment of liabilities or from particular risks (ring fenced funds).

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

SECTION 4 - SOLVENCY CAPITAL REQUIREMENT

SUBSECTION 1 - GENERAL PROVISIONS FOR THE SOLVENCY CAPITAL REQUIREMENT USING THE STANDARD FORMULA OR AN INTERNAL MODEL

Article 100

General provisions

Member States shall require that insurance and reinsurance undertakings hold eligible own funds covering the Solvency Capital Requirement.

The Solvency Capital Requirement shall be calculated, either in accordance with the standard formula in Subsection 2 or using an internal model, as set out in Subsection 3.

Article 101

Calculation of the Solvency Capital Requirement

1. The Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 5:

2 The Solvency Capital Requirement shall be calculated on the presumption that the undertaking will carry on its business as a going concern.

3. The Solvency Capital Requirement shall be calibrated so as to ensure that all quantifiable risks to which an insurance or reinsurance undertaking is exposed are taken into account. It shall cover existing business, as well as the new business expected to be written over the next twelve months. With respect to existing business, it shall cover unexpected losses only. It shall correspond to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 99.5% over a one-year period.

4. The Solvency Capital Requirement shall cover at least the following risks:

(a) non-life underwriting risk;

(b) life underwriting risk;

(c) health underwriting risk;

(d) market risk;

(e) credit risk;

(f) operational risk.

Operational risk as referred to in point (f) of the first subparagraph shall include legal risks, and exclude risks arising from strategic decisions, as well as reputation risks.

5 When calculating the Solvency Capital Requirement, insurance and reinsurance undertakings shall take account of the effect of risk mitigation techniques, provided that credit risk and other risks arising from the use of such techniques are properly reflected in the Solvency Capital Requirement.

Article 102

Frequency of calculation

1. Insurance and reinsurance undertakings shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to the supervisory authorities.
Insurance and reinsurance undertakings shall ensure that they hold eligible own funds which cover the last reported Solvency Capital Requirement.
Insurance and reinsurance undertakings shall monitor the amount of eligible own funds and the Solvency Capital Requirement on an on-going basis.
If the risk profile of an insurance or reinsurance undertaking deviates significantly from the assumptions underlying the last reported Solvency Capital Requirement, the undertaking concerned shall recalculate the Solvency Capital Requirement without delay and report it to the supervisory authorities.

2. Where there is evidence to suggest that the risk profile of the insurance or reinsurance undertaking has altered significantly since the date on which the Solvency Capital Requirement was last reported, the supervisory authorities may require the undertaking concerned to recalculate the Solvency Capital Requirement.

SUBSECTION 2 - SOLVENCY CAPITAL REQUIREMENT – STANDARD FORMULA

Article 103

Structure of the standard formula

The Solvency Capital Requirement calculated on the basis of the standard formula shall be the sum of the following items:

(a) the Basic Solvency Capital Requirement, as laid down in Article 104;

(b) the capital requirement for operational risk, as laid down in Article 106;

(c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in Article 107.

(…)

Article 104

Design of the Basic Solvency Capital Requirement

1. The Basic Solvency Capital Requirement shall comprise individual risk modules, which are aggregated in accordance with point 1 of Annex IV.

   It shall consist of at least the following risk modules:

   (a) non-life underwriting risk;

   (b) life underwriting risk;

   (c) (…) health underwriting risk;

   (d) market risk,

   (e) counterparty default risk.

2. For the purposes of points (a), (b) and (c) of paragraph 1, insurance or reinsurance operations shall be allocated to the underwriting risk module that best reflects the technical nature of the underlying risks.

3. The correlation coefficients for the aggregation of the risk modules referred to in paragraph 1, as well as the calibration of the capital requirements for each risk module, shall result in an overall Solvency Capital Requirement which complies with the principles set out in Article 101.

4. Each of the risk modules referred to in paragraph 1 shall be calibrated using a Value-at-Risk measure, with a 99.5% confidence level, over a one year period.

Where appropriate, diversification effects shall be taken into account in the design of each risk module.

5. The same design and specifications for the risk modules shall be used for all insurance and reinsurance undertakings, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in Article 108.

6. With regard to risks arising from catastrophes, geographical specifications may, where appropriate, be used for the calculation of the life, non-life and (…) health underwriting risk modules.

7. Subject to approval by the supervisory authorities, insurance and reinsurance undertakings may, within the design of the standard formula, replace a subset of its parameters by parameters specific to the undertaking concerned when calculating the life, non-life and (...) health underwriting risk modules.
Such parameters shall be calibrated on the basis of the internal data of the undertaking concerned, or of data which is directly relevant for the operations of that undertaking using standardised methods.
When granting supervisory approval, supervisory authorities shall verify the completeness, accuracy and appropriateness of the data used.

Article 105

Calculation of the Basic Solvency Capital Requirement

1. The Basic Solvency Capital Requirement shall be calculated in accordance with paragraphs 2 to 6.

2. The non-life underwriting risk module shall reflect the risk arising from (…) non-life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

   It shall take account of the uncertainty in the results of insurance and reinsurance undertakings related to the existing insurance and reinsurance obligations as well as to the new business expected to be written over the next twelve months.

   It shall be calculated, in accordance with point 2 of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

   (a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements (non-life premium and reserve risk);

   (b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events (non-life catastrophe risk).

3 The life underwriting risk module shall reflect the risk arising from the (…) life insurance obligations, in relation to the perils covered and the processes used in the conduct of business.

   It shall be calculated, in accordance with point 3 of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

   (a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities (mortality risk);

   (b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities (longevity risk);

   (c) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates (disability – morbidity risk);

(d) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts (life expense risk);

(e) the risk of loss, or of adverse change in the value of insurance liabilities resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured (revision risk);

(f) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy lapses, terminations, renewals and surrenders (lapse risk);

(g) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events (life catastrophe risk).

4. (...) The health underwriting risk module shall reflect the risk arising from the underwriting of health insurance (...) obligations, whether it is pursued on a similar technical basis to that of life insurance or not, following from both the perils covered and the processes used in the conduct of business.

It shall (...) cover at least the following risks:

(a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts;

(b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning;

(c) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.

5. The market risk module shall reflect the risk arising from the level or volatility of market prices of financial instruments which have an impact upon the value of the assets and liabilities of the undertaking. It shall properly reflect the structural mismatch between assets and liabilities, in particular with respect to the duration thereof.

It shall be calculated, in accordance with point 5 of Annex IV, as a combination of the capital requirements for at least the following sub-modules:

(a) the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates (interest rate risk);

(b) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities (equity risk);

(c) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate (property risk);

(d) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure (spread risk);

(e) the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates (currency risk).

(f) additional risks to an insurance or reinsurance undertaking stemming, either from lack of diversification in the asset portfolio, or from large exposure to default risk by a single issuer of securities or a group of related issuers (market risk concentrations).

6. The counterparty default risk module shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of insurance and reinsurance undertakings over the forthcoming twelve months. The counterparty default risk module shall cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module. <u>It shall take appropriate account of collateral or other security held by or for the account of the insurance or reinsurance undertaking and the risks associated therewith.</u>

For each counterparty, the counterparty default risk module shall take account of the overall counterparty risk exposure of the insurance or reinsurance undertaking concerned to that counterparty, irrespective of the legal form of its contractual obligations to that undertaking.

Article 105 ter

Calculation of the equity risk sub-module: symmetric adjustment mechanism

1. The equity risk sub-module calculated in accordance with the standard formula shall include a symmetric adjustment to the equity capital charge applied to cover the risk arising from changes in the level of equity prices.

2. The symmetric adjustment made to the standard equity capital charge, calibrated in accordance with Article 104(4), covering the risk arising from changes in the level of equity prices shall be based on a function of the current level of an appropriate equity index and a weighted average level of that index. The weighted average should be calculated over an appropriate period of time which shall be the same for all insurance and reinsurance undertakings.

3. The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices shall not result in an equity capital charge being applied that is more than 10 percentage points lower or 10 percentage points higher than standard equity capital charge.

Article 106

Capital requirement for operational risk

1. The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in Article 104. That requirement shall be calibrated in accordance with Article 101(3).
2. With respect to life insurance contracts where the investment risk is borne by the policyholders, the calculation of the capital requirement for operational risk shall take account of the amount of annual expenses incurred in respect of those insurance obligations.
3. With respect to insurance and reinsurance operations other than those referred to in paragraph 2, the calculation of the capital requirement for operational risk shall take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations. In this case, the capital requirement for operational risks shall not exceed (…) 30% of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

Article 107

Adjustment for the loss-absorbing capacity of technical provisions and deferred taxes

The adjustment referred to in point (c) paragraph 1 of Article 103 for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of both.

That adjustment shall take account of the risk mitigating effect provided by future discretionary benefits of (…) insurance contracts, to the extent insurance and reinsurance undertakings can establish that a reduction in such benefits may be used to cover (...) unexpected losses when they arise. The risk mitigating effect provided by future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to these future discretionary benefits.
For the purpose of the second paragraph, the value of future discretionary benefits under adverse circumstances shall be compared to the value of such benefits under the underlying assumptions of the best-estimate calculation.

Article 108

Simplifications in the standard formula

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.

Simplified calculations shall be calibrated in accordance with Article 101(3).

Article 108(bis)

Significant deviations from the assumptions underlying the standard formula calculation

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance and reinsurance undertakings concerned deviates significantly from the assumptions underlying the standard formula calculation, the supervisory authorities may, by a decision stating the reasons, require the undertakings concerned to replace a subset of the parameters used in the standard formula calculation by parameters specific to those undertakings when calculating the life, non-life and health underwriting risk modules, as set out in Article 104(7). Those specific parameters shall be calculated in such a way to ensure that the undertaking complies with Article 101(3).

.

Article 109

Implementing measures

1. In order to ensure that the same treatment is applied to all insurance and reinsurance undertakings calculating the Solvency Capital Requirement on the basis of the standard formula, or to take account of market developments, the Commission shall adopt implementing measures laying down the following:

(a) a standard formula in accordance with the provisions of Articles 101 and 103 to 108;

(b) any sub-modules necessary or covering more precisely the risks which fall under the respective risk modules referred to in Article 104 as well as any subsequent updates;

(c) the methods, assumptions and standard parameters to be used, when calculating each of the risk modules or sub-modules of the Basic Solvency Capital Requirement laid down in Articles 104, 105, the symmetric adjustment mechanism and the appropriate period of time, expressed in the number of months, as referred to in Article 105ter, and Article 305b, as well as the appropriate approach for integrating the method referred to in Article 305b related to the use of this method in the Solvency Capital Requirement as calculated in accordance with the standard formula;

(d) the correlation parameters, including, if necessary, those set out in Annex IV, and the procedures for the updating of those parameters;

(e) where insurance and reinsurance undertakings use risk mitigation techniques, the methods and assumptions to be used to assess the changes in the risk profile of the undertaking concerned and adjust the calculation of the Solvency Capital Requirement;

(f) the qualitative criteria that the risk mitigation techniques referred to in point (e) must meet in order to ensure that the risk has been effectively transferred to a third party;

(g) the methods and parameters to be used when assessing the capital requirement for operational risk set out in Article 106, including the percentage referred to in paragraph 3 of Article 106;

(ga) the methods and adjustments to be used to reflect the reduced scope for risk diversification of insurers related to ring fenced funds;

(h) the method to be used when calculating the adjustment for the loss-absorbing capacity of technical provisions, as laid down in Article 107;

(i) the subset of standard parameters in the life, non-life and (...) health underwriting risk modules that may be replaced by undertaking-specific parameters as set out in Article 104(7);

(j) the standardised methods to be used by the insurance or reinsurance undertaking to calculate the undertaking-specific parameters referred to in point (i), and any criteria with respect to the completeness, accuracy, and appropriateness of the data used that must be met before supervisory approval is given;

(k) the simplified calculations provided for specific sub-modules and risk modules, as well as the criteria that insurance and reinsurance undertakings, including captive insurance and reinsurance undertakings, shall be required to meet in order to be entitled to use each of these simplifications, as set out in Article 108;

(l) the approach to be used with respect to related undertakings within the meaning of Article 210 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 related undertakings arising from the strategic nature of those investments and the influence exercised by the participating undertaking on those related undertakings.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

2. The Commission may adopt implementing measures laying down quantitative limits and asset eligibility criteria in order to address risks which are not adequately covered by a sub-module. Such implementing measures shall apply to assets covering technical provisions, excluding assets held in respect of life insurance contracts where the investment risk is borne by the policyholders. Those measures shall be reviewed by the Commission in the light of developments in the standard formula and financial markets.

Those measures designed to amend non-essential elements of this Directive, by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

SUBSECTION 3 - SOLVENCY CAPITAL REQUIREMENT – FULL AND PARTIAL INTERNAL MODELS

Article 110

General provisions for the approval of full and partial internal models

1. Member States shall ensure that insurance or reinsurance undertakings may calculate the Solvency Capital Requirement using a full or partial internal model as approved by the supervisory authorities.

2. Insurance and reinsurance undertakings may use partial internal models for the calculation of one or more of the following:

   (a) one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in Articles 104 and 105;

   (b) the capital requirement for operational risk as laid down in Article 106;

   (c) the adjustment referred to in Article 107.

   In addition, partial modelling may be applied to the whole business of insurance and reinsurance undertakings, or only to one or more major business units.

3. In any application for approval, insurance and reinsurance undertakings shall submit, as a minimum, documentary evidence that the internal model meets the requirements set out in Articles 118 to 123.

   Where the application for that approval relates to a partial internal model, the requirements set out in Articles 118 to 123 shall be adapted to take account of the limited scope of the application of the model.

4. The supervisory authorities shall decide on the application within six months from the receipt of the complete application.

5. Supervisory authorities shall give approval to the application only if they are satisfied that the systems of the insurance or reinsurance undertaking for identifying, measuring, monitoring, (…) managing and reporting risk are adequate and in particular, that the internal model complies with the requirements referred to in paragraph 3.

6. Any decision by the supervisory authorities to reject the application for the use of an internal model shall be accompanied by the reasons therefore.

7. (…) **A**fter having received approval from supervisory authorities to use an internal model, insurance and reinsurance undertakings (…) may, by a decision stating the reasons, be required to provide supervisory authorities with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2.

Article 111

Specific provisions for the approval of partial internal models

1. In the case of a partial internal model, supervisory approval shall only be given if that model complies with the requirements set out in Article 110 and the following additional conditions:
   (a) the reason for the limited scope of application of the model is properly justified by the undertaking;
   (b) the resulting Solvency Capital Requirement reflects more appropriately the risk profile of the undertaking and in particular meets the principles set out in Subsection 1;
   (c) its design is consistent with the principles set out in Subsection 1 so as to allow the partial internal model to be fully integrated into the Solvency Capital Requirement Standard Formula.
2. When assessing an application for the use of a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of an insurance or reinsurance undertaking with respect to a specific risk module, or parts of both, supervisory authorities may require the insurance and reinsurance undertakings concerned to submit a realistic transitional plan to extend the scope of the model.
   The transitional plan shall set out the manner in which insurance and reinsurance undertakings plan to extend the scope of the model to other sub-modules or business units, in order to ensure that the model covers a predominant part of their insurance operations with respect to that specific risk module.

Article 112

Implementing measures

The Commission shall adopt implementing measures setting out following:

(1) the procedure to be followed for the approval of an internal model;

(2) the adaptations to be made to the standards set out in Articles 118 to 123 in order to take account of the limited scope of the application of the partial internal model.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 113

Policy for changing the full and partial internal models

As part of the initial approval process of (...) an internal model, (...) the supervisory authorities shall approve the policy for changing the model of the insurance or reinsurance undertaking (...).

Insurance and reinsurance undertakings may change their internal model in accordance with that policy.

The policy shall include a specification of minor and major changes to the internal model.

Major changes to the internal model, as well as changes to the policy, shall always be subject to prior supervisory approval, as laid down in Article 110.

Minor changes to the internal model shall not be subject to prior supervisory approval, insofar as they are developed in accordance with the policy.

Article 114

Responsibilities of the administrative and management bodies

The administrative or management bodies of the insurance and reinsurance undertakings shall approve the application to the supervisory authorities for approval of the internal model referred to in Article 110, as well as the application for approval of any subsequent major changes made to that model.

The administrative or management body shall have responsibility for putting in place systems which ensure that the internal model operates properly on a continuous basis.

Article 115

Reversion to the standard formula

After having received approval in accordance with Article 110, insurance and reinsurance undertakings shall not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, except in duly justified circumstances and subject to the approval of the supervisory authorities.

Article 116

Non-compliance of the internal model

1. If, after having received approval from the supervisory authorities to use an internal model, insurance and reinsurance undertakings cease to comply with the requirements set out in Articles 118 to 123, they shall, without delay, either present to the supervisory authorities a plan to restore compliance within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.
2. In the event that insurance and reinsurance undertakings fail to implement the plan referred to in paragraph 1, the supervisory authorities may require insurance and reinsurance undertakings to revert to calculating the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2.

Article 117

Significant deviations from the assumptions underlying the (...) standard formula calculation

Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, as set out in Subsection 2, because the risk profile of the insurance and reinsurance undertakings concerned deviates significantly from the assumptions underlying the (…) standard formula calculation, the supervisory authorities may, by a decision stating the reasons, require the undertakings concerned to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules thereof.

Article 118

Use test

Insurance and reinsurance undertakings shall demonstrate that the internal model is widely used in and plays an important role in the following:

(1) their system of governance, referred to in Articles 41 – 49, in particular

(a) their risk-management system as laid down in Article 43 and their decision-making processes;

(b) their economic and solvency capital assessment and allocation processes, including the assessment referred to in Article 44.

In addition, insurance and reinsurance undertakings shall demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which they use their internal model for the other purposes covered by the first paragraph.

The administrative or management body shall be responsible for ensuring the on-going appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the insurance and reinsurance undertakings concerned.

Article 119

Statistical quality standards

1. The internal model, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the criteria set out in paragraphs 2 to 9.

2. The methods used to calculate the probability distribution forecast shall be based on adequate, applicable and relevant actuarial and statistical techniques and shall be consistent with the methods used to calculate technical provisions.

   The methods used to calculate the probability distribution forecast shall be based upon current and credible information and realistic assumptions.

   Insurance and reinsurance undertakings shall be able to justify the assumptions underlying their internal model to the supervisory authorities.

3. Data used for the internal model shall be accurate, complete and appropriate.

   Insurance and reinsurance undertakings shall update the data sets used in the calculation of the probability distribution forecast at least once a year.

4. No particular method for the calculation of the probability distribution forecast shall be prescribed.

Regardless of the method of calculation chosen, the ability of the internal model to rank risk shall be sufficient to ensure that it is widely used in and plays an important role in the system of governance of insurance and reinsurance undertakings, in particular their risk-management system and decision-making processes, and capital allocation in accordance with Article 118.

The internal model shall cover all of the material risks to which insurance and reinsurance undertakings are exposed. As a minimum, (...) internal models shall cover the risks set out in Article 101(4).

5. As regards diversification effects, insurance and reinsurance undertakings may take account in their internal model of dependencies within risk categories, as well as across risk categories, provided that supervisory authorities are satisfied that the system used for measuring those diversification effects is adequate.

6. Insurance and reinsurance undertakings may take full account of the effect of risk mitigation techniques in their internal model, as long as credit risk and other risks arising from the use of risk mitigation techniques are properly reflected in the internal model.

7. Insurance and reinsurance undertakings shall accurately assess the particular risks associated with financial guarantees and any contractual options in their internal model, where material. They shall also assess the risks associated with both policyholder options and contractual options for insurance and reinsurance undertakings. For this purpose, they shall take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

8. In their internal model, insurance and reinsurance undertakings may take account of future management actions that they would reasonably expect to carry out in specific circumstances.

In the case set out in the first subparagraph, the undertaking concerned shall make allowance for the time necessary to implement such actions.

9. In their internal model, insurance and reinsurance undertakings shall take account of all payments to policy holders and beneficiaries which they expect to make, whether or not these payments are contractually guaranteed.

Article 120

Calibration standards

1. Insurance and reinsurance undertakings may use a different time period or risk measure than that set out in Article 101(3) for internal modelling purposes as long as the outputs of the internal model can be used by those undertakings to calculate the Solvency Capital Requirement in a manner that provides policyholders and beneficiaries with a level of protection equivalent to that set out in Article 101.
2. Where practicable, insurance and reinsurance undertakings shall derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model of those undertakings, using the Value-at-Risk measure set out in Article 101(3).
3. Where insurance and reinsurance undertakings cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by the internal model, the supervisory authorities may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as those undertakings can demonstrate to the supervisory authorities that policyholders are provided with a level of protection equivalent to that set out in Article 101.
4. Supervisory authorities may require insurance and reinsurance undertakings to run their internal model on relevant benchmark portfolios and using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

Article 121

Profit and loss attribution

Insurance and reinsurance undertakings shall review, at least annually, the causes and sources of profits and losses for each major business unit.

They shall demonstrate how the categorisation of risk chosen in the internal model explains the causes and sources of profits and losses. The categorisation of risk and attribution of profits and losses shall reflect the risk profile of the insurance and reinsurance undertakings.

Article 122

Validation standards

Insurance and reinsurance undertakings shall have a regular cycle of model validation which includes monitoring the performance of the internal model, reviewing the on-going appropriateness of its specification, and testing its results against experience.

The model validation process shall include an effective statistical process for validating the internal model which enables the insurance and reinsurance undertakings to demonstrate to their supervisory authorities that the resulting capital requirements are appropriate.

The statistical methods applied shall not only test the appropriateness of the probability distribution forecast compared to loss experience, but also to all material new data and information relating thereto.

The model validation process shall include an analysis of the stability of the internal model and in particular the testing of the sensitivity of the results of the internal model to changes in key underlying assumptions. It shall also include an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

Article 123

Documentation standards

Insurance and reinsurance undertakings shall document the design and operational details of their internal model.

The documentation shall demonstrate compliance with Articles 118 to 122.

The documentation shall provide a detailed outline of the theory, assumptions, and mathematical and empirical basis underlying the internal model.

The documentation shall indicate any circumstances under which the internal model does not work effectively.

Insurance and reinsurance undertakings shall document all major changes to their internal model, as set out in Article 113.

Article 124

External models and data

The use of a model or data obtained from a third-party shall not be considered to be a justification for exemption from any of the requirements for the internal model set out in Articles 118 to 123.

Article 125

Implementing measures

The Commission shall, in order to ensure a harmonised approach to the use of internal models throughout the Community and to enhance the better assessment of the risk profile and management of the business of insurance and reinsurance undertakings, adopt implementing measures with respect to Articles 118 to 124.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

SECTION 5 - MINIMUM CAPITAL REQUIREMENT

Article 126

General provisions

Member States shall (…) require that insurance and reinsurance undertakings hold eligible basic own funds, to cover the Minimum Capital Requirement.

Article 127

Calculation of the Minimum Capital Requirement

1. The Minimum Capital Requirement shall be calculated in accordance with the following principles:

(a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;

(b) ***it*** shall correspond to an amount of eligible basic own funds below which policyholders and beneficiaries are exposed to an unacceptable level of risk if insurance and reinsurance undertakings were allowed to continue their operations;

(c) the linear function referred to in paragraph 2 used to calculate the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of an insurance or reinsurance undertaking subject to a confidence level of 85 (…)% over a one-year period;

(d) it shall have an absolute floor of (...):

(i) 2.200.000 EUR for non-life insurance undertakings, including captive insurance undertakings, except in the case where all or some of the risks included in one of the classes 10 to 15 listed in point A of Annex 1 are covered, in which case it shall not be less than 3.200.000 EUR,

(ii) 3.200.000 EUR for life insurance undertakings, including captive insurance undertakings,

(iii) 3.200.000 EUR for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall not be less than a minimum of 1.000.000 EUR,

(iv) the sum of the amounts set out in points (i) and (ii) for insurance undertakings as referred to in Article 72(5).

2. Subject to paragraph 3 the Minimum Capital Requirement shall be calculated as a linear function of a set or sub-set of the following variables: the undertaking's technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses. The variables used shall be measured net of reinsurance.

3. Without prejudice to point (d) of paragraph 1, the Minimum Capital Requirement shall not fall below 25% nor exceed 45%, of the undertaking's Solvency Capital Requirement, calculated in accordance with Chapter VI, Section 4, Sub-sections 2 or 3, and including any capital add-on imposed in accordance with Article 37.

Member States shall allow their supervisory authorities, for a period not exceeding two years after the date referred to in Article 310(1), to require an insurance or reinsurance undertaking to apply the percentages referred to in the previous subparagraph exclusively to the undertaking's Solvency Capital Requirement calculated in accordance with Chapter VI, Section 4, Sub-section 2.

4. Insurance and reinsurance undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the results of that calculation to supervisory authorities.
If either of the limits referred to in paragraph 3 determines an undertaking's Minimum Capital Requirement, the undertaking shall provide to the supervisory authority information allowing a proper understanding of the reasons for this.

5. The Commission shall submit to the European Parliament and the European Insurance and Occupational Pensions Committee, at the latest five years after the date referred to in Article 310(1), a report on Member States' rules and supervisory authorities' practices adopted pursuant to paragraphs 1 to 4.

That report shall address, in particular, the use and level of the cap and the floor set out in paragraph 3 as well as any problems faced by supervisory authorities and by undertakings in the application of this Article.

Article 128

Implementing measures

The Commission shall adopt implementing measures specifying the calculation of the Minimum Capital Requirement, referred to in Articles 126 and 127.

Those measures designed to amend non-essential elements of this Directive, by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

Article 129

Transitional arrangements regarding compliance with the Minimum Capital Requirement

By way of derogation from Articles 137 and 142, where insurance and reinsurance undertakings comply with the Required Solvency Margin referred to in Article 28 of Directive 2002/83/EC, Article 16 a of Directive 73/239/EC or Articles 37, 38 or 39 of Directive 2005/68/EC respectively on the date set out in Article 310(1) but do not hold sufficient eligible basic own funds to cover the Minimum Capital Requirement, the undertakings concerned shall comply with Article 126 within one year from the date as set out in Article 310(1).

If the undertaking concerned fails to comply with Article 126 within the period set out in the first paragraph, the authorisation of the undertaking shall be withdrawn, subject to the applicable processes provided for in the national legislation.

SECTION 6 - INVESTMENTS

Article 130

"Prudent person" principle

1. Member States shall ensure that insurance and reinsurance undertakings invest all their assets in accordance with the "prudent person" principle, as specified in paragraphs 2,3 and 4.

2. With respect to the whole portfolio of assets, insurance and reinsurance undertakings shall only invest in assets and instruments whose risks the undertaking concerned can properly identify, measure, monitor, manage (..) control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with Article 44(1)(a).

All assets, in particular those covering the Minimum Capital Requirement and the Solvency Capital Requirement, shall be invested in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole. In addition the localisation of those assets shall be such as to ensure their availability.

Assets held to cover the technical provisions shall also be invested in a manner appropriate to the nature and duration of the insurance and reinsurance liabilities. Those assets shall be invested in the best interest of all policyholders and beneficiaries taking into account any disclosed policy objective.

In the case of a conflict of interest, insurance undertakings, or the entity which manages their asset portfolio, shall ensure that the investment is made in the best interest of policyholders and beneficiaries.

3. Without prejudice to paragraph 2, with respect to assets held in respect of life insurance contracts where the investment risk is borne by the policyholders, the second, third and fourth subparagraphs of this paragraph shall apply.

Where the benefits provided by a contract are directly linked to the value of units in an UCITS as defined in Directive 85/611/EEC, or to the value of assets contained in an internal fund held by the insurance undertakings, usually divided into units, the technical provisions in respect of those benefits must be represented as closely as possible by those units or, in the case where units are not established, by those assets.

Where the benefits provided by a contract are directly linked to a share index or some other reference value other than those referred to in second subparagraph, the technical provisions in respect of those benefits must be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based.

Where the benefits referred to in second and third subparagraphs include a guarantee of investment performance or some other guaranteed benefit, the assets held to cover the corresponding additional technical provisions shall be subject to paragraph 4.

4. Without prejudice to paragraph 2, with respect to other assets than those covered by paragraph 3, the second to fifth subparagraphs of this paragraph shall apply.

The use of derivative instruments shall be possible insofar as they contribute to a reduction of risks or facilitate efficient portfolio management.

Investment and assets which are not admitted to trading on a regulated financial market shall be kept to prudent levels.

Assets shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area and excessive accumulation of risk in the portfolio as a whole.

Investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not expose the insurance undertakings to excessive risk concentration.

Article 131

Freedom of investment

1. Member States shall not require insurance and reinsurance undertakings to invest in particular categories of assets.

2. Member States shall not subject the investment decisions of an insurance or reinsurance undertaking or its investment manager to any kind or prior approval or systemic notification requirements.

3. This Article is without prejudice to Member State requirements restricting the types of assets or reference values to which policy benefits may be linked. Any such rules shall only be applied in the case where the investment risk is borne by a policyholder who is a natural person and shall not be more restrictive than those set out in the Directive 85/611/EEC (UCITS).

Article 132

Localisation of assets and prohibition of pledging of assets

1. With respect to insurance risks situated in the Community, Member States shall *not require* that the assets held to cover the technical provisions related to those risks are localised within the Community *or* in any particular Member States.

(…) With respect to recoverables from reinsurance contracts against undertakings authorized in accordance with this Directive or having their head office in a third country whose solvency regime is deemed to be equivalent in accordance with Article 170, Member States shall also not require the localization within the Community of the assets representing those recoverables.

2. Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions if the reinsurer (…) is an insurance or reinsurance undertaking authorised in accordance with this Directive.

Article 133

Implementing measures

1. In order to ensure the uniform application of this Directive, the Commission may adopt implementing measures specifying qualitative requirements in the following areas: (…):

(a) the identification, measurement, monitoring, managing and reporting (…) of risks arising from investments in relation to the first subparagraph of Article 130(2);

(b) the identification, measurement monitoring, managing and reporting (…)of specific risks arising from investment in derivative instruments and assets referred to in the second subparagraph of Article 130(4);

2. In order to ensure cross-sectoral consistency and to remove misalignment between the interest of firms that 'repackage' loans into tradeable securities and other financial instruments (originators) and insurance or reinsurance undertakings that invest in these securities or instruments, the Commission shall adopt implementing measures laying down requirements in the following areas:
(a) the requirements that need to be met by the originator in order for an insurance or reinsurance undertaking to be allowed to invest in securities or instruments of this type issued after 1 January 2011, including requirements that ensure that the originator retains a net economic interest of not less than 5 per cent;
(b) qualitative requirements that must be met by insurance or reinsurance undertakings who invest in these securities or instruments.

3. Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

CHAPTER VII - INSURANCE AND REINSURANCE UNDERTAKINGS IN DIFFICULTY OR IN AN IRREGULAR SITUATION

Article 134

Identification and notification of deteriorating financial conditions by the insurance and reinsurance undertaking

Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and immediately notify the supervisory authorities when such deterioration occurs.

Article 135

Non-Compliance with technical provisions

If an insurance or reinsurance undertaking does not comply with Chapter VI, Section 2, the supervisory authorities of its home Member State may prohibit the free disposal of its assets after having communicated their intentions to the supervisory authorities of the host Member States. The supervisory authorities of the home Member State shall designate the assets to be covered by such measures.

Article 136

Non-Compliance with the Solvency Capital Requirement

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

2. Within two months from the observation of the non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the supervisory authority.

3. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of the non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

The supervisory authority may, if appropriate, extend that period by three months.

3a. In the event of an exceptional fall in financial markets, the supervisory authority may extend the period set out in the second sub-paragraph of paragraph 3 by an appropriate period of time taking into account all relevant factors.

The insurance or reinsurance undertaking concerned shall submit every 3 months a progress report to its supervisory authority setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement.

The extension referred to in subparagraph 1 shall be withdrawn, if that progress report shows, that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of the non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

4. In exceptional circumstances, if the supervisory authority is of the opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. That supervisory authority shall inform the supervisory authorities of the host Member States of any measures it has taken. Those authorities shall, at the request of the supervisory authority of the home Member State, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.

Article 137

Non-Compliance with the Minimum Capital Requirement

1. Insurance and reinsurance undertakings shall immediately inform the supervisory authority as soon as they observe that the Minimum Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the coming three months.
2. Within one month from the observation of the non-compliance with the Minimum Capital Requirement 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 from 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. The supervisory authority of the home Member State may also restrict or prohibit the free disposal of the assets of the insurance or reinsurance undertaking. It shall inform the supervisory authorities of the host Member States accordingly. Those authorities shall, at the request of the supervisory authority of the home Member State, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.

Article 138

Prohibition of free disposal of assets located within the territory of a Member State

Member States shall take the measures necessary to be able, in accordance with national law, to prohibit the free disposal of assets located within their territory at the request, in the cases provided for in Articles 135, 136, 137(…) and 142 (2) (…) of the undertaking's home Member State, which shall designate the assets to be covered by such measures.

Article 139

Supervisory powers in deteriorating financial conditions

Notwithstanding Articles 136 and 137 if the solvency position of the undertaking continues to deteriorate, the supervisory authorities shall have the power to take all measures necessary to safeguard the interests of policyholders in the case of insurance contracts, or the obligations arising out of reinsurance contracts.

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

Article 140

Recovery plan and finance scheme

1. The recovery plan referred to in Article 136(2) and the finance scheme referred to in Article 137(2) shall, at least include particulars or evidence concerning the following:
   (a) estimates of management expenses, in particular current general expenses and commissions;
   (b) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
   (c) a forecast balance sheet;
   (d) estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement
   (e) the overall reinsurance policy

(…)

3. If the supervisory authorities have required a recovery plan referred to in Article 136(2) or a finance scheme referred to in Article 137(2) in accordance with paragraph 1, they shall refrain from issuing a certificate in accordance with Article 39 for as long as they consider that the rights of the policyholders, or the contractual obligations of the reinsurance undertaking are threatened.

Article 141

Implementing measures

The Commission shall adopt implementing measures specifying the factors to be taken into account in accordance with Article 136 (3a) including the maximum appropriate period of time, expressed in total number of months, which shall be the same for all insurance and reinsurance undertakings as referred to in the first sub-paragraph of Article 136 (3a).

Where it is necessary to enhance convergence the Commission may adopt implementing measures laying down further specifications with respect to the recovery plan referred to in Article 136(2) and the finance scheme referred to in Article 137(2) and Article 139 taking due care to avoid pro-cyclical effects.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

Article 142

Withdrawal of authorisation

1. The supervisory authority of the home Member State may withdraw an authorisation granted to an insurance or reinsurance undertaking in the following cases:
   (a) the undertaking concerned does not make use of the authorisation within 12 months, expressly renounces it or ceases to carry on business for more than six months, unless the Member State concerned has made provision for authorisation to lapse in such cases;
   (b) the undertaking concerned no longer fulfils the conditions for authorisation ;
   (…)
   (c) the undertaking concerned fails seriously in its obligations under the regulations to which it is subject.

The supervisory authority of the home Member State shall withdraw an authorisation granted to an insurance or reinsurance undertaking in the case when the undertaking does not comply with the Minimum Capital Requirement and the supervisory authority considers that the finance scheme submitted is manifestly inadequate or, the undertaking concerned fails to comply with the approved scheme within three months from the observation of the non-compliance with the Minimum Capital Requirement.

2. In the event of the withdrawal or lapse of authorisation, the supervisory authority of the home Member State shall notify the supervisory authorities of the other Member States accordingly, and those authorities shall take appropriate measures to prevent the insurance or reinsurance undertaking from commencing new operations within their territories.

The supervisory authority of the home Member State shall, together with those authorities, take all measures necessary to safeguard the interests of insured persons and, in particular, shall restrict the free disposal of the assets of the insurance undertaking in accordance with Article 138.

3. Any decision to withdraw authorisation shall contain detailed reasons and be communicated to the insurance or reinsurance undertaking concerned.

CHAPTER VIII - RIGHT OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES

SECTION 1 - ESTABLISHMENT BY INSURANCE UNDERTAKINGS

Article 143

Conditions for branch establishment

1. Member States shall ensure that an insurance undertaking which proposes to establish a branch within the territory of another Member State notifies the supervisory authorities of its home Member State.

   Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as a branch, even if that presence does not take the form of a branch, but consists merely of an office managed by the own staff of the undertaking or by a person who is independent but has permanent authority to act for the undertaking as an agency would.

2. Member States shall require every insurance undertaking that proposes to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

   a) the Member State within the territory of which it proposes to establish a branch;

   (b) a scheme of operations setting out, at least, the types of business envisaged and the structural organisation of the branch;

(c) the name of person who possesses sufficient powers to bind, in relation to third parties, the insurance undertaking or, in the case of Lloyd's, the underwriters concerned and to represent it or them in relations with the authorities and courts of the host Member State (hereinafter "authorised agent");

(d) the address in the host Member State from which documents may be obtained and to which they may be delivered, including all communications to the authorised agent;

with regard to Lloyd's, in the event of any litigation in the host Member State arising out of underwritten commitments, the insured persons must not be treated less favourably than if the litigation had been brought against businesses of a conventional type.

3. Where a non-life insurance undertaking intends its branch to cover risks in class 10 in point A of Annex I, not including carrier's liability, it must produce a declaration that it has become a member of the national bureau and the national guarantee fund of the host Member State

4. In the event of a change in any of the particulars communicated under points (b), (c) or (d) of paragraph 2 an insurance undertaking shall give written notice of the change to the supervisory authorities of the home Member State and of the Member State where that branch is situated at least one month before making the change so that the supervisory authorities of the home Member State and the supervisory authorities of the Member State where that branch is situated may fulfil their respective roles under Article 144 (1), (2) and subparagraph 1 of paragraph (3).

Article 144

Communication of information

1. Unless the supervisory authorities of the home Member State have reason to doubt the adequacy of the governance system or the financial situation of the insurance undertaking or the fit and proper requirements according to Article 42 of the authorised agent, taking into account the business planned, they shall, within three months of receiving all the information referred to in Article 143(2), communicate that information to the supervisory authorities of the host Member State and shall inform the insurance undertaking concerned thereof.

The supervisory authorities of the home Member State shall also attest that the insurance undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement calculated in accordance with Articles 100 and 127.

2. Where the supervisory authorities of the home Member State refuse to communicate the information referred to in Article 143(2) to the supervisory authorities of the host Member State they shall give reasons for their refusal to the insurance undertaking concerned within three months of receiving all the information in question.

That refusal or failure to act may be subject to a right to apply to the courts in the home Member State.

3. Before the branch of an insurance undertaking starts business, the supervisory authorities of the host Member State shall, where applicable, within two months of receiving the information referred to in paragraph 1, inform the supervisory authority of the home Member State~~,~~ of the conditions under which, in the interest of the general good, that business must be carried on in the host Member State. The supervisory authority of the home Member State shall communicate this information to the insurance undertaking concerned.

SECTION 2 - FREEDOM TO PROVIDE SERVICES: BY INSURANCE UNDERTAKINGS

SUBSECTION 1 - GENERAL PROVISIONS

Article 145

Prior notification to the home Member State

Any insurance undertaking that intends to carry on business for the first time in one or more Member States under the freedom to provide services shall first notify the supervisory authorities of the home Member State, indicating the nature of the risks or commitments it proposes to cover.

Article 146

Notification by the home Member State

1. Within one month of the notification provided for in Article 145, the supervisory authorities of the home Member State shall communicate the following to the Member State or States within the territories of which an insurance undertaking intends to carry on business under the freedom to provide services:

   (a) a certificate attesting that the insurance undertaking covers the Solvency Capital Requirement and Minimum Capital Requirement calculated in accordance with Articles 100 and 127;

   (b) the classes of insurance which the insurance undertaking has been authorised to offer;

   (c) the nature of the risks or commitments which the insurance undertaking proposes to cover in the host Member State.

   At the same time, the supervisory authorities of the home Member State shall inform the insurance undertaking concerned of that communication.

2. Member States within the territory of which a non-life insurance undertaking intends, under the freedom to provide services, to cover risks in class 10 in point A of Annex I other than carrier's liability may require that insurance undertaking to submit the following:

   (a) the name and address of the representative referred to in point (h) of Article 18(1),

   (b) a declaration that it has become a member of the national bureau and national guarantee fund of the host Member State.

3. Where the supervisory authorities of the home Member State do not communicate the information referred to in paragraph 1 within the period laid down therein, they shall give the reasons for their refusal to the insurance undertaking within that same period.
   That refusal or failure to act shall be subject to a right to apply to the courts in the home Member State.

4. The insurance undertaking may start business as from the date on which it is informed of the communication provided for in the first subparagraph of paragraph 1.

Article 147

Changes in the nature of the risks or commitments

Any change which an insurance undertaking intends to make to the information referred to in Article 145 shall be subject to the procedure provided for in Articles 145 and 146.

SUBSECTION 2 - THIRD PARTY MOTOR VEHICLE LIABILITY

Article 148

Compulsory insurance on third party motor vehicle liability

1. Where non-life insurance undertaking, through an establishment situated in one Member State, covers a risk, other than carrier's liability, classified under class 10 in point A of Annex I which is situated in another Member State, the host Member State shall require that undertaking to become a member of and participate in the financing of its national bureau and its national guarantee fund.

2. The financial contribution referred to in paragraph 1 shall only be made in relation to risks, other than carrier's liability, in class 10 point A of Annex I covered by way of provision of services. That contribution shall be calculated on the same basis as for non-life insurance undertakings covering those risks, through an establishment situated in that Member State.

   The calculation shall be made by reference to the insurance undertakings' premium income from that class in the host Member State or the number of risks in that class covered there.

3. The host Member State may require an insurance undertaking providing services to comply with the rules in that Member State concerning the cover of aggravated risks, insofar as they apply to non-life insurance undertakings established in that State.

Article 149

Non-discrimination of persons pursuing claims

The host Member State shall require the non-life insurance undertaking to ensure that persons pursuing claims arising out of events occurring in its territory are not placed in a less favourable situation as a result of the fact that the undertaking is covering a risk, other than carrier's liability, in class 10 in point A of Annex I by way of provision of services rather than through an establishment (…) situated in that State.

Article 150

Representative

1. For the purposes referred to in Article 149, the host Member State shall require the non-life insurance undertaking to appoint a representative resident or established in its territory who shall collect all necessary information in relation to claims, and shall possess sufficient powers to represent the undertaking in relation to persons suffering damage who could pursue claims, including the payment of such claims, and to represent it or, where necessary, to have it represented before the courts and authorities of that Member State in relation to these claims.

   The representative may also be required to represent the non-life insurance undertaking before the supervisory authorities of the host Member State with regard to checking the existence and validity of motor vehicle liability insurance policies.

2. The host Member State may not require that representative to undertake activities on behalf of the non-life insurance undertaking which appointed him other than those set out in paragraph 1.

3. The appointment of the representative shall not in itself constitute the opening of a branch for the purpose of Article 143.

4. If the insurance undertaking has failed to appoint a representative, (…) Member States may give their approval to (…) the claims representative appointed (…) in accordance with Article 4 of Directive 2000/26/EC of the European Parliament and of the Council to assume the function of the representative referred to in paragraph 1 of this Article.

SECTION 3 - COMPETENCIES OF THE SUPERVISORY AUTHORITIES OF THE HOST MEMBER STATE

SUBSECTION 1 - INSURANCE

Article 151

Language

The supervisory authorities of the host Member State may require the information which they are authorised to request with regard to the business of insurance undertakings operating in the territory of that Member State to be supplied to them in the official language or languages of that State.

Article 152

Prior notification and prior approval

1 The host Member State shall not adopt provisions requiring the prior approval or systematic notification of general and special policy conditions, scales of premiums, or, in the case of life insurance, the technical bases used in particular for calculating scales of premiums and technical provisions, or the forms and other documents which an insurance undertaking intends to use in its dealings with policyholders.

2. The host Member State may only require an insurance undertaking that proposes to carry on insurance business within its territory to effect non-systematic notification of policy conditions and other documents for the purpose of verifying compliance with its national provisions concerning insurance contracts, and that requirement may not constitute a prior condition for an insurance undertaking to carry on its business.

3. The host Member State may not retain or introduce prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Article 153

Insurance undertakings not complying with the legal provisions

1. If the supervisory authorities of a host Member State establish that an insurance undertaking with a branch or carrying on business under the freedom to provide services in its territory is not complying with the legal provisions applicable to it in that Member State, they shall require the insurance undertaking concerned to remedy that irregular situation.

2. If the insurance undertaking concerned fails to take the necessary action, the supervisory authorities of the Member State concerned shall inform the supervisory authorities of the home Member State accordingly.

   The supervisory authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the insurance undertaking concerned remedies that irregular situation.

   The supervisory authorities of the home Member State shall inform the supervisory authorities of the host Member State of the measures taken.

3. If, despite the measures taken by the home Member State or because those measures prove inadequate or are lacking in that State, the insurance undertaking persists in violating the legal provisions in force in the host Member State or because those measures prove inadequate, the supervisory authorities of the host Member State may, after informing the supervisory authorities of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, in so far as is strictly necessary, preventing that undertaking from continuing to conclude new insurance contracts within territory of the host Member State.
   Member States shall ensure that in their territories it is possible to serve the legal documents necessary for such measures on insurance undertakings.

4. Paragraphs 1, 2 and 3 shall not affect the power of the Member States concerned to take appropriate emergency measures to prevent or penalise irregularities within their territories. That power shall include the possibility of preventing insurance undertakings from continuing to conclude new insurance contracts within their territories.

5. Paragraphs 1, 2 and 3 shall not affect the power of the Member States to penalise infringements within their territories.

6. If an insurance undertaking which has committed an infringement has an establishment (…) or possesses property in the Member State concerned, the supervisory authorities of that Member State may, in accordance with national law, apply the national administrative penalties prescribed for that infringement by way of enforcement against that establishment (…) or property.

7. Any measure adopted under paragraphs 2 to 6 involving or restrictions on the conduct of insurance business must be properly reasoned and communicated to the insurance undertaking concerned.

8. Insurance undertakings shall submit to the supervisory authorities of the host Member State at their request all documents requested of them for the purposes of paragraphs 1 to 7 to the extent that insurance undertakings the head office of which is in that Member State~~s~~ are also obliged to do so.

9. Member States shall inform the Commission of the number and types of cases which led to refusals under Articles 144 and 146 in which measures have been taken under paragraph 4.

On the basis of that information the Commission shall inform the European Insurance and Occupational Pensions Committee every two years.

Article 154

Advertising

Insurance undertakings with head offices in Member States may advertise their services, through all available means of communication, in the host Member State subject to the rules governing the form and content of such advertising adopted in the interest of the general good.

Article 155

Taxes on premiums

1. Without prejudice to any subsequent harmonisation, every insurance contract shall be subject exclusively to the indirect taxes and parafiscal charges on insurance premiums in the Member State in which the risk is situated or the commitment is covered.
   For the purposes of the first subparagraph, moveable property contained in a building situated within the territory of a Member State, except for goods in commercial transit, shall be considered as a risk situated in that Member State, even if the building and its contents are not covered by the same insurance policy.
   In the case of Spain, an insurance contract shall also be subject to the surcharges legally established in favour of the Spanish «Consorcio de Compensación de Seguros» for the performance of its functions relating to the compensation of losses arising from extraordinary events occurring in that Member State.
2. The law applicable to the contract under Article 176 and Regulation No. 593/2008/EG (ROME I) shall not affect the fiscal arrangements applicable.
3. Each Member State shall apply its own national provisions to those insurance undertakings which cover risks or commitments situated within its territory for measures to ensure the collection of indirect taxes and parafiscal charges due under paragraph 1.

SUBSECTION 2 - REINSURANCE

Article 156

Reinsurance undertakings not complying with the legal provisions

1. If the supervisory authorities of a Member State establish that a reinsurance undertaking with a branch or carrying on business under the freedom to provide services within its territory is not complying with the legal provisions applicable to it in that Member State, they shall require the reinsurance undertaking concerned to remedy that irregular situation. At the same time, they shall refer those findings to the supervisory authority of the home Member State.
2. If, despite the measures taken by the home Member State, the reinsurance undertaking persists in violating the legal provisions applicable to it in the host Member State or because such measures prove inadequate, the supervisory authorities of the host Member State may, after informing the supervisory authority of the home Member State, take appropriate measures to prevent or penalise further irregularities, including, insofar as is strictly necessary, preventing that reinsurance undertaking from continuing to conclude new reinsurance contracts within the territory of the host Member State.
   Member States shall ensure that within their territories it is possible to serve the legal documents necessary for such measures on reinsurance undertakings.
3. Any measure adopted under paragraphs 1 and 2 involving sanctions or restrictions on the conduct of reinsurance business shall be properly reasoned and communicated to the reinsurance undertaking concerned.

SECTION 4 - STATISTICAL INFORMATION

Article 157

Statistical information on cross-border activities

Every insurance undertaking shall inform the competent supervisory authority of its home Member State, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commissions, without deduction of reinsurance, by Member State and as follows:

(a) for non-life insurance by group of classes as set out in point B of Annex I;

(b) for life insurance by each of classes I to IX, as set out in Annex II.

As regards class 10 in point A of Annex I not including carrier's liability, the undertaking concerned shall also inform that supervisory authority of the frequency and average cost of claims.
The supervisory authority of the home Member State shall forward the information referred to in the first and second subparagraphs within a reasonable time and in aggregate form to the supervisory authorities of each of the Member States concerned upon their request.

SECTION 5 - TREATMENT OF CONTRACTS OF BRANCHES IN WINDING-UP PROCEEDINGS

Article 158

Winding-up of insurance undertakings

Where an insurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other insurance contract of that undertaking, without distinction as to nationality as far as the persons insured and the beneficiaries are concerned.

Article 159

Winding-up of reinsurance undertakings

Where a reinsurance undertaking is wound up, commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of the other reinsurance contracts of that undertaking.

CHAPTER IX

BRANCHES ESTABLISHED WITHIN THE COMMUNITY AND BELONGING TO INSURANCE OR REINSURANCE UNDERTAKINGS WHOSE HEAD OFFICES ARE OUTSIDE THE COMMUNITY

SECTION 1 – TAKING UP OF BUSINESS

Article 160

Principle of authorisation and conditions

1. Member States shall make access to the business referred to in the first subparagraph of Article 2(1) by any undertaking whose head office is outside the Community subject to an official authorisation.

2. A Member State may grant an authorisation if the undertaking fulfils at least the following conditions:

   (a) it is entitled to carry on insurance business under its national law;

   (b) it establishes a branch in the territory of such Member State;

   (c) it undertakes to set up at the place of management of the branch accounts specific to the business which it carries on there, and to keep there all the records relating to the business transacted;

   (d) it designates a general representative, to be approved by the supervisory authorities;

   (e) it possesses in the Member State where it carries on its business assets of an amount equal to at least one half of the absolute floor prescribed in point (d) of Article 127(1) in respect of the Minimum Capital Requirement and deposits one fourth of that absolute floor as security;

(f) it undertakes to cover the Solvency Capital Requirement and the Minimum Capital Requirement accordance with the requirements referred to in Articles 100 and 126;

(g) it communicates the name and address of the claims representative appointed in each Member State other than the Member State in which the authorisation is sought if the risks to be covered are classified in class 10 of point A in Annex I, other than carrier's liability.

(h) it submits a scheme of operations in accordance with the provisions in Article 161;

(i) it fulfils the governance requirements laid down in Chapter IV, Section 2 .

3. For the purposes of this Chapter *"branch"* means any permanent presence in the territory of a Member State of an (…) undertaking referred to in paragraph 1, which receives authorisation in that Member State and which carries out insurance business.

Article 161

Scheme of operations of the branch

1. The scheme of operations of the branch referred to in point (h) of Article 160(2) shall contain the following:

(a) the nature of the risks or commitments which the undertaking proposes to cover;

(b) the guiding principles as to reinsurance;

(c) estimates of the future Solvency Capital Requirement, as laid down in Chapter VI, Section 4, on the basis of a forecast balance sheet, as well as the method of calculation used to derive those estimates;

(d) estimates of the future Minimum Capital Requirement, as laid down in Chapter VI, Section 5 , on the basis of a forecast balance sheet, as well as the method of calculation used to derive those estimates;

(e) the state of the eligible own funds and eligible basic own funds of the undertaking with respect to the Solvency Capital Requirement and Minimum Capital Requirement as referred to in Chapter VI, Sections 4 and 5;

(f) estimates of the cost of setting up the administrative services and the organisation for securing business, the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 in point A of Annex I, the resources available for the provision of the assistance;

(g) information on the structure of the governance system.

2. In addition to the requirements set out in paragraph 1, the scheme of operations shall include the following , for the first three financial years:

(a) a forecast balance sheet;

(b) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement and the Solvency Capital Requirement,

(c) for non-life insurance also the following:

(i) estimates of management expenses other than installation costs, in particular current general expenses and commissions;

(ii) estimates of premiums or contributions and claims;

(d) for life insurance, also a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions.

3. As far as life insurance is concerned, Member States may require (…) insurance undertakings to submit systematic notification of the technical bases used for calculating scales of premiums and technical provisions, without that requirement constituting a prior condition for a life insurance (…) undertaking to carry on its business.

Article 162

Transfer of portfolio

1. Under the conditions laid down by national law, Member States shall authorise branches set up within their territory and covered by this Chapter to transfer all or part of their portfolios of contracts to an accepting undertaking established in the same Member State if the supervisory authorities of that Member State or, where appropriate, of the Member State referred to in Article 165 (…), certify that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in the first subparagraph of Article 100.

2. Under the conditions laid down by national law, Member States shall authorise branches set up within their territory and covered by this Chapter to transfer all or part of their portfolios of contracts to an insurance undertaking with a head office in another Member State if the supervisory authorities of that Member State certify that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in the first subparagraph of Article 100.

3. If under the conditions laid down by national law a Member State authorises branches set up within its territory and covered by this Chapter to transfer all or part of their portfolios of contracts to an branch covered by this Chapter and set up within the territory of another Member State, it shall ensure that the supervisory authorities of the Member State of the accepting undertaking or, if appropriate, of the Member State referred to in Article 165 certify the following:

   (a) that after taking the transfer into account the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement ;
   (b) that the law of the Member State of the accepting undertaking permits such a transfer;
   (c) that that Member State has agreed to the transfer.

4. In the circumstances referred to in paragraphs 1, 2 and 3, the Member State in which the transferring branch is situated shall authorise the transfer after obtaining the agreement of the supervisory authorities of the Member State in which the risks are situated, or the Member State of the commitment, where different from the Member State in which the transferring branch is situated.

5. The supervisory authorities of the Member States consulted shall give their opinion or consent to the supervisory authorities of the home Member State of the transferring insurance undertaking within three months of receiving a request. The absence of any response from the authorities consulted within that period shall be considered equivalent to a favourable opinion or tacit consent.

6. A transfer authorised in accordance with paragraphs 1 to 5 shall be published as laid down by national law in the Member State in which the risk is situated or the Member State of the commitment.

Such transfers shall automatically be valid against policyholders, insured persons and any other persons having rights or obligations arising out of the contracts transferred.

Article 163

Technical provisions

Member States shall require undertakings to establish adequate technical provisions to cover the insurance and reinsurance obligations assumed in their territories calculated in accordance with Chapter VI, Section 2. Member States shall require undertakings to value assets and liabilities in accordance with Chapter VI, Section 1 and determine own funds in accordance with Chapter VI, Section 3.

Article 164

Solvency Capital Requirement and Minimum Capital Requirement

1. Each Member State shall require for branches which are set up in its territory an amount of eligible own funds consisting of the items referred to in Article 98(4).
The Solvency Capital Requirement and the Minimum Capital Requirement shall be calculated in accordance with the provisions of Chapter VI, Sections 4 and 5.

However, for the purpose of calculating the Solvency Capital Requirement and the Minimum Capital Requirement, account shall be taken of the following:

(a) for non-life insurance, only of the operations carried on by the branch concerned;

(b) for life insurance, only of the operations effected by the branch concerned.

2. The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement shall be constituted in accordance with Article 98(5).

3. The eligible amount of basic own funds may not be less than one-half of the absolute floor required under point (d) of Article 127(1).

The deposit lodged in accordance with point (e) of Article 160(2) shall be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

4. The assets representing the Solvency Capital Requirement must be kept within the Member State where the activities are carried on up to the amount of the Minimum Capital Requirement and the excess within the Community.

Article 165

Advantages to undertakings authorised in more than one Member State

1. Any undertaking which has requested or obtained authorisation from more than one Member State may apply for the following advantages which may be granted only jointly:

(a) the Solvency Capital Requirement referred to in Article164 shall be calculated in relation to the entire business which it carries on within the Community;

(b) the deposit required under point (e) of Article 160(2) shall be lodged in only one of those Member States;

(c) the assets representing the Minimum Capital Requirement shall be localised, in accordance with Article 132, in any one of the Member States in which it carries on its activities.

In the cases referred to in point (a) of the first subparagraph, account shall be taken only of the operations effected by all the branches established within the Community for the purposes of this calculation.

2. Application to benefit from the advantages provided for in paragraph 1 shall be made to the supervisory authorities of the Member States concerned. The application shall state the authority of the Member State which in future is to supervise the solvency of the entire business of the branches established within the Community. Reasons must be given for the choice of authority made by the undertaking.

The deposit referred to in point (e) of Article 160(2) shall be lodged with that Member State.

3. The advantages provided for in paragraph 1 may only be granted if the supervisory authorities of all Member States in which an application has been made agree to them. They shall take effect from the time when the selected supervisory authority informs the other supervisory authorities that it will supervise the state of solvency of the entire business of the branches within the Community.

The supervisory authority selected shall obtain from the other Member States the information necessary for the supervision of the overall solvency of the branches established in their territory.

4. At the request of one or more of the Member States concerned, the advantages granted under paragraphs 1, 2 and 3 shall be withdrawn simultaneously by all Member States concerned.

Article 166

Accounting, prudential and statistical information and undertakings in difficulty

For the purposes of this Section Articles 33, 34, 137(3), 138 and 139 shall apply.
As regards the application of Articles 135, 136 and 137, where an undertaking qualifies for the advantages provided for in Article 165(1), (2) and (3), the supervisory authority responsible for verifying the solvency of branches established within the Community with respect to their entire business shall be treated in the same way as the supervisory authority of the Member State in the territory of which the head office of a Community undertaking is situated.

Article 167

Separation of non-life and life business

1. Branches referred to in this Section may not simultaneously carry on life and non-life insurance activities in the same Member State.
2. By way of derogation from paragraph 1 Member States may provide that branches referred to in this Section which, on the relevant date referred to in the first subparagraph of Article 72(5), carried on both activities simultaneously in a Member State may continue to do so there provided that each activity is separately managed in accordance with Article 73.
3. Any Member State which under the second subparagraph of Article 72(5) requires undertakings established in its territory to cease the simultaneous pursuit of the activities in which they were engaged on the relevant date referred to in the first subparagraph of Article 72(5) must also impose this requirement on branches referred to in this Section which are established in its territory and simultaneously carry on both activities there. Member States may provide that branches referred to in this Section whose head office simultaneously carries on both activities and which on the dates referred to in the first subparagraph of Article 72(5) carried on in the territory of a Member State solely life insurance activity may continue their activity there. If the undertaking wishes to carry on non-life insurance activity in that territory it may only carry on life insurance activity through a subsidiary.

Article 168

Withdrawal of authorisation for undertakings authorised in more than one Member State

In the case of a withdrawal of authorisation by the authority referred to in Article 165(2) that authority shall notify the supervisory authorities of the other Member States where the undertaking operates and those authorities shall take the appropriate measures.

If the reason for that withdrawal is the inadequacy of the overall state of solvency as fixed by the Member States which agreed to the request referred to in Article 165, the Member States which gave their approval shall also withdraw their authorisations.

Article 169

Agreements with third countries

The Community may, by means of agreements concluded pursuant to the Treaty with one or more third countries, agree to the application of provisions different to those provided for in this Section, for the purpose of ensuring, under conditions of reciprocity, adequate protection for policyholders and insured persons in the Member States.

SECTION 2 – REINSURANCE

Article 170

Equivalence

1. The Commission shall adopt implementing measures specifying the criteria to assess whether the solvency regime of a third-country applied to re-insurance activities of undertakings with their head office in that third-country is equivalent to that laid down in Title I.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

1a. The Commission may, in accordance with the regulatory procedure referred to in Article 304(2) and taking into account the criteria adopted in accordance with paragraph 1, adopt decisions whether the solvency regime of a third-country applied to reinsurance activities of undertakings with their head office in that third-country is equivalent to that laid down in Title I.

Those decisions shall be regularly reviewed.

2. Where in accordance with paragraph 1**a** the solvency regime of a third country has been deemed to be equivalent to this Directive, reinsurance contracts concluded with undertakings having their head office in those third countries shall be treated in the same manner as reinsurance contracts concluded with an undertaking which is authorised in accordance with this Directive.

Article 171

Prohibition of pledging of assets

Member States shall not retain or introduce for the establishment of technical provisions a system with gross reserving which requires pledging of assets to cover unearned premiums and outstanding claims provisions if the reinsurer (…) is an insurance or reinsurance undertaking having its head office in a third country whose solvency regime is deemed to be equivalent to that laid down in this Directive in accordance with Article 170.

Article 172

Principle and conditions for conducting reinsurance activity

A Member State shall not apply to third country reinsurance undertakings taking up or carrying on reinsurance activity in its territory provisions which result in a more favourable treatment than that granted to reinsurance undertakings which have their head office in that Member State.

Article 173

Agreements with third countries

1. The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising supervision over the following:
   (a) third country reinsurance undertakings which conduct reinsurance business in the Community;
   (b) Community reinsurance undertakings which conduct reinsurance business in the territory of a third country.
2. The agreements referred to in paragraph 1 shall in particular seek to ensure, under conditions of equivalence of prudential regulation, effective market access for reinsurance undertakings in the territory of each contracting party and provide for mutual recognition of supervisory rules and practices on reinsurance. They shall also seek to ensure the following:
   (a) that the supervisory authorities of the Member States are able to obtain the information necessary for the supervision of reinsurance undertakings which have their head offices situated in the Community and conduct business in the territory of third countries concerned;
   (b) that the supervisory authorities of third countries are able to obtain the information necessary for the supervision of reinsurance undertakings which have their head offices situated within their territories and conduct business in the Community.
3. Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall with the assistance of the European Insurance and Occupational Pensions Committee examine the outcome of the negotiations referred to in paragraph 1 of this Article and the resulting situation.

CHAPTER X

SUBSIDIARIES OF INSURANCE AND REINSURANCE UNDERTAKINGS GOVERNED BY THE LAWS OF A THIRD COUNTRY AND ACQUISITIONS OF HOLDINGS BY SUCH UNDERTAKINGS

Article 174

Information from Member States to the Commission

The supervisory authorities of the Member States shall inform the Commission and the supervisory authorities of the other Member States of any authorisation of a direct or indirect subsidiary, one or more of whose parent undertakings are governed by the laws of a third country.

That information shall also contain an indication of the structure of the group concerned.

Whenever an undertaking governed by the law of a third country acquires a holding in an insurance or reinsurance undertaking authorised in the Community which would turn that insurance or reinsurance undertaking into a subsidiary of that third country undertaking the supervisory authorities of the home Member State shall inform the Commission and the supervisory authorities of the other Member States.

Article 175

Third-country treatment of Community insurance and reinsurance undertakings

1. Member States shall inform the Commission of any general difficulties encountered by their insurance or reinsurance undertakings in establishing themselves and operating in a third country or carrying on activities in a third country.

2. The Commission shall, periodically, submit a report to the Council examining the treatment accorded, in third countries, to insurance or reinsurance undertakings authorised in the Community, as regards the following:

   (a) the establishment in third countries of insurance or reinsurance undertakings authorised in the Community;

   (b) the acquisition of holdings in third-country insurance or reinsurance undertakings;

   (c) the carrying on of insurance or reinsurance activities by such established undertakings;

   (d) the cross-border provision of insurance or reinsurance activities from the Community to third countries.

The Commission shall submit those reports to the Council, together with any appropriate proposals or recommendations.

TITLE II - SPECIFIC PROVISIONS FOR INSURANCE AND REINSURANCE

CHAPTER I - APPLICABLE LAW AND CONDITIONS OF DIRECT INSURANCE CONTRACTS

SECTION 1 - APPLICABLE LAW

Article 176

Applicable Law

Any Member State not subject to the application of Regulation No 593/2008/EC shall apply the provisions of that Regulation in order to determine the law applicable to insurance contracts falling within the scope of Article 7 of that Regulation.

SECTION 2 – COMPULSORY INSURANCE

Article 177

Related obligations

1. Non-life insurance undertakings may offer and conclude compulsory insurance contracts under the conditions set out in this Article.

2. When a Member State imposes an obligation to take out insurance, an insurance contract shall not satisfy that obligation unless it complies with the specific provisions relating to that insurance laid down by that Member State.

3 Where a Member State imposes compulsory insurance and the insurance undertaking is required to notify the supervisory authorities of any cessation of cover, such cessation may be invoked against injured third parties only in the circumstances laid down by that Member State.

4. Each Member State shall communicate to the Commission the risks against which insurance is compulsory under its legislation, stating the following:

(a) the specific legal provisions relating to that insurance;

(b) the particulars which must be given in the certificate which a non life insurance undertaking must issue to an insured person where that Member State requires proof that the obligation to take out insurance has been complied with. A (…) Member State may require that those particulars include (…) a declaration by the insurance undertaking to the effect that the contract complies with the specific provisions relating to that insurance.

The Commission shall publish the particulars referred to in the first subparagraph in the *Official Journal of the European Union*.

SECTION 3 - GENERAL GOOD

Article 178

General good

The Member State in which a risk is situated**,** or the Member State of the commitment shall not prevent a policyholder from concluding a contract with an insurance undertaking authorised under the conditions of Article 14 as long as that conclusion of contract does not conflict with legal provisions protecting the general good in the Member State in which the risk is situated**,** or in the Member State of the commitment.

SECTION 4 - CONDITIONS OF INSURANCE CONTRACTS AND SCALES OF PREMIUMS

Article 179

Non-life insurance

1. Member States shall not require the prior approval or systematic notification of general and special policy conditions, scales of premiums, or forms and other printed documents which an insurance undertaking intends to use in its dealings with policyholders.
   Member States may only require non-systematic notification of those policy conditions and other documents for the purpose of verifying compliance with national provisions concerning insurance contracts. Those requirements may not constitute a prior condition for an insurance undertaking to carry on business.
2. A Member State which makes insurance compulsory may require that insurance undertakings communicate to its supervisory authority the general and special conditions of such insurance before circulating them.
3. Member States may not retain or introduce an obligation of prior notification or approval of proposed increases in premium rates except as part of general price-control systems.

Article 180

Life insurance

Member States shall not require the prior approval or systematic notification of general and special policy conditions, scales of premiums, technical bases used in particular for calculating scales of premiums and technical provisions or forms and other printed documents which a life insurance undertaking intends to use in its dealings with policyholders.

However, the home Member State may, for the sole purpose of verifying compliance with national provisions concerning actuarial principles, require systematic communication of the technical bases used in particular for calculating scales of premiums and technical provisions. Those requirements may not constitute a prior condition for an insurance undertaking to carry on business.

SECTION 5 - INFORMATION FOR POLICYHOLDERS

SUBSECTION 1 - NON-LIFE INSURANCE

Article 181

General Information for policyholders

1. Before a non-life insurance contract is concluded the non-life insurance undertaking shall inform the policyholder of the following:

   (a) the law applicable to the contract, where the parties do not have a free choice;

   (b) the fact that the parties are free to choose the law applicable and the law the insurer proposes to choose.

   The insurance undertaking shall also inform the policyholder of the arrangements for handling complaints of policyholders concerning contracts including, where appropriate, the existence of a complaints body, without prejudice to the right of the policyholder to take legal proceedings.

2. The obligations referred to in paragraph 1 shall apply only where the policyholder is a natural person.

3. The detailed rules for implementing paragraphs 1 and 2 shall be laid down by the Member State in which the risk is situated.

Article 182

Additional information in the case of non-life insurance offered under the right of establishment or the freedom to provide services

1. Where non-life insurance is offered under the right of establishment or the freedom to provide services, the policyholder shall, before any commitment is entered into, be informed of the Member State in which the head office or, where appropriate, the branch with which the contract is to be concluded is situated.

Any documents issued to the policyholder must convey the information referred to in the first subparagraph.

The obligations imposed in the first and second subparagraphs of this paragraph shall not apply to large risks (…).

2. The contract or any other document granting cover, together with the insurance proposal where it is binding upon the policyholder, shall state the address of the head office, or, where appropriate, of the branch of the non-life insurance undertaking which grants the cover.

The Member States may require that the name and address of the representative of the non-life insurance undertaking referred to in point (a) of Article 146(2) also appear in the documents referred to in the first subparagraph of this paragraph.

SUBSECTION 2 - LIFE INSURANCE

Article 183

Information for policyholders

1. Before the life insurance contract is concluded, at least the information set out in paragraphs 2 to 3a shall be communicated to the policyholder.
2. The following information about the life insurance undertaking shall be communicated:
   (a) the name of the undertaking and its legal form;
   (b) the name of the Member State in which the head office and, where appropriate, the branch concluding the contract is situated;
   (c) the address of the head office and, where appropriate, of the branch concluding the contract;
   (d) a concrete reference to the report on the Solvency and financial condition as laid down in Article 50, allowing the policyholder easy access to this information.

3. The following information about the commitment shall be communicated:

(a) Definition of each benefit and each option;

(b) Term of the contract;

(c) Means of terminating the contract;

(d) Means of payment of premiums and duration of payments;

(e) Means of calculation and distribution of bonuses;

(f) Indication of surrender and paid-up values and the extent to which they are guaranteed;

(g) Information on the premiums for each benefit, both main benefits and supplementary benefits, where appropriate;

(h) For unit-linked policies, definition of the units to which the benefits are linked;

(i) Indication of the nature of the underlying assets for unit-linked policies;

(j) Arrangements for application of the cooling-off period;

(k) General information on the tax arrangements applicable to the type of policy;

(l) The arrangements for handling complaints concerning contracts by policyholders, lives assured or beneficiaries under contracts including, where appropriate, the existence of a complaints body, without prejudice to the right to take legal proceedings;

(m) Law applicable to the contract where the parties do not have a free choice or, where the parties are free to choose the law applicable, the law the assurer proposes to choose.

3a. In addition, specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract which are assumed by the policyholder.

4. The policyholder shall be kept informed throughout the term of the contract of any change concerning the following information:

(a) the policy conditions, both general and special;

(b) the name of the life insurance undertaking, its legal form or the address of its head office and, where appropriate, of the (…) branch which concluded the contract;

(c) all the information listed in points (d) to (j) of paragraph 3 in the event of a change in the policy conditions or amendment of the law applicable to the contract;

(d) every year, information on the state of bonuses ;

(e) Where, in connection with an offer for or conclusion of a life assurance, the insurer provides figures relating to the amount of potential payments above and beyond the contractually agreed payments, he must provide the policyholder with a specimen calculation whereby the potential maturity payment is set out applying the basis for the premium calculation using three different rates of interest. This shall not apply to term insurances and contracts. The insurer must inform the policyholder in a clear and comprehensible manner that the specimen calculation is only a model of computation based on notional assumptions, and that the policyholder may not derive any contractual claims from the specimen calculation.

(f) In the case of insurances with profit participation, the insurer must inform the policyholder annually in writing of the status of his claims, incorporating the profit participation. Furthermore, where the insurer has provided figures about the potential future development of the profit participation, he must inform the policyholder of differences between the actual development and the initial data.

5. The information referred to in paragraphs 2, 3, 3a and 4 shall be provided in a clear and accurate manner, in writing, in an official language of the Member State of the commitment.

However, such information may be in another language if the policyholder so requests and the law of the Member State so permits or the policyholder is free to choose the law applicable.

6. The Member State of the commitment may require life insurance undertakings to furnish information in addition to that listed in paragraphs 2, 3, 3a and 4 only if it is necessary for a proper understanding by the policyholder of the essential elements of the commitment.

7. The detailed rules for implementing paragraphs 1 to 6 shall be laid down by the Member State of the commitment.

Article 184

Cancellation period

1. Member States shall prescribe that policyholders who conclude individual life insurance contracts shall have a period of between 14 and 30 days from the time when they were informed that the contract had been concluded within which to cancel the contract.

The giving of notice of cancellation by the policyholders shall have the effect of releasing them from any future obligation arising from the contract.

The other legal effects and the conditions of cancellation shall be determined by the law applicable to the contract, notably as regards the arrangements for informing the policyholder that the contract has been concluded.

2. The Member States may choose not to apply paragraph 1 in the following cases:

(a) where a contract has a duration of six months or less;

(b) where, because of the status of the policyholder or the circumstances in which the contract is concluded, the policyholder does not need special protection.

Where Member States make use of the option set out in the first subparagraph they shall specify that fact in their law.

CHAPTER II - PROVISIONS SPECIFIC TO NON-LIFE INSURANCE

SECTION 1 - GENERAL PROVISIONS

Article 185

Policy Conditions

General and special policy conditions shall not include any conditions intended to meet, in an individual case, the particular circumstances of the risk to be covered.

Article 186

Abolition of monopolies

Member States shall ensure that monopolies in respect of the taking up of the business of certain classes of insurance, granted to bodies established within their territories and referred to in Article 8 are abolished.

Article 187

Participation in national guarantee schemes

Host Member States may require non-life insurance undertakings to join and participate, on the same terms as non-life insurance undertakings authorised in their territories, in any scheme designed to guarantee the payment of insurance claims to insured persons and injured third parties.

SECTION 2 - COMMUNITY CO-INSURANCE

Article 188

Community co-insurance operations

1. This Section shall apply to Community co-insurance operations which shall be those co-insurance operations which relate to one or more risks classified in classes 3 to 16 of point A of Annex 1 and which satisfy the following conditions:

   (a) the risk is a large risk (…);

   (b) the risk is covered by a single contract at an overall premium and for the same period by two or more insurance undertakings each for its own part as 'co-insurers', one of them being the leading insurance undertaking;

   (c) the risk is situated within the Community;

   (d) for the purpose of covering the risk, the leading insurance undertaking is treated as if it were the insurance undertaking covering the whole risk;

   (e) at least one of the co-insurers participates in the contract through a head office or a branch established in a Member State other than that of the leading insurance undertaking;

   (f) the leading insurance undertaking fully assumes the leader's role in co-insurance practice and in particular determines the terms and conditions of insurance and rating.

(…)

3. Articles 145 to 150 shall apply only to the leading insurance undertaking.

4. Co-insurance operations which do not satisfy the conditions set out in paragraph 1 shall remain subject to the provisions of this Directive except those of this Section

Article 189

Participation in Community co-insurance

The right of insurance undertakings to participate in Community co-insurance shall not be made subject to any provisions other than those of this Section.

Article 190

Technical provisions

The amount of the technical provisions shall be determined by the different co-insurers according to the rules fixed by their home Member State or, in the absence of such rules, according to customary practice in that State.

However, the technical provisions shall be at least equal to those determined by the leading insurer according to the rules of its home Member State.

Article 191

Statistical data

Home Member States shall ensure that co-insurers keep statistical data showing the extent of Community co-insurance operations in which they participate and the Member States concerned.

Article 192

Treatment of co-insurance contracts in winding up proceedings

In the event of an insurance undertaking being wound up, liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under the other insurance contracts of that undertaking without distinction as to the nationality of the insured and of the beneficiaries.

Article 193

Exchange of information between supervisory authorities

For the purposes of the implementation of this Section the supervisory authorities of the Member States shall, in the framework of the cooperation referred to in Title I, Chapter IV, Section 5, provide each other with all the information necessary.

Article 194

Cooperation on implementation

The Commission and the supervisory authorities of the Member States shall cooperate closely for the purposes of examining any difficulties which might arise in implementing this Section.

In the course of this cooperation they shall examine in particular any practices which might indicate that the leading insurance undertaking does not assume the role of the leader in co-insurance practice or that the risks clearly do not require the participation of two or more insurers for their coverage.

SECTION 3 - ASSISTANCE

Article 195

Activities similar to tourist assistance

Member States may make the provision of assistance to persons who get into difficulties in circumstances other than those referred to in Article 2 (2) subject to this Directive.

If a Member State makes use of this possibility it shall treat such activity as if it were classified in class 18 in point A of Annex I.

The second paragraph shall in no way affect the possibilities for classification laid down in Annex I for activities which obviously come under other classes.

SECTION 4 – LEGAL EXPENSES INSURANCE

Article 196

Scope of this Section

1. This Section shall apply to legal expenses insurance referred to in class 17 in point A of Annex I whereby an insurance undertaking promises, against the payment of a premium, to bear the costs of legal proceedings and to provide other services directly linked to insurance cover, in particular with a view to the following:

   (a) securing compensation for the loss, damage or injury suffered by the insured person, by settlement out of court or through civil or criminal proceedings~~,~~;

   (b) defending or representing the insured person in civil, criminal, administrative or other proceedings or in respect of any claim made against that person.

2. This Section shall not apply to any of the following:

   (a) legal expenses insurance where such insurance concerns disputes or risks arising out of, or in connection with, the use of sea-going vessels;

   (b) the activity pursued by an insurance undertaking providing civil liability cover for the purpose of defending or representing the insured person in any inquiry or proceedings if that activity is at the same time pursued in the own interest of that insurance undertaking under such cove(c) where a Member State so chooses, the activity of legal expenses insurance undertaken by an assistance insurer which complies with the following conditions:

      (i) the activity is carried out in a Member State other than the one the habitual residence of the insured person is situated;

      (ii) the activity forms part of a contract covering solely the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent (…) residence.

   In the case referred to in point (c) of the first subparagraph the contract shall clearly state that the cover concerned is limited to the circumstances referred to in that point and is ancillary to the assistance.

Article 197

Separate contracts

Legal expenses cover shall be the subject of a contract separate from that drawn up for the other classes of insurance or shall be dealt with in a separate section of a single policy in which the nature of the legal expenses cover and, should the Member State so request, the amount of the relevant premium are specified.

Article 198

Management of claims

1. The home Member State shall ensure that insurance undertakings adopt, in accordance with the option chosen by the Member State, or at their own choice, if the Member State so agrees, at least one of the methods for the management of claims set out in paragraphs 2, 3 and 4.

   Whichever solution is adopted, the interest of persons having legal expenses cover shall be regarded as safeguarded in an equivalent manner under this Section.

2 Insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof carries on at the same time a similar activity in another undertaking having financial, commercial or administrative links with the first insurance undertaking and carrying on one or more of the other classes of insurance set out in Annex I.

   Composite insurance undertakings shall ensure that no member of the staff who is concerned with the management of legal expenses claims or with legal advice in respect thereof carries on at the same time a similar activity for another class transacted by them.

3. The insurance undertaking shall entrust the management of claims in respect of legal expenses insurance to an undertaking having separate legal personality. That undertaking shall be mentioned in the separate contract or separate section referred to in Article 197. If the undertaking having separate legal personality has links with an insurance undertaking which carries on one or more of the classes of insurance referred to in point A of Annex I, members of the staff of the undertaking having separate legal personality who are concerned with the management of claims or with legal advice connected with such management may not pursue the same or a similar activity in the other insurance undertaking at the same time. Member States may impose the same requirements on the members of the administrative or management body.

4. In the contract, the insurance undertaking shall grant the insured persons the right to entrust the defence of their interests, from the moment that they have the right to claim from their insurer under the policy, to a lawyer of their choice or, to the extent that national law so permits, any other appropriately qualified person.

Article 199

Free choice of lawyer

1. Any contract of legal expenses insurance shall expressly provide the following:
   (a) that, where recourse is had to a lawyer or other person appropriately qualified according to national law in order to defend, represent or serve the interests of the insured person in any inquiry or proceedings, that insured person shall be free to choose such lawyer or other person;
   (b) that the insured persons shall be free to choose a lawyer or, if they so prefer and to the extent that national law so permits, any other appropriately qualified person, to serve their interests whenever a conflict of interests arises.
2. For the purposes of this Section "lawyer" means any person entitled to pursue his professional activities under one of the denominations laid down in Council Directive 77/249/EEC[68].

[68] OJ L 78, 26.3.1977, p. 17.

Article 200

Exception to the free choice of lawyer

1. Member States may provide exemption from Article 199(1) for legal expenses insurance if all the following conditions are fulfilled:
   (a) the insurance is limited to cases arising from the use of road vehicles in the territory of the Member State concerned;
   (b) the insurance is connected to a contract to provide assistance in the event of accident or breakdown involving a road vehicle;
   (c) neither the legal expenses insurance undertaking nor the assistance insurer carries out any class of liability insurance;
   (d) measures are taken so that the legal counsel and representation of each of the parties to a dispute is effected by completely independent lawyers when these parties are insured for legal expenses by the same insurance undertaking.
2. An exemption granted pursuant to paragraph 1 shall not affect the application of Article 198.

Article 201

Arbitration

Member States shall for the settlement of any dispute between the legal expenses insurance undertaking and the insured and without prejudice to any right of appeal to a judicial body which might be provided for by national law, provide for an arbitration or other procedure offering comparable guarantees of objectivity.

The insurance contract shall provide for the right of the insured person to have recourse to such a procedure.

Article 202

Conflict of interest

Whenever a conflict of interests arises or there is disagreement over the settlement of the dispute, the legal expenses insurer or, where appropriate, the claims settlement office shall inform the person insured of the right referred to in Article 199 (1) - the possibility of having recourse to the procedure referred to in Article 201.

Article 203

Abolition of specialisation of legal expenses insurance

Member States shall abolish all provisions which prohibit an insurance undertaking from carrying on within their territory legal expenses insurance and other classes of insurance at the same time.

SECTION 5 - HEALTH INSURANCE

Article 204

Health insurance as an alternative to social security

1. Member States in which contracts covering the risks in class 2 in point A of Annex I may serve as a partial or complete alternative to health cover provided by the statutory social security system may require the following:

   (a) that those contracts comply with the specific legal provisions adopted by that Member State to protect the general good in that class of insurance;

   (b) that the general and special conditions of that insurance be communicated to the supervisory authorities of that Member State before use.

2. Member States may require that the health insurance system referred to in paragraph 1 be operated on a technical basis similar to that of life insurance where all the following conditions are fulfilled:

(a) the premiums paid are calculated on the basis of sickness tables and other statistical data relevant to the Member State in which the risk is situated in accordance with the mathematical methods used in insurance;
(b) a reserve is set up for increasing age;
(c) the insurer may cancel the contract only within a fixed period determined by the Member State in which the risk is situated;
(d) the contract provides that premiums may be increased or payments reduced, even for current contracts;
(e) the contract provides that the policyholders may change their existing contract into a new contract complying with paragraph 1, offered by the same insurance undertaking or the same branch and taking account of their acquired rights.

In the case referred to in point (e) of the first subparagraph, account shall be taken of the reserve for increasing age and a new medical examination may be required only for increased cover.

The supervisory authorities of the Member State concerned shall publish the sickness tables and other relevant statistical data referred to in point (a) of the first subparagraph and transmit them to the supervisory authorities of the home Member State.

The premiums must be sufficient, on reasonable actuarial assumptions, for insurance undertakings to be able to meet all their commitments having regard to all aspects of their financial situation. The home Member State shall require the technical basis for the calculation of premiums to be communicated to its supervisory authorities before the product is circulated.

The third and fourth subparagraphs shall also apply where existing contracts are modified.

SECTION 6 – INSURANCE AGAINST ACCIDENTS AT WORK

Article 205

Compulsory insurance against accidents at work

Member States may require that any insurance undertaking offering, at its own risk, compulsory insurance against accidents at work within their territories comply with the specific provisions of their national law concerning such insurance, except for the provisions concerning financial supervision, which shall be the exclusive responsibility of the home Member State.

CHAPTER III - PROVISIONS SPECIFIC TO LIFE INSURANCE

Article 206

Prohibition on compulsory ceding of part of underwriting

Member States shall not require life insurance undertakings to cede part of their underwriting of activities listed in Article 2(3) to an organisation or organisations designated by national law.

Article 207

Premiums for new business

Premiums for new business shall be sufficient, on reasonable actuarial assumptions, to enable life insurance undertakings to meet all their commitments and, in particular, to establish adequate technical provisions.

For that purpose, all aspects of the financial situation of a life insurance undertaking may be taken into account, without the input from resources other than premiums and income earned thereon being systematic and permanent in a way that it may jeopardise the solvency of the undertaking concerned in the long term.

CHAPTER IV – RULES SPECIFIC TO REINSURANCE

Article 208

Finite reinsurance

1. Member States shall ensure that insurance and reinsurance undertakings which conclude finite reinsurance contracts or carry on finite reinsurance activities are able to properly identify, measure, monitor, manage, control and report the risks arising from those contracts or activities.

2. In order to ensure that a harmonised approach is adopted with respect to finite reinsurance activities, the Commission may adopt implementing measures specifying the provisions of paragraph 1 with respect to the monitoring, management and control of risks arising from finite reinsurance activities.

   Those implementing measures designed to amend non-essential elements of this Directive inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304 (3).

3. For the purposes of paragraphs 1 and 2 finite reinsurance means reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following features:
   (a) explicit and material consideration of the time value of money~~,~~;
   (b) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer.

Article 209

Special purpose vehicle

1. Member States shall allow the establishment within their territory of special purpose vehicles, subject to prior supervisory approval.

2. In order to ensure that a harmonised approach is adopted with respect to special purpose vehicles, the Commission (…) shall adopt implementing measures laying down the following:

   (a) scope of authorisation;
   (b) mandatory conditions to be included in all contracts issued;
   (c) the fit and proper requirements as referred to in Article 42 of the persons running the special purpose vehicle;
   (d) fit and proper requirements for shareholders or members having a qualifying holding in the special purpose vehicle;
   (e) sound administrative and accounting procedures, adequate internal control mechanisms and risk management requirements;
   (f) accounting, prudential and statistical information requirements;
   (g) the solvency requirements.

Those implementing measures designed to amend non-essential elements of this Directive inter alia by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

3. Special purpose vehicles authorised prior to the date referred to in Article 310(1) shall be subject to the law of the Member State having authorised the special purpose vehicle. However, any new activity commenced by such a special purpose vehicle after the date referred to in Article 310(1) shall be subject to paragraphs 1 and 2

TITLE III

SUPERVISION OF INSURANCE AND REINSURANCE UNDERTAKINGS IN A GROUP

CHAPTER I – GROUP SUPERVISION: DEFINITIONS, CASES OF APPLICATION, SCOPE AND LEVELS

SECTION 1 - DEFINITIONS

Article 210

Definitions (ex Article 219)

1. For the purposes of this Title, the following definitions shall apply:

(a) "participating undertaking" means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;

(b) "related undertaking" means either a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;

(c) "group" means a group of undertakings:

(i) that consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC*;* or

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

- one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and

- the establishment and dissolution of such relationships for the purposes of this Title are subject to prior approval by the group supervisor.

The undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

(d) "group supervisor" means the supervisory authority responsible for group supervision, determined in accordance with Article 260;

(da) "college of supervisors" means a permanent but flexible structure for cooperation and coordination among the supervisory authorities of the Member States concerned;

(e) "insurance holding company" means a parent undertaking, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking, and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC;

(f) "mixed-activity insurance holding company" means a parent undertaking, other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company within the meaning of Directive 2002/87/EC, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings.

2. 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.

They shall also consider as a subsidiary undertaking any undertaking over which, in the opinion of the supervisory authorities, a parent undertaking effectively exercises a dominant influence.

They shall also consider as participation the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the supervisory authorities, a significant influence is effectively exercised.

SECTION 2 - CASES OF APPLICATION AND SCOPE

Article 211

Cases of application of group supervision

1. Member States shall provide for supervision, at the level of the group, of insurance and reinsurance undertakings which are part of a group, in accordance with this Title.

   The provisions of this Directive, which lay down the rules for the supervision of insurance and reinsurance undertakings taken individually, shall continue to apply to such undertakings, except where otherwise provided under this Title.

2. Member States shall ensure that supervision at the level of the group applies as follows:

   (a) to insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 216 to 262;

   (b) to insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company which has its head office in the Community, in accordance with Articles 216 to 262;

(c) to insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company having its head office outside the Community or a third-country insurance or reinsurance undertaking, in accordance with Articles 263, 264 and 265;

(d) to insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 267.

3. In the cases referred to in points (a) and (b) of paragraph 2, where the participating insurance or reinsurance undertaking or the insurance holding company which has its head office in the Community is a related undertaking of a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consultation with the other supervisory authorities concerned, decide not to carry out at the level of that participating insurance or reinsurance undertaking or that insurance holding company the supervision of risk concentration referred to in Article 248 or the supervision of intra-group transactions referred to in Article 249 or both.

Article 212

Scope of group supervision

1. The exercise of group supervision in accordance with Article 211 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, the insurance holding company or the mixed-activity insurance holding company taken individually, without prejudice to Article 261 as far as insurance holding companies are concerned.

2. In the following cases, the group supervisor may decide on a case-by-case basis not to include an undertaking in the group supervision referred to in Article 211:

(a) if the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 227;

(b) if the undertaking which should be included is of negligible interest with respect to the objectives of group supervision;

(c) if the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

However, where several undertakings of the same group, taken individually, may be excluded pursuant to point (b) of the first subparagraph, they must nevertheless be included where, collectively, they are of non-negligible interest.

Where the group supervisor is of the opinion that an insurance or reinsurance undertaking should not be included in the group supervision under one of the cases mentioned in points (b) and (c) of the first subparagraph, it shall consult the other supervisory authorities concerned before taking a decision.

Where the group supervisor does not include an insurance or reinsurance undertaking in the group supervision under one of the cases provided for in points (b) and (c) of the first subparagraph, the supervisory authorities of the Member State in which that undertaking is situated may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance or reinsurance undertaking concerned.

SECTION 3 - LEVELS

Article 213

Ultimate parent undertaking at Community level

1. Where the participating insurance or reinsurance undertaking or the insurance holding company referred to in points (a) and (b) of Article 211(2) is itself a subsidiary undertaking of another insurance or reinsurance undertaking or of another insurance holding company which has its head office in the Community, Articles 216 to 262 shall apply only at the level of the ultimate parent insurance or reinsurance undertaking or insurance holding company which has its head office in the Community.

2. Where the ultimate parent insurance or reinsurance undertaking or insurance holding company which has its head office in the Community, referred to in paragraph 1, is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consultation with the other supervisory authorities concerned, decide not to carry out at the level of that ultimate parent undertaking the supervision of risk concentration referred to in Article 248 or the supervision of intra-group transactions referred to in Article 259 or both.

Article 214 (ex Article 223)

Ultimate parent undertaking at national level

1. Where the participating insurance or reinsurance undertaking or the insurance holding company which has its head office in the Community, referred to in points (a) and (b) of Article 211(2), does not have its head office in the same Member State as the ultimate parent undertaking at Community level referred to in Article 213, Member States may allow their supervisory authorities to decide, after consultation with the group supervisor and that ultimate parent undertaking at Community level, to subject to group supervision the ultimate parent insurance or reinsurance undertaking or insurance holding company at national level.

In such a case, the supervisory authority shall explain its decision to both the group supervisor and the ultimate parent undertaking at Community level.

Articles 216 to 262 shall apply mutatis mutandis, subject to the provisions set out in paragraphs 2 to 6.

2. The supervisory authority may restrict group supervision of the ultimate parent undertaking at national level to one or several sections of Chapter II.

3. Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, the choice of method made in accordance with Article 218 by the group supervisor in respect of the ultimate parent undertaking at Community level referred to in Article 213 shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

4. Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, and where the ultimate parent undertaking at Community level referred to in Article 213 has obtained, in accordance with Articles 229 or 231(5), the permission to calculate the 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, that decision shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

In such a situation, where the supervisory authority considers that the risk profile of the ultimate parent undertaking at national level deviates significantly from the internal model approved at Community level, and as long as that undertaking does not properly address the concerns of the supervisory authority, that supervisory authority may decide to impose a capital add-on to the group Solvency Capital Requirement of that undertaking resulting from the application of such model, or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

The supervisory authority shall explain such decisions to both the undertaking and the group supervisor.

5. Where the supervisory authority decides to apply to the ultimate participating undertaking at national level Chapter II, Section 1, that undertaking shall not be allowed to introduce, in accordance with Articles 234 or 247, an application for permission to subject any of its subsidiaries to Articles 236 to 238.

6. Where Member States allow their supervisory authorities to make the decision referred to in paragraph 1, they shall provide that no such decisions can be made or maintained where the ultimate participating undertaking at national level is a subsidiary of the ultimate participating undertaking at Community level referred to in Article 213 and the latter has obtained in accordance with Articles 235 or 247 permission for that subsidiary to be subject to Articles 236 to 238.

7. The Commission may adopt implementing measures specifying the circumstances under which the decision referred to in paragraph 1 can be made.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 215

Parent undertaking covering several Member States

1. Where Member States allow their supervisory authorities to make the decision referred to in Article 214, they shall also allow them to decide to conclude an agreement with supervisory authorities in other Member States where another related ultimate parent undertaking at national level is present, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

   Where the supervisory authorities concerned have concluded an agreement as referred to in the first subparagraph of this paragraph, group supervision shall not be carried out at the level of any ultimate parent undertaking referred to in Article 214 present in Member States other than the Member State where the subgroup referred to in the first subparagraph of this paragraph is located.

2. The provisions set out in Article 214(2) to (6) shall apply *mutatis mutandis*.

3. The Commission may adopt implementing measures specifying the circumstances under which the decision referred to in paragraph 1 can be made.

   Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

CHAPTER II - FINANCIAL POSITION

SECTION 1 - GROUP SOLVENCY

SUBSECTION 1 - GENERAL PROVISIONS

Article 216

Supervision of group solvency

1. Supervision of the group solvency shall be exercised in accordance with paragraphs 2 and 3, Article 250 and Chapter III.

2. In the case referred to in point (a) of Article 211(2), Member States shall require the participating insurance or reinsurance undertakings to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsections 2, 3 and 4.

3. In the case referred to in point (b) of Article 211(2), Member States shall require insurance and reinsurance undertakings in a group to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsection 5.

4. The requirements referred to in paragraphs 2 and 3 shall be subject to supervisory review by the group supervisor in accordance with Chapter III. The provisions set out in Article 134 and in paragraphs 1, 2 and 3 of Article 136 shall apply by analogy.

5. As soon as the participating undertaking has observed and informed the group supervisor that the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance in the following three months, the group supervisor shall inform the other supervisory authorities within the college, which shall analyse the situation of the group.

Articles 217

Frequency of calculation

1. The group supervisor shall ensure that the calculations referred to in Article 216(2) and (3) are carried out at least once a year, either by the participating insurance or reinsurance undertakings or by the insurance holding company.

   The relevant data for and the results of that calculation shall be submitted to the group supervisor by the participating insurance or reinsurance undertaking, or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or by the undertaking in the group identified by the group supervisor after consultation with the other supervisory authorities concerned and with the group itself.

2. Insurance and reinsurance undertakings and insurance holding company shall monitor the group Solvency Capital Requirement on an on-going basis. If the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.

   Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the group supervisor may require a recalculation of the group Solvency Capital Requirement.

SUBSECTION 2 – CHOICE OF CALCULATION METHOD AND GENERAL PRINCIPLES

Article 218

Choice of method

1. The calculation of the solvency at the level of the group of the insurance and reinsurance undertakings referred to in point (a) of Article 211(2) shall be carried out in accordance with the technical principles and one of the methods set out in Articles 219 to 231.

2. Member States shall provide that the calculation of the solvency at the level of the group of insurance and reinsurance undertakings referred to in point (a) of Article 211(2) shall be carried out according to method 1 described in Subsection 4.

   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 consultation with the other supervisory authorities concerned and the group itself, to apply to that group method 2 described in Subsection 4 or a combination of methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

Article 219

Inclusion of proportional share

1. The calculation of the group solvency shall take account of the proportional share held by the participating undertaking in its related undertakings.

   For the purposes of the first subparagraph, the proportional share shall comprise either of the following:

(a) where method 1 is used, the percentages used for the establishment of the consolidated accounts;

(b) where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

However, regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account.

Where in the opinion of the supervisory authorities, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the group supervisor may nevertheless allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

2. The group supervisor shall determine, after consultation with the other supervisory authorities concerned and the group itself, the proportional share which shall be taken into account in the following cases:

(a) where there are no capital ties between some of the undertakings in a group;

(b) where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking**;**

(c) where a supervisory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of the supervisory authority, it effectively exercises a dominant influence over that other undertaking.

Article 220

Elimination of double use of eligible own funds

1. The double use of own funds eligible for the Solvency Capital Requirement among the different insurance or reinsurance undertakings taken into account in that calculation shall not be allowed.

   For that purpose, when calculating the group solvency and where the methods described in Subsection 4 do not provide for it, the following amounts shall be excluded:

   (a) the value of any asset of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;

   (b) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking;

   (c) the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirements of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

2. Without prejudice to paragraph 1, the following may only be included in the calculation in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned:

   (a) surplus funds falling under Article 90(2) arising in a related life insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated;

(b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

However, the following shall in any case be excluded from the calculation:

(a) any subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;
(b) any subscribed but not paid-up capital of the participating insurance or reinsurance undertaking which represents a potential obligation on the part of a related insurance or reinsurance undertaking;
(c) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.

3. If the supervisory authorities consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in paragraph 2 cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

4. The sum of the own funds referred to in paragraphs 2 and 3 may not exceed the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

5. Any eligible own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the supervisory authority in accordance with Article 89 may only be included in the calculation in so far as they have been duly authorised by the supervisory authority responsible for the supervision of that related undertaking.

Article 221

Elimination of the intra-group creation of capital

1. When calculating group solvency, no account shall be taken of any own funds eligible for the solvency capital requirement arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following:

   (a) a related undertaking;

   (b) a participating undertaking;

   (c) another related undertaking of any of its participating undertakings.

2. When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated when the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.

3. Reciprocal financing shall be deemed to exist at least when an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertakings.

Article 222

Valuation

The value of the assets and liabilities shall be assessed in accordance with Article 74.

SUBSECTION 3 – APPLICATION OF THE CALCULATION METHODS

Article 223

Related insurance and reinsurance undertakings

Where the insurance or reinsurance undertaking has more than one related insurance or reinsurance undertaking, the group solvency calculation shall be carried out by including each of these related insurance or reinsurance undertakings.

Member States may provide that where the related insurance or reinsurance undertaking has its head office in a Member State other than that of the insurance or reinsurance undertaking for which the group solvency calculation is carried out, the calculation takes account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other Member State.

Article 224

Intermediate insurance holding companies

1. When calculating the group solvency of an insurance or reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking, through an insurance holding company, the situation of such an insurance holding company shall be taken into account.

   For the sole purpose of that calculation, the intermediate insurance holding company shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 in respect of the Solvency Capital Requirement and were subject to the same conditions as are laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3, in respect of own funds eligible for the Solvency Capital Requirement.

2. In cases where an intermediate insurance holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 98, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Article 98 to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

Any eligible own funds of an intermediate insurance holding company, which would require prior authorisation from the supervisory authority in accordance with Article 89 if they were held by an insurance or reinsurance undertaking, may only be included in the calculation of the group solvency in so far as they have been duly authorised by the group supervisor.

Article 225

Related third-country insurance and reinsurance undertakings

1. When calculating, in accordance with Article 231, the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, the latter shall, solely for the purposes of the calculation, *be treated* as a related insurance or reinsurance undertaking.

However, where the third-country in which that undertaking has its head office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that laid down in Title I, Chapter VI, Member States may provide that the calculation shall take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third-country concerned.

2. The verification of whether the third-country regime is at least equivalent shall be carried out by the group supervisor, at the request of the participating undertaking or on its own initiative.

In so doing**,** the group supervisor shall consult the other supervisory authorities concerned and *CEIOPS,* before taking a decision on equivalence.

3. The Commission may adopt implementing measures specifying the criteria to assess whether the solvency regime in a third-country is equivalent to that laid down in Title I, Chapter VI.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

3a. The Commission may adopt, after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the procedure referred to in Article 304(2), and taking into account the criteria adopted in accordance with paragraph 3, a decision as to whether the solvency regime in a third-country is equivalent to that laid down in Title I, Chapter VI.

These decisions shall be regularly reviewed to take into account any changes to the solvency regime laid down in Title I, Chapter VI, and to the solvency regime in the third country.

4. When a decision adopted by the Commission in accordance with paragraph **3a** concludes as to the equivalence of the solvency regime in a third country, paragraph 2 shall not apply.

When a decision adopted by the Commission in accordance with paragraph **3a** concludes that the solvency regime in a third country is not equivalent, the option referred to in the second subparagraph of paragraph 1 to take into account the Solvency Capital Requirement and eligible own funds as laid down by the third country concerned shall not be applicable and the third-country insurance or reinsurance undertaking shall be treated exclusively in accordance with the first subparagraph of paragraph 1.

Article 226

Related credit institutions, investment firms and financial institutions

When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, Member States shall allow their participating insurance and reinsurance undertakings to apply *mutatis mutandis* methods 1 or 2 set out in Annex I to Directive 2002/87/EC. However, method 1 set out in that Annex shall be applied only if the group supervisor is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Member States shall however 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 the first paragraph from the own funds eligible for the group solvency of the participating undertaking.

Article 227

Non-availability of the necessary information

Where the information necessary for calculating the group solvency of an insurance or reinsurance undertaking, concerning a related undertaking with its head office in a Member State or a third-country, is not available to the supervisory authorities concerned, the book value of that undertaking in the participating insurance or reinsurance undertaking shall be deducted from the own funds eligible for the group solvency.

In that case, the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

SUBSECTION 4 – CALCULATION METHODS

Article 228

Method 1 (Default method): Accounting consolidation-based method

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 own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;

   (b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

   The rules laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 and in 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.

2. The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in Title I, Chapter VI, Section 4, Subsections 1 and 2 and Title I, Chapter VI, Section 4, Subsections 1 and 3.

The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:

(a) the minimum capital requirement (Minimum Capital Requirement) as referred to in Article 127 of the participating insurance or reinsurance undertaking;

(b) the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.

That minimum shall be covered by eligible basic own funds as determined in Article 98(5).

For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 219 to 227 shall apply *mutatis mutandis*. The provisions set out in paragraphs 1 and 2 of Article 137 shall apply by analogy.

Article 229

Group internal model

1. 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, the supervisory authorities concerned shall cooperate to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.

   An application as referred to in the first subparagraph shall be submitted to the group supervisor.

   The group supervisor shall inform the other supervisory authorities concerned without delay.

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor.

   The group supervisor shall forward the complete application to the other supervisory authorities concerned without delay.

3. During the period referred to in paragraph 2, the group supervisor and any of the other supervisory authorities concerned may consult the Committee of European Insurance and Occupational Pensions Supervisors. The Committee shall also be consulted if the participating undertaking so requests.

   When the Committee is consulted, all the supervisory authorities concerned shall be informed and the period referred to in paragraph 2 shall be extended by two months.

4. Where CEIOPS has not been consulted in accordance with paragraph 3, and in the absence of a joint decision of the supervisory authorities concerned within six months from the date of receipt of the complete application by the group supervisor, the group supervisor shall request CEIOPS, within a further two months, to deliver advice to all the supervisory authorities concerned. The group supervisor shall take a decision within three weeks of the transmission of that advice, taking full account thereof.

Whether CEIOPS has been consulted or not, the group supervisor's decision shall be set out in a document containing the full reasons for the decision and shall take into account the views expressed by the other supervisory authorities concerned.

The group supervisor shall provide its decision to the applicant and the other supervisory authorities concerned. The supervisory authorities concerned shall comply with the decision.

5. In the absence of a joint decision within the periods set out in paragraphs 2 and 3 respectively, the group supervisor shall make its own decision on the application.

In making its decision, the group supervisor shall duly take into account the following:

(a) any views and reservations of the other supervisory authorities concerned expressed during the applicable period;

(b) where the Committee of European Insurance and Occupational Pensions Supervisors has been consulted, the advice of that Committee.

The decision shall be set out in a document containing the fully reasoned decision and an explanation of any significant deviation from the positions adopted by the Committee of European Insurance and Occupational Pensions Supervisors.

The group supervisor shall transmit the decision to the applicant and the other supervisory authorities concerned.

That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

6. Where any of the supervisory authorities concerned considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the supervisory authority, that authority may, in accordance with Article 37, impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model.

In exceptional circumstances, where such capital add-on would not be appropriate, the supervisory authority may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Title I, Chapter VI, Section 4, Subsections 1 and 2. In accordance with cases (a) and (c) of Article 37(1), the authority may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula.

The supervisory authority shall explain any decision referred to in the first and second subparagraphs to both the insurance or reinsurance undertaking and the group supervisor.

Article 230

Group capital add-on

In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the group supervisor shall pay particular attention to any case where the circumstances referred to in points (a) to (c) of Article 37(1) may arise at group level, in particular where:

(a) any specific risks existing at group level would not be sufficiently covered by the standard formula or the internal model used, because they are difficult to quantify;

(b) any capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is imposed by the supervisory authorities concerned, in accordance with Articles 37 and 229(6).

If the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed. The provisions set out in Article 37 (1) to (5), together with implementing measures taken in accordance with Article 37(6) shall apply *mutatis mutandis*.

Article 231

Method 2 (Alternative method): Deduction and aggregation method

1. The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:

(a) the aggregated group eligible own funds, as provided for in paragraph 2;

(b) the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in paragraph 3.

2. The aggregated group eligible own funds are the sum of the following:

(a) the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;

(b) the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

3. The aggregated group Solvency Capital Requirement is the sum of the following:

(a) the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;

(b) the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

4. Where the participation in the related insurance or reinsurance undertakings consists, wholly or in part, of an indirect ownership, the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and the items referred to in points (b) of the second and third paragraphs shall include the corresponding proportional shares of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings, respectively.

5. In the case of an application for permission to calculate 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, Article 229 shall apply *mutatis mutandis*.

6. In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in paragraph 3, appropriately reflects the risk profile of the group, 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.

If the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, a capital add-on to the aggregated group Solvency Capital Requirement may be imposed. The provisions set out in Article 37 (1) to (5), together with implementing measures taken in accordance with Article 37(6), shall apply *mutatis mutandis*.

Article 232

Implementing measures

The Commission shall adopt implementing measures specifying the technical principles and methods set out in Articles 218 to 227 and the application of Articles 228 to 231 to ensure uniform application within the Community.

Those measures designed to amend non-essential elements of this directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

SUBSECTION 5 – SUPERVISION OF GROUP SOLVENCY FOR INSURANCE AND REINSURANCE UNDERTAKINGS THAT ARE SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY

Article 233

Group solvency of an insurance holding company

Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company, the group supervisor shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company applying Articles 218(2) to 231.

For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 as regards the Solvency Capital Requirement and subject to the same conditions as laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 as regards the own funds eligible for the Solvency Capital Requirement.

SUBSECTION 6 – SUPERVISION OF GROUP SOLVENCY FOR GROUPS WITH CENTRALISED RISK MANAGEMENT

Article 234

Subsidiaries of an insurance or reinsurance undertaking: conditions

Member States shall provide that the rules laid down in Articles 236 and 238 shall apply to any insurance or reinsurance undertaking which is the subsidiary of an insurance or reinsurance undertaking, where all of the following conditions are satisfied:

(a) the subsidiary, in relation to which the group supervisor has not made any decision under Article 212(2), is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with this Title;

(b) the risk management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;

(b *bis*) the parent undertaking has received the agreement under 3rd sub-paragraph of paragraph 4 of article 250;

(b *ter*) the parent undertaking has received the agreement under paragraph 2 of article 260;

(d) an application for permission to be subject to Articles 236 and 238 has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 235.

Article 235

Subsidiaries of an insurance or reinsurance undertaking: decision on the application

1. In the case of applications for permission to be subject to the rules laid down in Articles 236 and 238, the supervisory authorities concerned shall work together within the college of supervisors, in full consultation, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the supervisory authority having authorized the subsidiary. The supervisor shall inform and forward the complete application to the other supervisory authorities (…) within the college without delay.

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college.

(…)

(…)

3. During the period referred to in paragraph 2, in the case of diverging views concerning the approval of the application referred to in paragraph 1, the group supervisor or any of the other supervisory authorities concerned may consult the Committee of European Insurance and Occupational Pensions Supervisors. Where the Committee is consulted, all supervisory authorities concerned should be informed and the period referred to in paragraph 2 shall be extended by one month.

Where the Committee of European Insurance and Occupational Pensions Supervisors has been consulted, the supervisory authorities concerned shall duly consider such advice before taking their joint decision.

4. The supervisory authority having authorized the subsidiary shall provide to the applicant the joint decision referred to in paragraphs 2 and 3 in a document containing the fully reasoned decision and an explanation of any significant deviation from the positions adopted by the Committee of European Insurance and Occupational Pensions Supervisors, where it has been consulted. The joint decision shall be recognized as determinative and applied by the supervisory authorities in the Member States concerned.

5. In the absence of a joint decision between the supervisory authorities concerned within the periods set out in paragraphs 2 and 3, the group supervisor shall make its own decision on the application.

In making its decision, the group supervisor shall duly consider the following:

(a) any views and reservations of the supervisory authorities concerned expressed during the applicable period;

(b) any reservations of the other supervisory authorities within the college expressed during the applicable period;

(c) where the Committee of European Insurance and Occupational Pensions Supervisors has been consulted, the advice of that Committee.

The decision shall be set out in a document containing the fully reasoned decision and an explanation of any significant deviation from the reservations of the other supervisory authorities concerned and the advice of the Committee of European Insurance and Occupational Pensions Supervisors. The decision shall be provided to the applicant and the other supervisory authorities concerned by the group supervisor.

Article 236

Subsidiaries of an insurance or reinsurance undertaking: determination of the Solvency Capital Requirement

1. Without prejudice to Article 229, the Solvency Capital Requirement of the subsidiary shall be calculated as set out in paragraphs 2, 3*bis*, and 4.

2. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 229 and the supervisory authority having authorized the subsidiary considers that its risk profile deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose (…) to set a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model, or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The supervisory authority shall discuss its proposal within the college of supervisors and communicate the grounds for such proposals to both the subsidiary and the college of supervisors.

3. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in exceptional circumstances, propose (…) to require the undertaking to replace a subset of the parameters used in the standard formula calculation by parameters specific to those undertakings when calculating the life, non-life and health underwriting risk modules, as set out in Article 108bis, or in the cases referred to in Article 37, to **set** a capital add-on to the Solvency Capital Requirement of that subsidiary. The supervisory authority shall discuss its proposal within the college of supervisors and communicate the grounds for such proposal to both the subsidiary and the college of supervisors.

3*bis*. The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority having authorised the subsidiary and/or on other possible measures.

4. Where the supervisory authority and the group supervisor disagree (…) within one month from the proposal of the supervisory authority, the matter shall be referred for consultation to the Committee of European Insurance and Occupational Pensions Supervisors, which shall give its advice within two months.

The supervisory authority having authorized that subsidiary shall duly consider such advice before taking its final decision.
The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other supervisory authorities within the college and the advice from Committee of European Insurance and Occupational Pensions Supervisors.
The decision shall be submitted to the subsidiary and to the college of supervisors.

(...)[69]

[69] Art 237 was deleted

Article 238

Subsidiaries of an insurance or reinsurance undertaking: non-compliance with of the Solvency Capital Requirement

1. Without prejudice to Article 136, the supervisory authority having authorized the subsidiary shall – in case of non-compliance with SCR – forward without delay to the college of supervisors the recovery plan submitted by the subsidiary in order to achieve, within six months from the observation of the non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

   The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority regarding the approval of the recovery plan within four months from the date of the observation of the non-compliance with the Solvency Capital Requirement.
   In the absence of an agreement, the supervisory authority having authorized the subsidiary makes its own decision on the approval of the recovery plan, taking duly into account the views and reservations of the other supervisory authorities within the college.

1bis. When the supervisory authority having authorized the subsidiary identifies, in accordance with article 134, deteriorating financial conditions it shall notify without delay the college of supervisors. With the exception of in emergency situations, the measures to be taken should be discussed under the college of supervisors.

   The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority regarding the measures to be taken within one month from the date of the communication.
   In the absence of an agreement, the supervisory authority having authorized the subsidiary makes its own decision, taking duly into account the views and reservations of the other supervisory authorities within the college.

1ter. Without prejudice of Article 137, the supervisory authority having authorized the subsidiary shall – in case of non-compliance with MCR – forward without delay to the college of supervisors the short-term finance scheme submitted by the subsidiary in order to achieve, within three months from the observation of the non-compliance with the Minimum Capital Requirement, the reestablishment of the level of eligible own funds covering the Minimum Capital Requirement or the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement. The college of supervisors should also be informed of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

(…)[70]

Article 242

Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary

1. The rules provided for in Articles 236 and 238 shall cease to apply in the following cases:

(a) the condition referred to in Article 234(a) is no longer complied with;
(b) the condition referred to in Article 234(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time;
(b *bis*) the conditions referred to in Article 234(b *bis*) and (b *ter*) are no longer complied with.

In the case referred to in point (a) of the first subparagraph, where the group supervisor decides, after consultation with the college of supervisors, no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the supervisory authority concerned and the parent undertaking.

[70] Art 239 to 241 were deleted

For the purposes of point (b), (b bis) and (b ter) of the first subparagraph, the parent undertaking shall be responsible for ensuring that the conditions are complied with on an on-going basis. In the event of non-compliance, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

Without prejudice to the third subparagraph, the group supervisor shall verify at least once a year, on its own initiative, that the conditions referred to in Article 234(b), (b bis) and (b ter) continue to be complied with. The group supervisor shall also perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with this condition.

Where the verification performed identifies weaknesses, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

If, after consulting the college of supervisors, the group supervisor determines that the plan referred to in the third or fourth subparagraph is insufficient or subsequently that it is not being implemented within the agreed period of time, the group supervisor shall conclude that the condition referred to in Article 234(b), (b *bis*) and (b *ter*) is no longer complied with and it shall immediately inform the supervisory authority concerned.

2. The regime provided for in Articles 236 and 238 shall be again applicable if the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Article 235.

(…)[71]

[71] Art 243 and 244 were deleted

Article 245

Subsidiaries of an insurance or reinsurance undertaking: implementing measures

In order to ensure the uniform application of Articles 234, 235, 236, 238 and 242, the Commission shall adopt implementing measures relating to the following:

(a) specifying the criteria to be applied when assessing whether the conditions stated in Article 234 are satisfied;

(a bis) specifying the criteria to be applied when assessing what should be considered emergency situations as stated in Article 238;

(d) specifying the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties in accordance with Articles 235, 236, 238 and 242.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 246

Review clause

1. Two years after the date as referred to in Article 310, the Commission shall make an assessment of the application of Title III of this Directive, in particular of the cooperation of supervisory authorities within, and functionality of, the colleges, as referred to in Article 252, the legal status of CEIOPS, and of the supervisory practices on setting the capital add-ons, and present a report to the European Parliament and the Council, accompanied where appropriate by proposals for its review.

2. Three years after the date as referred to in Article 310, the Commission shall make an assessment of the benefit of enhancing group supervision and capital management within a group of insurance or reinsurance undertakings including a reference to COM (2008) 119 final and the EP report on this proposal of 16 October 2008. The assessment should include possible measures to enhance a sound cross-border management of insurance groups notably of risks and asset management. In its assessment, the Commission shall, inter alia, take into account new developments and progress concerning:

a) a harmonised framework on early intervention,
b) practices in centralized group risk management, functioning of group internal models, including stress testing,
c) intra-group transactions and risk concentrations,
d) the behaviour of diversification and concentration effects over time,
e) legally binding framework for the mediation of supervisory disputes,
f) a harmonised framework on asset transferability, insolvency and winding up procedures which eliminates the relevant national company or corporate law barriers to asset transferability,
g) equivalent level of protection of policyholders and beneficiaries of the undertakings of the same group particularly in crisis situations,
h) a harmonised and adequately funded EU-wide solution for insurance guarantee schemes,
i) a harmonised and legally binding framework between competent authorities, central banks and ministries of finance concerning crisis management, resolution and fiscal burden-sharing which aligns supervisory powers with fiscal responsibilities.

The Commission shall present a report to the European Parliament and the Council, accompanied where appropriate by proposals for its review.

Article 247

Subsidiaries of an insurance holding company

Articles 234, 235, 236, 238, 242, 245 and 246 shall apply *mutatis mutandis* to insurance and reinsurance undertakings which are the subsidiary of an insurance holding company.

SECTION 2 - RISK CONCENTRATION AND INTRA-GROUP TRANSACTIONS

Article 248

Supervision of risk concentration

1. Supervision of the risk concentration at group level shall be exercised in accordance with paragraphs 2 and 3, Article 250 and Chapter III.

2. The Member States shall require insurance and reinsurance undertakings or insurance holding companies to report on a regular basis and at least annually to the group supervisor any significant risk concentration at the level of the group.

   The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by a insurance or reinsurance undertaking, by the insurance holding company or by the insurance or reinsurance undertaking in the group identified by the group supervisor after consultation with the other supervisory authorities concerned and with the group.

   The risk concentrations shall be subject to supervisory review by the group supervisor.

3. The group supervisor, after consultation with the other supervisory authorities concerned and the group, shall identify the type of risks insurance and reinsurance undertakings in a particular group shall report in all circumstances.

   When defining or giving their opinion about the type of risks, the group supervisor and the other supervisory authorities concerned shall take into account the specific group and risk management structure of the group.

   In order to identify significant risk concentration to be reported, the group supervisor, after consultation of the other supervisory authorities concerned and the group, shall impose appropriate thresholds based on solvency capital or technical provisions or both.

When reviewing the risk concentrations, the group supervisor shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

4. The Commission may adopt implementing measures, as regards the definition and identification of a significant risk concentration and the reporting on such a risk concentration, for the purposes of paragraphs 2 and 3.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 249

Supervision of intra-group transactions

1. Supervision of intra-group transactions shall be exercised in accordance with paragraphs 2 and 3, Article 250 and Chapter III.

2. The Member States shall require insurance and reinsurance undertakings or insurance holding companies to report on a regular basis and at least annually to the group supervisor all significant intra-group transactions by insurance and reinsurance undertakings within a group, including those performed with any natural person linked to any undertaking within the group by close links.

In addition, Member States shall require reporting of very significant intra-group transactions as soon as is practicable.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or by the insurance or reinsurance undertaking in the group identified by the group supervisor after consultation with the other supervisory authorities concerned and with the group.

The intra-group transactions shall be subject to supervisory review by the group supervisor.

3. The group supervisor, after consultation with the other supervisory authorities concerned and the group, shall identify the type of intra-group transactions insurance and reinsurance undertakings in a particular group must report in all circumstances. Article 248(3) shall apply by analogy.

4. The Commission may adopt implementing measures, as regards the definition and identification of a significant intra-group transaction and the reporting on such an intra-group transaction, for the purposes of paragraphs 2 and 3.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

SECTION 3 - RISK MANAGEMENT AND INTERNAL CONTROL

Article 250

Supervision of the system of governance

1. The requirements set out in TITLE 1, Chapter IV, Section 2 shall apply *mutatis mutandis* at the level of the group.

Without prejudice to the first subparagraph, 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 points (a) and (b) of Article 211(2) so that those systems and reporting procedures can be controlled at the level of the groups.

2. Without prejudice to paragraph 1, the group internal control mechanisms shall include at least the following:

(a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;

(b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration

3. The systems and reporting procedures referred to in paragraph 1 and 2 shall be subject to supervisory review by the group supervisor, in accordance with the rules laid down in Chapter III.

4. Member States shall require the participating insurance or reinsurance undertaking or the insurance holding company to undertake at the level of the group the assessment required by Article 44. The own risk and solvency assessment conducted at group level shall be subject to supervisory review by the group supervisor in accordance with Chapter III.

Where the calculation of the solvency at the level of the group is carried out in accordance with the accounting consolidation-based method referred to in Article 228, the participating insurance or reinsurance undertaking or the insurance holding company shall provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

Where the participating insurance or reinsurance undertaking or the insurance holding company so decides, and subject to the agreement of the group supervisor, it may undertake any assessments required by Article 44 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.

Before granting the agreement in accordance with the third subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors as referred to in Article 252.

Where the group exercises the option provided in the third subparagraph, it shall submit the document to all supervisory authorities concerned at the same time. Exercising this option shall not remove from the subsidiaries concerned the obligation to ensure that the requirements of Article 44 are met.

CHAPTER III - MEASURES TO FACILITATE GROUP SUPERVISION

Article 251

Group Supervisor

1. A single supervisor, responsible for coordination and exercise of group supervision, shall be designated from among the supervisory authorities of the Member States concerned (hereinafter "group supervisor").

2. Where the same supervisory authority is competent for all insurance and reinsurance undertakings in a group, the task of group supervisor shall be exercised by that supervisory authority.

   In all other cases and subject to paragraph 3, the task of group supervisor shall be exercised by the following:

   (a) where a group is headed by an insurance or reinsurance undertaking, by the supervisory authority which has authorised that undertaking;

   (b) where a group is not headed by an insurance or reinsurance undertaking, by the supervisory authority identified in accordance with the following:

      (i) where the parent of an insurance or reinsurance undertaking is an insurance holding company, by the supervisory authority which has authorised that insurance or reinsurance undertaking;

      (ii) where more than one insurance or reinsurance undertaking with a head office in the Community have as their parent the same insurance holding company, and one of these undertakings has been authorised in the Member State in which the insurance holding company has its head office, by the supervisory authority of the insurance or reinsurance undertaking authorised in that Member State;

(iii) where the group is headed by more than one insurance holding company with a head office in different Member States and there is an insurance or reinsurance undertaking in each of these States, by the supervisory authority of the insurance or reinsurance undertaking with the largest balance sheet total;

(iv) where more than one insurance or reinsurance undertaking with a head office in the Community have as their parent the same insurance holding company and none of these undertakings has been authorised in the Member State in which the insurance holding company has its head office, by the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total;

(v) where the group is a group without a parent undertaking, or in any other case, by the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total.

3. In particular cases, the supervisory authorities concerned may, at the request of any of the authorities, take a joint decision to derogate from the criteria set out in paragraph 2 if their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings activities in different countries, and designate a different supervisory authority as group supervisor.

For that purpose, any of the supervisory authorities concerned may request that a discussion be opened on whether the criteria referred to in paragraph 2 are appropriate. Such a discussion shall not take place more than once a year.

The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months from the request for discussion. Before taking their decision, the supervisory authorities concerned shall give the group an opportunity to state its opinion.

3a. During the period referred to in paragraph 3, any of the supervisory authorities concerned may request that CEIOPS be consulted. In the event that CEIOPS is consulted, the period referred to in paragraph 3 shall be extended by two months.

3b. In the event that CEIOPS is consulted, the supervisory authorities concerned shall duly take into account CEIOPS' advice before taking their joint decision. The joint decision shall be fully reasoned and shall contain an explanation of any significant deviation from the positions adopted by CEIOPS.

4. In the absence of a joint decision (…) derogating from the criteria set out in paragraph 2, the task of group supervisor shall be exercised by the supervisory authority identified in accordance with paragraph 2.

(…)

5. The Committee of European Insurance and Occupational Pensions Supervisors shall inform the European Parliament, the Council and the Commission, at least once a year, of any major difficulties with the application of paragraphs 2, 3 and 4.

In the event that any major difficulties do arise with the application of the criteria set out in paragraphs 2 and 3, the Commission shall adopt implementing measures specifying these criteria.

Those measures, designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

6. Where a Member State has more than one supervisory authority for the prudential supervision of insurance and reinsurance undertakings, such Member State shall take the necessary measures to ensure coordination between those authorities.

Article 252

Rights and duties of the group supervisor and the other *supervisors* – *College of supervisors*

1. The rights and duties assigned to the group supervisor with regard to group supervision shall comprise the following:

(a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;

(b) supervisory review and assessment of the financial situation of the group;

(c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 216 to 249;

(d) assessment of the system of governance of the group, as set out in Article 250, and of whether the members of the administrative or management body of the participating undertaking meet the requirements set out in Article 42 and Article 261;

(e) planning and coordination, through regular meetings held at least annually or other appropriate means, of supervisory activities in going concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

(f) other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 229 and 231 and leading the process for permitting the application of the regime established in articles 235, 236, 238 and 242.

2. In order to facilitate group supervision, a college of supervisors, chaired by the group supervisor**,** shall be established to facilitate the exercise of the tasks referred to in the first paragraph.
The college of supervisors shall assure that cooperation, exchange of information and consultation processes among the supervisory authorities of the college, are effectively applied in accordance with Title III of this Directive, with a view to promoting the convergence of their respective decisions and activities.

3. The membership of the college shall include the group supervisor and supervisory authorities of all the Member States in which the head office of all subsidiary undertakings is situated.

The supervisory authorities of significant branches and related undertakings shall also be allowed to participate in the colleges of supervisors. However, their participation shall only be limited to achieving the objective of efficient exchange of information.

The effective functioning of the college may require that some activities will be carried out by a reduced number of supervisory authorities within the college.

4. Without prejudice to any measure adopted pursuant to this Directive, the establishment and functioning of colleges shall be based on coordination arrangements concluded by the group supervisor and the other supervisory authorities concerned.

In the case of diverging views concerning the coordination arrangements, any member of the college may refer the matter to the Committee of European Insurance and Occupational Pension Supervisors.
The group supervisor, following the consultation with the supervisory authorities concerned, shall duly consider any advice produced within two months by the Committee of European Insurance and Occupational Pension Supervisors before taking its final decision. The decision shall be set out in a document containing the fully reasoned decision and an explanation of any significant deviation from any advice given by the Committee of European Insurance and Occupational Pension Supervisors. The group supervisor shall transmit the decision to the other supervisory authorities concerned.

5. Without prejudice to any measure adopted pursuant to this Directive, the coordination arrangements shall specify the procedures for:

(a) the decision-making process among the supervisory authorities concerned as referred to in Articles 229, 230 and 251;
(b) the consultation referred to in paragraph 4 and in Article 216(5).

Without prejudice to the rights and duties allocated by this directive to the group supervisor and to other supervisory authorities, the coordination arrangements may entrust additional tasks to the group supervisor or the other supervisory authorities in the cases where this results in a more efficient supervision of the group, and it does not impair the supervisory activities of the members of the college in respect of their individual responsibilities.

In addition, the coordination arrangements may specify

(a) the consultation among the supervisory authorities concerned, in particular as referred to in Articles 211, 212, 213, 214, 215, 217, 218, 219, 225, 248, 249, 250, 254, 260, 263 and 264;

(b) the cooperation with other supervisory authorities.

6. The Committee of European Insurance and Occupational Pensions Supervisors shall elaborate guidelines for the operational functioning of colleges on the basis of comprehensive reviews of the work of the colleges to assess the level of convergence between them. Such reviews shall be performed at least every three years. Member states shall ensure that the group supervisor transmit to the Committee of European Insurance and Occupational Pensions Supervisors the information, on the functioning of the college and any difficulties encountered, relevant for the reviews.

7. The Commission shall adopt implementing measures for the coordination of group supervision for the purposes of paragraphs 1 to 6, including the definition of a significant branch.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 253

Cooperation and exchange of information between supervisory authorities

1. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.

   With the objective of ensuring that the supervisory authorities, including the group supervisor, have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and whether or not established in the same Member State**,** they shall provide one another with such information in order to allow and facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In this regard, the supervisory authorities concerned and the group supervisor shall communicate without delay to one another all relevant information as soon as it becomes available. The information referred to in this subparagraph includes, but is not limited to, information about actions of the group and supervisors, and information provided by the group.

1a. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall each call immediately for a meeting of all supervisors involved in group supervision in at least the following cases:

   (a) when they become aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking; or

   (b) when they become aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with which method according to Title III, Chapter II, Section 1, Subsection 4, is used;

   (c) when other exceptional circumstances occur or have occurred.

2. The Commission shall adopt implementing measures determining the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned.

The Commission shall adopt implementing measures specifying the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

The measures referred to in the first and second subparagraphs designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 254

Consultation between supervisory authorities

1. Without prejudice to Article 252, the supervisory authorities concerned shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other in the college of supervisors with regard to the following items:

(a) changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group, which require the approval or authorisation of supervisory authorities;

(b) major sanctions or exceptional measures taken by supervisory authorities, including the imposition of a capital add-on to the Solvency Capital Requirement under Article 37 and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under Title I, Chapter VI, Section 4, Subsection 3.

For the purposes of point (b), the group supervisor shall always be consulted.

In addition, the supervisory authorities concerned shall, where a decision is based on information received from other supervisory authorities, consult each other prior to that decision.

2. Without prejudice to Article 252, a supervisory authority may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decision. In that case, the supervisory authority shall, without delay, inform the other supervisory authorities concerned.

Article 255

Requests from the group supervisor to other supervisory authorities

The group supervisor may invite the supervisory authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the group supervision pursuant to Article 251, to request from the parent undertaking any information which would be relevant for the exercise of its coordination rights and duties as laid down in Article 252, and to transmit that information to the group supervisor.

The group supervisor shall, when it needs information referred to in Article 258(2) which has already been given to another supervisory authority, contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Article 256

Cooperation with authorities responsible for credit institutions and investment firms

Where an insurance or reinsurance undertaking and either a credit institution as defined in Directive 2006/48/EC or an investment firm as defined in Council Directive 2004/39/EC, or both, are directly or indirectly related or have a common participating undertaking, the supervisory authorities concerned and the authorities responsible for the supervision of those other undertakings shall cooperate closely.

Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular as set out in this Title.

Article 257

Professional secrecy and confidentiality

Member States shall authorise the exchange of the information between their supervisory authorities and between their supervisory authorities and other authorities, as referred to in Articles 253 to 256.

Information received in the framework of group supervision, and in particular any exchange of information between supervisory authorities and between supervisory authorities and other authorities which is provided for in this Title, shall be subject to the provisions on professional secrecy and communication of confidential information laid down in Article 297.

Article 258

Access to information

1. Member States shall ensure that the natural and legal persons included within the scope of group supervision, and their related undertakings and participating undertakings, are able to exchange any information which could be relevant for the purposes of group supervision.

2. Member States shall provide that their authorities responsible for exercising group supervision shall have access to any information relevant for the purposes of that supervision regardless of the nature of the undertaking concerned. Article 35 shall apply *mutatis mutandis*.

The supervisory authorities concerned may only address themselves directly to the undertakings in the group to obtain the necessary information, if such information has been requested from the insurance undertaking or reinsurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time.

Article 259

Verification of information

1. Member States shall ensure that their supervisory authorities may carry out within their territory, either directly or through the intermediary of persons whom they appoint for that purpose, on-site verification of the information referred to in Article 258 on the premises of any of the following:

(a) the insurance or reinsurance undertaking subject to group supervision;

(b) related undertakings of that insurance or reinsurance undertaking;

(c) parent undertakings of that insurance or reinsurance undertaking;

(d) related undertakings of a parent undertaking of that insurance or reinsurance undertaking.

2. Where supervisory authorities wish in specific cases to verify the information concerning an undertaking, whether or not regulated, which is part of a group and is situated in another Member State, they shall ask the supervisory authorities of that other Member State to have the verification carried out.

The authorities which receive such a request shall, within the framework of their competences, act upon that request either by carrying out the verification directly, by allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself. The group supervisor shall be informed of the action taken.

The supervisory authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification directly.

Article 260

Group solvency and financial condition report

1. Member States shall require participating insurance and reinsurance undertakings or insurance holding companies to publicly disclose, on an annual basis, a report on the solvency and financial condition at the level of the group. Articles 50 and 52 to 54 shall apply *mutatis mutandis*.

2. Where a participating insurance or reinsurance undertaking or an insurance holding company so decides, and subject to the agreement of the group supervisor, it may provide a single solvency and financial condition report which shall comprise the following:

(a) the information at the level of the group which must be disclosed in accordance with paragraph 1;

(b) the information for any of the subsidiaries within the group which must be individually identifiable and disclosed in accordance with Articles 50 and 52 to 54.

Before granting the agreement in accordance with first subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors as referred to in Article 252.

3. Where the report referred to in paragraph 2 fails to include information which the supervisory authority having 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 disclose the necessary additional information.

4. The Commission shall adopt implementing measures further specifying the information which must be disclosed and the means by which this is to be achieved as regards the single solvency and financial condition report.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 261

Administrative or management body of insurance holding companies

Member States shall require that all persons who effectively run the insurance holding company are fit and proper to perform their duties.

The provisions set out in Article 42 shall apply by analogy.

Article 262

Enforcement measures

1. If the insurance or reinsurance undertakings in a group do not comply with the requirements referred to in Articles 216 to 250 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance or reinsurance undertakings, the following shall require the necessary measures in order to rectify the situation as soon as possible:

(a) the group supervisor with respect to the insurance holding company;

(b) the supervisory authorities with respect to the insurance and reinsurance undertakings.

Where, in the case referred to in point (a) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance holding company has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Where, in the case referred to in point (b) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance or reinsurance undertaking has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Without prejudice to paragraph 2, Member States shall determine the measures which may be taken by their supervisory authorities with respect to insurance holding companies.

The supervisory authorities concerned, including the group supervisor, shall where appropriate coordinate their enforcement measures.

2. Without prejudice to their criminal law provisions, Member States shall ensure that sanctions or measures may be imposed on insurance holding companies which infringe laws, regulations or administrative provisions enacted to implement this Title, or on the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such sanctions or measures are effective, especially when the central administration or main establishment of an insurance holding company is not located at its head office.

3. The Commission may adopt implementing measures for the coordination of enforcement measures referred to in paragraphs 1 and 2.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

Article 262a

Reporting of the Committee of European Insurance and Occupational Pensions Supervisors

1. The Committee of European Insurance and Occupational Pensions Supervisors shall annually attend the European Parliament for a general parliamentary committee hearing. When due, the hearing may also include the reporting for the purpose of Article 70, paragraph 2.

2. In doing so, the Committee of European Insurance and Occupational Pensions Supervisors shall among others report on all relevant and important experiences of the supervisory activities and cooperation between supervisors in the framework of Title III, in particular on:

(a) the process of the nomination of the group supervisor, the number of group supervisors and geographical spread;

(b) the working of the colleges of supervisors, in particular the involvement and commitment of supervisory authorities where they are not the group supervisor.

3. The Committee of European Insurance and Occupational Pensions Supervisors may for the purposes of paragraph 1 also include, when available, the main lessons drawn from the reviews within the meaning of Article 252, paragraph 7.

CHAPTER IV - THIRD COUNTRIES

Article 263

Parent undertakings outside the Community: verification of equivalence

1. In the case referred to in point (c) of Article 211(2), the supervisory authorities concerned shall verify whether the insurance and reinsurance undertakings, the parent undertaking of which has its head office outside the Community, are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by this Title on the supervision at the level of the group of insurance and reinsurance undertakings referred to in points (a) and (b) of Article 211(2).

   The verification shall be carried out by the supervisory authority which would be the group supervisor if the criteria set out in Article 251(2) were to apply, at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Community or on its own initiative, unless the Commission had concluded previously in respect of the equivalence of the third country involved. In so doing, that supervisory authority shall consult the other supervisory authorities concerned, and CEIOPS, before taking a decision.

2. The Commission may adopt implementing measures specifying the criteria to assess whether the prudential regime in a third-country for the supervision of groups is equivalent to that laid down in this Title. Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 304(3).

3. The Commission may adopt, after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the procedure referred to in Article 304(2), and taking into account the criteria adopted in accordance with paragraph 2, a decision as to whether the prudential regime for the supervision of groups in a third-country is equivalent to that laid down in this Title.

Those decisions shall be regularly reviewed to take into account any changes to the prudential regime for the supervision of groups laid down in this Title and to the prudential regime in the third country for the supervision of groups and to any other change in regulation that may affect the decision of equivalence.

When a decision has been adopted by the Commission, in accordance with the first subparagraph, in respect of a third country, that decision shall be recognised as determinative for the purposes of the verification referred to in paragraph 1.

Article 263a

Parent undertaking outside the Community: equivalence

1. In the event of equivalent supervision referred to in Article 263, Member States shall rely on the equivalent group supervision exercised by the third-country supervisory authorities, in accordance with paragraphs 2 and 4.

2. Articles 251 to 262 shall apply mutatis mutandis to the cooperation with third-country supervisory authorities.

Article 264

Parent undertakings outside the Community: absence of equivalence

1. In the absence of equivalent supervision referred to in Article 263, Member States shall apply to the insurance and reinsurance undertakings either Articles 216 to 262, by analogy and with the exception of Articles 234 to 247, or one of the methods set out in paragraph 2.

   The general principles and methods set out in Articles 216 to 262 shall apply at the level of the insurance holding company, third-country insurance undertaking or third-country reinsurance undertaking.

   For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in TITLE I, Chapter VI, Section 3, Subsections 1, 2 and 3 as regards the own funds eligible for the Solvency Capital Requirement and to either of the following:

   (a) a Solvency Capital Requirement determined in accordance with the principles of Article 224 where it is an insurance holding company;

   (b) a Solvency Capital Requirement determined in accordance with the principles of Article 225, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

2. Member States shall allow their supervisory authorities to apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings in a group. These methods must be agreed by the group supervisor, after consultation with the other supervisory authorities concerned.

   The supervisory authorities may in particular require the establishment of an insurance holding company which has its head office in the Community, and apply this Title to the insurance and reinsurance undertakings in the group headed by that insurance holding company.

   The methods chosen shall allow the objectives of the group supervision as defined in this Title to be achieved and shall be notified to the other supervisory authorities concerned and the Commission.

Article 265

Parent undertakings outside the Community: levels

Where the parent undertaking referred to in Article 263 is itself a subsidiary of an insurance holding company having its head office outside the Community or of a third-country insurance or reinsurance undertaking, Member States shall apply the verification provided for in Article 263 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country insurance undertaking or a third-country reinsurance undertaking

However, Member States shall allow their supervisory authorities to decide, in the absence of equivalent supervision referred to in Article 263, to carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether a third-country insurance holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

In such a case, the supervisory authority referred to in the second subparagraph of Article 263(1) shall explain its decision to the group.

Article 264 shall apply *mutatis mutandis*.

Article 266

Cooperation with third countries supervisory authorities

1. The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising group supervision over:

   (a) insurance or reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 211 which have their head office situated in a third country; and

   (b) third-country insurance undertakings or third-country reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 211 which have their head office in the Community.

2. The agreements referred to in paragraph 1 shall in particular seek to ensure both:

   (a) that the supervisory authorities of the Member States are able to obtain the information necessary for the supervision at the level of the group of insurance and reinsurance undertakings which have their head office in the Community and which have subsidiaries or hold participations in undertakings outside the Community; and

   (b) that the supervisory authorities of third countries are able to obtain the information necessary for the supervision at the level of the group of third-country insurance and reinsurance undertakings which have their head office in their territories and which have subsidiaries or hold participations in undertakings in one or more Member States.

3. Without prejudice to Article 391(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Insurance and Occupational Pensions Committee, examine the outcome of the negotiations referred to in paragraph 1.

CHAPTER V - MIXED-ACTIVITY INSURANCE HOLDING COMPANIES

Article 267

Intra-group transactions

1. Member States shall ensure that, where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company, the supervisory authorities responsible for the supervision of these insurance or reinsurance undertakings exercise general supervision over transactions between these insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.

2. Articles 249, 253 to 259 and 262 shall apply *mutatis mutandis*.

Article 268

Cooperation with third countries

As concerns cooperation with third countries, Article 266 shall apply *mutatis mutandis*.

TITLE IV - REORGANISATION AND WINDING-UP OF INSURANCE UNDERTAKINGS

CHAPTER I - SCOPE AND DEFINITIONS

Article 269

Scope of this Title

This Title shall apply to reorganisation measures and winding-up proceedings concerning the following:

(1) insurance undertakings;

(2.) branches situated in the territory of the Community of insurance undertakings which have their head office outside the Community.

Article 270

Definitions

1. For the purpose of this Title the following definitions shall apply:

(a) *"competent authorities"* means the administrative or judicial authorities of the Member States which are competent for the purposes of the reorganisation measures or the winding-up proceedings;

(b) *"branch"* means any permanent presence of an insurance undertaking in the territory of a Member State other than the home Member State which carries on insurance activities ;

(c) *"reorganisation measures"* means measures involving any intervention by the competent authorities which are intended to preserve or restore the financial situation of an insurance undertaking and which affect pre-existing rights of parties other than the insurance undertaking itself, including but not limited to measures involving the possibility of a suspension of payments, suspension of enforcement measures or reduction of claims;

(d) *"winding-up proceedings"* means collective proceedings involving the realisation of the assets of an insurance undertaking and the distribution of the proceeds among the creditors, shareholders or members as appropriate, which necessarily involve any intervention by the competent authorities including where the collective proceedings are terminated by a composition or other analogous measure, whether or not they are founded on insolvency or are voluntary or compulsory;

(e) *"administrator"* means any person or body appointed by the competent authorities for the purpose of administering reorganisation measures;

(f) *"liquidator"* means any person or body appointed by the competent authorities or by the governing bodies of an insurance undertaking for the purpose of administering winding-up proceedings;

(g) *"insurance claims"* means any amount which is owed by an insurance undertaking to insured persons, policyholders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation provided for in points (b) and (c) of Article 2(3) in direct insurance business, including amounts set aside for those persons, when some elements of the debt are not yet known.

The premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of insurance contracts and operations referred to in point (g) of the first subparagraph in accordance with the law applicable to such contracts or operations before the opening of the winding-up proceedings shall also be considered insurance claims.

2. For the purpose of applying this Title to reorganisation measures and winding-up proceedings concerning a branch situated in a Member State of an insurance undertaking whose head office is located outside the Community the following definitions shall apply:

(a) *"home Member State"* means the Member State in which the branch was granted authorisation according to Articles 143 to 147;

(b) *"supervisory authorities"* means the supervisory authorities of the Member State in which the branch was authorised.;

(c) "*competent authorities"* means the competent authorities of the Member State in which the branch was authorised.

CHAPTER II - REORGANISATION MEASURES

Article 271

Adoption of reorganisation measures — Applicable law

1. Only the competent authorities of the home Member State shall be entitled to decide on the reorganisation measures with respect to an insurance undertaking, including its branches.
2. The reorganisation measures shall not preclude the opening of winding-up proceedings by the home Member State.
3. The reorganisation measures shall be governed by the laws, regulations and procedures applicable in the home Member State, unless otherwise provided in Articles 287 to 294.
4. Reorganisation measures taken in accordance with the legislation of the home Member State shall be fully effective throughout the Community without any further formalities, including against third parties in other Member States, even if the legislation of those other Member States does not provide for such reorganisation measures or alternatively makes their implementation subject to conditions which are not fulfilled.
5. The reorganisation measures shall be effective throughout the Community once they become effective in the home Member State.

Article 272

Information to the supervisory authorities

The competent authorities of the home Member State shall inform as a matter or urgency the supervisory authorities of that Member State of their decision on any reorganisation measure, where possible before the adoption of such a measure and failing that immediately thereafter.
The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to adopt reorganisation measures including the possible practical effects of such measures.

Article 273

Publication of decisions on reorganisation measures

1. Where an appeal is possible in the home Member State against a reorganisation measure, the competent authorities of the home Member State, the administrator or any person entitled to do so in the home Member State shall make public the decision on a reorganisation measure in accordance with the publication procedures provided for in the home Member State and, furthermore, publish in the *Official Journal of the European Union* at the earliest opportunity an extract from the document establishing the reorganisation measure.

   The supervisory authorities of the other Member States which have been informed of the decision on a reorganisation measure pursuant to Article 272 may ensure the publication of such decision within their territory in the manner they consider appropriate.

2. The publications provided for in paragraph 1 shall specify the competent authority of the home Member State, the applicable law as provided in Article 271(3) and the administrator appointed, if any. They shall be made in the official language or in one of the official languages of the Member State in which the information is published.

3. The reorganisation measures shall apply regardless of the provisions concerning publication set out in paragraphs 1 and 2 and shall be fully effective as against creditors, unless the competent authorities of the home Member State or the law of that Member State provide otherwise.

4. Where reorganisation measures affect exclusively the rights of shareholders, members or employees of an insurance undertaking, considered in those capacities, paragraphs 1, 2 and 3 shall not apply unless the law applicable to the reorganisation measures provides otherwise.

   The competent authorities shall determine the manner in which the parties referred to in the first subparagraph are to be informed in accordance with the applicable law.

Article 274

Information to known creditors - Right to lodge claims

1. Where the law of the home Member State requires a claim to be lodged in order for it to be recognised or provides for compulsory notification of a reorganisation measure to creditors who have their habitual residence, domicile or head office in that State, the competent authorities of the home Member State or the administrator shall also inform known creditors who have their habitual residence, domicile or head office in another Member State, in accordance with Articles 283 and 285(1).

2. Where the law of the home Member State provides for the right of creditors who have their habitual residence, domicile or head office in that Member State to lodge claims or to submit observations concerning their claims, creditors who have their habitual residence, domicile or head office in another Member State shall have the same right in accordance with Articles 284 and 285(2).

CHAPTER III - WINDING-UP PROCEEDINGS

Article 275

Opening of winding-up proceedings — Information to the supervisory authorities

1. Only the competent authorities of the home Member State shall be entitled to take a decision concerning the opening of winding-up proceedings with regard to an insurance undertaking, including its branches in other Member States. This decision may be taken in the absence, or following the adoption, of reorganisation measures.
2. A decision concerning the opening of winding-up proceedings of an insurance undertaking, including its branches in other Member States, adopted in accordance with the legislation of the home Member State shall be recognised without further formality throughout the Community and shall be effective there as soon as the decision is effective in the Member State in which the proceedings are opened.
3. The competent authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of that Member State of the decision to open winding-up proceedings, if possible before the proceedings are opened and failing that immediately thereafter.

   The supervisory authorities of the home Member State shall inform as a matter of urgency the supervisory authorities of all other Member States of the decision to open winding-up proceedings including the possible practical effects of such proceedings.

Article 276

Applicable law

1. The decision to open winding-up proceedings with regard to an insurance undertaking, the winding-up proceedings and their effects shall be governed by the law applicable in the home Member State unless otherwise provided in Articles 287 to 294.

2. The law of the home Member State shall determine at least the following:

   (a) the assets which form part of the estate and the treatment of assets acquired by, or devolving to, the insurance undertaking after the opening of the winding-up proceedings;

   (b) the respective powers of the insurance undertaking and the liquidator;

   (c) the conditions under which set-off may be invoked;

   (d) the effects of the winding-up proceedings on current contracts to which the insurance undertaking is party;

   (e) the effects of the winding-up proceedings on proceedings brought by individual creditors, with the exception of lawsuits pending referred to in Article 294;

   (f) the claims which are to be lodged against the estate of the insurance undertaking and the treatment of claims arising after the opening of winding-up proceedings;

   (g) the rules governing the lodging, verification and admission of claims;

   (h) the rules governing the distribution of proceeds from the realisation of assets, the ranking of claims, and the rights of creditors who have obtained partial satisfaction after the opening of winding-up proceedings by virtue of a right *in rem* or through a set-off;

   (i) the conditions for and the effects of closure of winding-up proceedings, in particular by composition;

   (j) rights of the creditors after the closure of winding-up proceedings;

   (k) the party who is to bear the cost and expenses incurred in the winding-up proceedings;

   (l) the rules relating to the nullity, voidability or unenforceability of legal acts detrimental to all the creditors.

Article 277

Treatment of insurance claims

1. Member States shall ensure that insurance claims take precedence over other claims on the insurance undertaking in one or both of the following ways:

   (a) with respect to assets representing the technical provisions, insurance claims shall take absolute precedence over any other claim on the insurance undertaking;

   (b) with respect to the whole of the assets of the insurance undertaking, insurance claims shall take precedence over any other claim on the insurance undertaking with the only exception of the following:

      (i) claims by employees arising from employment contracts and employment relationships;

      (ii) claims by public bodies on taxes;

      (iii) claims by social security systems;

      (iv) claims on assets subject to rights *in rem*.

2. Without prejudice to paragraph 1, Member States may provide that the whole or a part of the expenses arising from the winding-up procedure, as determined by their national law, shall take precedence over insurance claims.

3. Member States which have chosen the option provided for in point (a) of paragraph 1 shall require insurance undertakings to establish and keep up to date a special register in accordance with Article 278.

Article 278

Special register

1. Every insurance undertaking shall keep at its head office a special register of the assets used to cover the technical provisions calculated and invested in accordance with law of the home Member State.

2. Where an insurance undertaking carries on both non-life and life activities, it shall keep at its head office separate registers for each type of business.

   However, where a Member State authorises insurance undertakings to cover life and the risks listed in classes 1 and 2 of point A of Annex I, it may provide that those insurance undertakings must keep a single register for the whole of their activities.

3. The total value of the assets entered, valued in accordance with the law applicable in the home Member State, shall at no time be less than the value of the technical provisions.

4. Where an asset entered in the register is subject to a right *in rem* in favour of a creditor or a third party, with the result that part of the value of the asset is not available for the purpose of covering commitments, that fact shall be recorded in the register and the amount not available shall not be included in the total value referred to in paragraph 3.

5. In the following cases the treatment of an asset in the case of the winding-up of the insurance undertaking with respect to the method provided for in point (a) of Article 157(1) shall be determined by the legislation of the home Member State, except where Articles 288, 289 or 290 apply to that asset:
   (a) where the asset used to cover technical provisions is subject to a right *in rem* in favour of a creditor or a third party, without meeting the conditions set out in paragraph 4;
   (b) where such an asset is subject to a reservation of title in favour of a creditor or of a third party;
   (c) where a creditor has a right to demand the set-off of his claim against the claim of the insurance undertaking~~;~~

6. Once winding-up proceedings have been opened, the composition of the assets entered in the register in accordance with paragraphs 1 to 5 shall not be changed and no alteration other than the correction of purely clerical errors shall be made in the registers, except with the authorisation of the competent authority.

However, the liquidators shall add to those assets the yield therefrom and the value of the pure premiums received in respect of the class of insurance concerned between the opening of the winding-up proceedings and the time of payment of the insurance claims or until any transfer of portfolio is effected.

7. If the product of the realisation of assets is less than their estimated value in the registers, the liquidators shall justify this to the supervisory authorities of the home Member States.

Article 279

Subrogation to a guarantee scheme

The home Member State may provide that, where the rights of insurance creditors have been subrogated to a guarantee scheme established in that Member State, claims by that scheme shall not benefit from the provisions of 277(1).

Article 280

Representation of preferential claims by assets

Member States which choose the option set out in point (b) of Article 277(1) shall require every insurance undertaking to ensure that the claims which may take precedence over insurance claims pursuant to point (b) of Article 277(1) and which are registered in the insurance undertaking's accounts are represented, at any moment and independently from a possible winding-up, by assets.

Article 281

Withdrawal of the authorisation

1. Where the opening of winding-up proceedings is decided in respect of an insurance undertaking, the authorisation of that undertaking shall be withdrawn in accordance with the procedure laid down in Article 142 , except to the extent necessary for the purposes of paragraph 2.

2. The withdrawal of authorisation pursuant to paragraph 1 shall not prevent the liquidator or any other person appointed by the competent authorities from carrying on some of the activities of the insurance undertakings in so far as that is necessary or appropriate for the purposes of winding-up.
The home Member State may provide that such activities shall be carried on with the consent and under the supervision of the supervisory authorities of that Member State.

Article 282

Publication of decisions on winding-up procedures

1. The competent authority, the liquidator or any person appointed for that purpose by the competent authority shall publish the decision to open winding-up proceedings in accordance with the publication procedures provided for in the home Member State and also publish an extract from the winding-up decision in the *Official Journal of the European Union*.

The supervisory authorities of all other Member States which have been informed of the decision to open winding-up proceedings in accordance with Article 275(3) may ensure the publication of such decision within their territories in the manner they consider appropriate.

2. The publication referred to in paragraph 1 shall specify the competent authority of the home Member State, the applicable law and the liquidator appointed. It shall be in the official language or in one of the official languages of the Member State in which the information is published.

Article 283

Information to known creditors

1. When winding-up proceedings are opened, the competent authorities of the home Member State, the liquidator or any person appointed for that purpose by the competent authorities shall without delay individually inform by written notice each known creditor who has his habitual residence, domicile or head office in another Member State.

2. The notice referred to in paragraph 1 shall cover time limits, the sanctions laid down with regard to those time limits, the body or authority empowered to accept the lodging of claims or observations relating to claims and any other measures.

The notice shall also indicate whether creditors whose claims are preferential or secured *in rem* need to lodge their claims.

In the case of insurance claims, the notice shall further indicate the general effects of the winding-up proceedings on the insurance contracts, in particular, the date on which the insurance contracts or the operations will cease to produce effects and the rights and duties of insured persons with regard to the contract or operation.

Article 284

Right to lodge claims

1. Any creditor, including public authorities of Member States, whose habitual residence, domicile or head office is situated in a Member State other than the home Member State shall have the right to lodge claims or to submit written observations relating to claims.
2. The claims of all creditors referred to in paragraph 1 shall be treated in the same way and given the same ranking as claims of an equivalent nature which may be lodged by creditors who have their habitual residence, domicile or head office in the home Member State. Competent authorities shall therefore operate without discrimination at Community level.
3. Except in cases where the law of the home Member State allows otherwise, a creditor shall send to the competent authority copies of any supporting documents and shall indicate the following:
   (a) the nature and the amount of the claim;
   (b) the date on which the claim arose;
   (c) whether he alleges preference, security *in rem* or reservation of title in respect of the claim;
   (d) where appropriate, what assets are covered by his security.

   The precedence granted to insurance claims by Article 277 need not be indicated.

Article 285

Languages and form

1. The information in the notice referred to in Article 283(1) shall be provided in the official language or one of the official languages of the home Member State.

   For that purpose a form shall be used bearing one of the following headings in all the official languages of the European Union:

   (a) «Invitation to lodge a claim; time limits to be observed»;

   (b) where the law of the home Member State provides for the submission of observations relating to claims, «Invitation to submit observations relating to a claim; time limits to be observed».

   However, where a known creditor is a holder of an insurance claim, the information in the notice referred to in Article 283(1) shall be provided in the official language or one of the official languages of the Member State in which the creditor has his habitual residence, domicile or head office.

2. Creditors who have their habitual residence, domicile or head office in a Member State other than the home Member State may lodge their claims or submit observations relating to claims in the official language or one of the official languages of that other Member State.

   However, in that case, the lodging of their claims or the submission of observations on their claims, as appropriate, shall bear the heading «Lodgement of claim» or «Submission of observations relating to claims», as appropriate, in the official language or one of the official languages of the home Member State.

Article 286

Regular information to the creditors

1. Liquidators shall in an appropriate manner, keep creditors regularly informed on the progress of the winding-up.

2. The supervisory authorities of the Member States may request information on developments in the winding-up procedure from the supervisory authorities of the home Member State.

CHAPTER IV - COMMON PROVISIONS

Article 287

Effects on certain contracts and rights

(…) By way of derogation from Articles 271 and 276, the effects of the opening of reorganisation measures or of winding-up proceedings shall be governed as follows:

(1) in the case of employment contracts and employment relationships, solely by the law of the Member State applicable to the employment contract or employment relationship;

(2) in the case of contracts conferring the right to make use of or acquire immovable property solely by the law of the Member State in whose territory the immovable property is situated;

(3) in the case of rights of the insurance undertaking with respect to immovable property, a ship or an aircraft subject to registration in a public register by the law of the Member State under whose authority the register is kept.

Article 288

Rights in rem of third parties

1. The opening of reorganisation measures or winding-up proceedings shall not affect the rights *in rem* of creditors or third parties in respect of tangible or intangible, movable or immovable assets — both specific assets and collections of indefinite assets as a whole which change from time to time which belong to the insurance undertaking and which are situated within the territory of another Member State at the time of the opening of such measures or proceedings.

2. The rights referred to in paragraph 1 shall at least include:

   (a) the right to dispose of assets or have them disposed of and to obtain satisfaction from the proceeds of or income from those assets, in particular by virtue of a lien or a mortgage;

(b) the exclusive right to have a claim met, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of a guarantee;

(c) the right to demand the assets from, or to require restitution by, anyone having possession or use of them contrary to the wishes of the party so entitled;

(d) a right to the beneficial use of assets.

3. The (…) right, (…) recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.

4. Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in point (l) of Article 276(2).

Article 289

Reservation of title

1. The opening of reorganisation measures or winding-up proceedings against an insurance undertaking purchasing an asset shall not affect the rights of a seller which are based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within the territory of a Member State other than the Member State in which such measures or proceedings were opened.

2. The opening, after delivery of the asset, of reorganisation measures or winding-up proceedings against an insurance undertaking which is selling an asset shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of the opening of such measures or proceedings the asset sold is situated within the territory of a Member State other than the State in which such measures or proceedings were opened.

3. Paragraphs 1 and 2 shall not preclude actions for nullity, voidability or unenforceability referred to in point (l) of Article 276(2).

Article 290

Set-off

1. The opening of reorganisation measures or winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the insurance undertaking, where such a set-off is permitted by the law applicable to the claim of the insurance undertaking.
2. Paragraph 1 shall not preclude actions for nullity, voidability or unenforceability referred to in point (l) of Article 276(2).

Article 291

Regulated markets

1. Without prejudice to Article 288 the effects of a reorganisation measure or the opening of winding-up proceedings on the rights and obligations of the parties to a regulated market shall be governed solely by the law applicable to that market.
2. Paragraph 1 shall not preclude any action for nullity, voidability, or unenforceability referred to in point (l) of Article 276(2) which may be taken to set aside payments or transactions under the law applicable to that market.

Article 292

Detrimental acts

Point (l) of Article 276(2) shall not apply where a person who has benefited from a legal act which is detrimental to all the creditors provides proof that that act is subject to the law of a Member State other than the home Member State, and that law does not allow any means of challenging that act in the relevant case.

Article 293

Protection of third-party purchasers

The following law shall be applicable where, by an act concluded after the adoption of a reorganisation measure or the opening of winding-up proceedings, an insurance undertaking disposes, for consideration, of any of the following:

(1) in the case of an immovable asset, the law of the Member State in whose territory the immovable asset is localised;

(2) in the case of a ship or an aircraft subject to registration in a public register, the law of the Member State under whose authority the register is kept;

(3) in the case of transferable or other securities whose existence or transfer presupposes entry in a register or account laid down by law or which are placed in a central deposit system governed by the law of a Member State, the law of the Member State under whose authority the register, account or system is kept.

Article 294

Lawsuits pending

The effects of reorganisation measures or winding-up proceedings on a pending lawsuit concerning an asset or a right of which the insurance undertaking has been divested shall be governed solely by the law of the Member State in which the lawsuit is pending.

Article 295

Administrators and liquidators

1. The appointment of the administrator or the liquidator shall be evidenced by a certified copy of the original decision of appointment or by any other certificate issued by the competent authorities of the home Member State.

The Member State within whose territory the administrator or liquidator wishes to act may require a translation into the official language or one of the official languages of that Member State. No formal authentication of that translation or other similar formality shall be required.

2. Administrators and liquidators shall be entitled to exercise within the territory of all the Member States all the powers which they are entitled to exercise within the territory of the home Member State.

Persons to assist or represent administrators and liquidators may be appointed, in accordance with the law of the home Member State, in the course of the reorganisation measure or winding-up proceedings, in particular in host Member States and, specifically, in order to help overcome any difficulties encountered by creditors in that State.

3. In exercising their powers according to the law of the home Member State, administrators or liquidators shall comply with the law of the Member States within whose territory they wish to take action, in particular with regard to procedures for the realisation of assets and the informing of employees.
Those powers shall not include the use of force or the right to rule on legal proceedings or disputes.

Article 296

Registration in a public register

1. The administrator, liquidator or any other authority or person duly empowered in the home Member State may request that a reorganisation measure or the decision to open winding-up proceedings be registered in any relevant public register kept in the other Member States.
However, if a Member State provides for mandatory registration, the authority or person referred to in the first subparagraph shall take all the measures necessary to ensure such registration.
2. The costs of registration shall be regarded as costs and expenses incurred in the proceedings.

Article 297

Professional secrecy

All persons required to receive or divulge information in connection with the procedures laid down in Articles 272 , 275 and 298 shall be bound by professional secrecy, as laid down in Articles 63 to 68, with the exception of any judicial authorities to which existing national provisions apply.

Article 298

Treatment of branches of third country insurance undertakings

Where an insurance undertaking whose head office is outside the Community has branches established in more than one Member State, each branch shall be treated independently with regard to the application of this Title.

The competent authorities and the supervisory authorities of those Member States shall endeavour to coordinate their actions.

Any administrators or liquidators shall likewise endeavour to coordinate their actions.

TITLE V - OTHER PROVISIONS

(…)[72]

Article 300

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 301

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.

[72] Art. 299 redrafted, renumbered and inserted as Art. 42a

Article 302

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.

Article 303

Review of amounts expressed in euro

The amounts expressed in euro in this Directive shall be adapted 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 Eurostat starting from 31 October 2012 until the date of adaptation and rounded up to a multiple of EUR 100 000.

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

The Commission shall publish the adapted amounts in the Official Journal.

The adapted amounts shall be implemented by Member States within 12 months of the publication in the Official Journal.

Article 304

Committee procedure

1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC[73].

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

3. Where reference is made to this paragraph, Articles 5a(1) to (4) of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

Article 305

Notifications submitted prior to entry into force of the laws, regulations and administrative provisions necessary to comply with Articles 56 to 62

The assessment procedure applied to proposed acquisitions for which notifications referred to in Article 56 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 56 to 62, shall be carried out in accordance with the national law of Member States in force at the time of notification.

[73] OJ L 3, 7.1.2004, p. 34.

Article 305a

Amendments to Directive 2003/41/EC

1. Article 17(2) is replaced by the following:

"For the purposes of calculating the minimum amount of additional assets, the rules laid down in Articles 17a to 17d shall apply."

2. The following Articles 17a to 17d are inserted:

"Article 17a (ex-Article 27 of Directive 2002/83/EC)

Available solvency margin

1. Each Member State shall require of every institution referred to in Article 17 (1)which is located in its territory an adequate available solvency margin in respect of its entire business at all times which is at least equal to the requirements in this Directive.

2. The available solvency margin shall consist of the assets of the institution free of any foreseeable liabilities, less any intangible items, including:

(a) the paid-up share capital or, in the case of an institution taking the form of a mutual undertaking, the effective initial fund plus any accounts of the members of the mutual undertaking which meet all the following criteria:

(i) the memorandum and articles of association must stipulate that payments may be made from these accounts to members of the mutual undertaking only in so far as this does not cause the available solvency margin to fall below the required level, or, after the dissolution of the undertaking, if all the undertaking's other debts have been settled;

(ii) the memorandum and articles of association must stipulate, with respect to any payments referred to in point (i) for reasons other than the individual termination of membership in the mutual undertaking, that the competent authorities must be notified at least one month in advance and can prohibit the payment within that period;

(iii) the relevant provisions of the memorandum and articles of association may be amended only after the competent authorities have declared that they have no objection to the amendment, without prejudice to the criteria stated in points (i) and (ii);

(b) reserves (statutory and free) not corresponding to underwriting liabilities;

(c) the profit or loss brought forward after deduction of dividends to be paid;

(d) in so far as authorised under national law, profit reserves appearing in the balance sheet where they may be used to cover any losses which may arise and where they have not been made available for distribution to members and beneficiaries. The available solvency margin shall be reduced by the amount of own shares directly held by the institution.

3. Member States may provide that the available solvency margin may also consist of:

(a) cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital, provided that binding agreements exist under which, in the event of the bankruptcy or liquidation of the institution, the subordinated loan capital or preferential share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital shall also fulfil the following conditions:

(i) only fully paid-up funds shall be taken into account;

(ii) for loans with a fixed maturity, the original maturity shall be at least five years. No later than one year before the repayment date, the institution shall submit to the competent authorities for their approval a plan showing how the available solvency margin will be kept at or brought to the required level at maturity, unless the extent to which the loan may rank as a component of the available solvency margin is gradually reduced during at least the last five years before the repayment date. The competent authorities may authorise the early repayment of such loans provided application is made by the issuing institution and its available solvency margin will not fall below the required level;

(iii) loans the maturity of which is not fixed shall be repayable only subject to five years' notice unless the loans are no longer considered as a component of the available solvency margin or unless the prior consent of the competent authorities is specifically required for early repayment. In the latter event the institution shall notify the competent authorities at least six months before the date of the proposed repayment, specifying the available solvency margin and the required solvency margin both before and after that repayment. The competent authorities shall authorise repayment only if the institution's available solvency margin will not fall below the required level;

(iv) the loan agreement shall not include any clause providing that in specified circumstances, other than the winding-up of the institution, the debt will become repayable before the agreed repayment dates;

(v) the loan agreement may be amended only after the competent authorities have declared that they have no objection to the amendment;

(b) securities with no specified maturity date and other instruments, including cumulative preferential shares other than those mentioned in point (a), up to 50 % of the lesser of the available solvency margin and the required solvency margin for the total of such securities and the subordinated loan capital referred to in point (a) provided they fulfil the following:

(i) they may not be repaid on the initiative of the bearer or without the prior consent of the competent authority;

(ii) the contract of issue shall enable the institution to defer the payment of interest on the loan;

(iii) the lender's claims on the institution shall rank entirely after those of all non-subordinated creditors;

(iv) the documents governing the issue of the securities shall provide for the loss-absorption capacity of the debt and unpaid interest, while enabling the institution to continue its business;

(v) only fully paid-up amounts shall be taken into account.

4. Upon application, with supporting evidence, by the institution to the competent authority of the home Member State and with the agreement of that competent authority, the available solvency margin may also consist of:

(a) where Zillmerising is not practised or where, if practised, it is less than the loading for acquisition costs included in the premium, the difference between a non-Zillmerised or partially Zillmerised mathematical provision and a mathematical provision Zillmerised at a rate equal to the loading for acquisition costs included in the premium. This figure may not, however, exceed 3,5 % of the sum of the differences between the relevant capital sums of life assurance and occupational retirement provision activities and the mathematical provisions for all policies for which Zillmerising is possible. The difference shall be reduced by the amount of any undepreciated acquisition costs entered as an asset;

(b) any hidden net reserves arising out of the valuation of assets, in so far as such hidden net reserves are not of an exceptional nature;

(c) one half of the unpaid share capital or initial fund, once the paid-up part amounts to 25 % of that share capital or fund, up to 50 % of the lesser of the available and required solvency margin.

5. The Commission may adopt implementing measures relating to paragraphs 2, 3 and 4 to take into account developments that justify a technical adjustment of the elements eligible for the available solvency margin.

Those measures designed to amend non-essential elements of this Directive shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 21b.

Article 17b (ex-Article 28 of Directive 2002/83/EC)

Required solvency margin

1. Subject to Article 17c, the required solvency margin shall be determined as laid down in paragraphs 2 to 6 according to the liabilities underwritten.

2. The required solvency margin shall be equal to the sum of the following two results:

(a) first result:

a 4 % fraction of the mathematical provisions relating to direct business and reinsurance acceptances gross of reinsurance cessions shall be multiplied by the ratio, for the last financial year, of the mathematical provisions net of reinsurance cessions to the gross total mathematical provisions. That ratio may in no case be less than 85 %.;

(b) second result:

for policies on which the capital at risk is not a negative figure, a 0,3 % fraction of such capital underwritten by the institution shall be multiplied by the ratio, for the last financial year, of the total capital at risk retained as the institution's liability after reinsurance cessions and retrocessions to the total capital at risk gross of reinsurance; that ratio may in no case be less than 50 %.

For temporary assurance on death of a maximum term of three years the fraction shall be 0,1 %. For such assurance of a term of more than three years but not more than five years the above fraction shall be 0,15 %.

3. For the supplementary insurance referred to in Article 2(3)(a)(iii) of Directive [COM(2008)119] the required solvency margin shall be equal to the required solvency margin for institutions as laid down in Article 17d.

4. For capital redemption operations referred to in Article 2(3)(b)(ii) of Directive [COM(2008)119], the required solvency margin shall be equal to a 4 % fraction of the mathematical provisions calculated in compliance with paragraph 2(a).

5. For operations referred to in Article 2(3)(b)(i) of Directive [COM(2008)119], the required solvency margin shall be equal to 1 % of their assets.

6. For assurances covered by Article 2(3)(a)(i) and (ii) of Directive [COM(2008)119] linked to investment funds and for the operations referred to in Article 2(3)(b)(iii), (iv) and (v) of Directive [COM(2008)119], the required solvency margin shall be equal to the sum of the following:

(a) in so far as the institution bears an investment risk, a 4 % fraction of the technical provisions, calculated in compliance with paragraph 2(a);

(b) in so far as the institution bears no investment risk but the allocation to cover management expenses is fixed for a period exceeding five years, a 1 % fraction of the technical provisions, calculated in compliance with paragraph 2(a);

(c) in so far as the institution bears no investment risk and the allocation to cover management expenses is not fixed for a period exceeding five years, an amount equivalent to 25 % of the last financial year's net administrative expenses pertaining to such business;

(d) in so far as the institution covers a death risk, a 0,3 % fraction of the capital at risk calculated in compliance with paragraph 2(b).

Article 17c (ex-Article 29 of Directive 2002/83/EC)

Guarantee fund

1. Member States may provide that one third of the required solvency margin as specified in Article 17b shall constitute the guarantee fund. This fund shall consist of the items listed in Article 17a(2), (3) and, with the agreement of the competent authority of the home Member State, (4)(b).

2. The guarantee fund may not be less than a minimum of EUR 3 million. Any Member State may provide for a one-fourth reduction of the minimum guarantee fund in the case of mutual undertakings and mutual-type undertakings.

Article 17d (ex-Article of 16a of Directive 1973/239/EEC)

Required solvency margin for the purpose of Article 17b(3)

1. The required solvency margin shall be determined on the basis either of the annual amount of premiums or contributions, or of the average burden of claims for the past three financial years.

2. The amount of the required solvency margin shall be equal to the higher of the two results as set out in paragraphs 3 and 4.

3. The premium basis shall be calculated using the higher of gross written premiums or contributions as calculated below, and gross earned premiums or contributions.

The premiums or contributions (inclusive of charges ancillary to premiums or contributions) due in respect of direct business in the last financial year shall be aggregated.

To this sum there shall be added the amount of premiums accepted for all reinsurance in the last financial year.

From this sum there shall then be deducted the total amount of premiums or contributions cancelled in the last financial year, as well as the total amount of taxes and levies pertaining to the premiums or contributions entering into the aggregate.

The amount so obtained shall be divided into two portions, the first portion extending up to EUR 50 million, the second comprising the excess; 18 % and 16 % of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the institution after deduction of amounts recoverable under reinsurance and the gross amount of claims; that ratio may in no case be less than 50 %.

4. The claims basis shall be calculated, as follows:

The amounts of claims paid in respect of direct business (without any deduction of claims borne by reinsurers and retrocessionaires) in the periods specified in paragraph 1 shall be aggregated.

To this sum there shall be added the amount of claims paid in respect of reinsurances or retrocessions accepted during the same periods and the amount of provisions for claims outstanding established at the end of the last financial year both for direct business and for reinsurance acceptances.

From this sum there shall be deducted the amount of recoveries effected during the periods specified in paragraph 1.

From the sum then remaining, there shall be deducted the amount of provisions for claims outstanding established at the commencement of the second financial year preceding the last financial year for which there are accounts, both for direct business and for reinsurance acceptances.

One-third of the amount so obtained shall be divided into two portions, the first extending up to EUR 35 million and the second comprising the excess; 26 % and 23 % of these portions respectively shall be calculated and added together.

The sum so obtained shall be multiplied by the ratio existing in respect of the sum of the last three financial years between the amount of claims remaining to be borne by the institution after deduction of amounts recoverable under reinsurance and the gross amount of claims; that ratio may in no case be less than 50 %.

5. If the required solvency margin as calculated in paragraphs 2, 3 and 4 is lower than the required solvency margin of the year before, the required solvency margin shall be at least equal to the required solvency margin of the year before multiplied by the ratio of the amount of the technical provisions for claims outstanding at the end of the last financial year and the amount of the technical provisions for claims outstanding at the beginning of the last financial year. In these calculations technical provisions shall be calculated net of reinsurance but the ratio may in no case be higher than 1."

3. The following Articles 21a and 21b are inserted:

"Article 21a (ex-Article 30 of Directive 2002/83/EC)

Review of the amount of the guarantee fund

1. The amount in euro as laid down in Article 17c(2) shall be reviewed annually starting on 31 October 2012, in order to take account of changes in the European index of consumer prices comprising all Member States as published by Eurostat.

The amount shall be adapted automatically, by increasing the base amount in euro by the percentage change in that index over the period between [31.12.2009] and the review date and rounded up to a multiple of EUR 100 000.

If the percentage change since the last adaptation is less than 5 %, no adaptation shall take place.

2. The Commission shall inform annually the European Parliament and the Council of the review and the adapted amount referred to in paragraph 1.

Article 21b (ex-Article 65 of Directive 2002/83/EC)

Committee procedure

1. The Commission shall be assisted by the European Insurance and Occupational Pensions Committee established by Commission Decision 2004/9/EC[74].

2. Where reference is made to this paragraph, Articles 5a(1) to (4) of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof."

[74] OJ L 3, 7.1.2004, p. 34.

Article 305b

Duration based equity risk sub-module

1. Member States may authorise 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 policyholders in accordance with the national legislation of the Member State that has authorised the undertaking;

and where

i) all assets and liabilities corresponding to this business shall be ring-fenced, managed and organised separately from the other activities of the insurance undertakings, without any possibility of transfer; and

ii) the insurance and reinsurance activities of the undertaking related to points a) and b), in relation to which the approach referred to in this paragraph is applied, are carried out only in the Member State where the undertaking has been authorised, and

iii) the average duration of the liabilities corresponding to this business held by undertaking exceed an average of 15 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 policyholders and beneficiaries with a level of protection equivalent to that set out in Article 101, if the approach provided for in this Article is only used in respect of those assets and liabilities as referred in point i). In the calculation of the Solvency Capital Requirement these assets and liabilities shall be fully considered for the purpose of assessing of diversification effects, without prejudice to the need to safeguard the interests of policyholders and beneficiaries in other Member States.

Subject to the approval by the supervisory authorities, the approach set out in subparagraph 1 shall only be used if 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 on-going 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 this condition is verified with the level of confidence necessary to provide policyholders and beneficiaries with a level of protection equivalent to that set out in Article 101.

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.

2. The Commission shall submit to the European Insurance and Occupational Pensions Committee and the European Parliament, at the latest five years after the date referred to in Article 310(1), a report on the application of the approach set out in paragraph 1 of this Article and the supervisory authorities' practices adopted pursuant to paragraph 1 of this Article, accompanied, where appropriate, by any adequate proposal.

TITLE VI - TRANSITIONAL AND FINAL PROVISIONS

CHAPTER I - TRANSITIONAL PROVISIONS

SECTION 1 - INSURANCE

Article 306

Derogations and abolition of restrictive measures

1. Member States may exempt non-life insurance undertakings which on 31 January 1975 did not comply with the requirements of Articles 16 and 17 of Directive 73/239/EEC whose annual premium or contribution income on 31 July 1978 fell short of six times the amount of the minimum guarantee fund required under Article 17 (2) of Directive 73/239/EEC from the requirement to establish such minimum guarantee fund before the end of the financial year in respect of which the premium or contribution income is as much as six times such minimum guarantee fund. After considering the results of the examination provided for under Article 301(2), the Council shall unanimously decide, on a proposal from the Commission, when this exemption is to be abolished by Member States.

2. Non-life insurance undertakings set up in the United Kingdom by Royal Charter or by private Act or by special public Act may continue to carry on their business in the form in which they were constituted on 31 July 1973 for an unlimited period.

   Life insurance undertakings set up in the United Kingdom by Royal Charter or by private Act or by special Public Act may carry on their activity in the legal form in which they were constituted on 15 March 1979 for an unlimited period.

The United Kingdom shall draw up a list of the undertakings referred to in the first and second subparagraphs and communicate it to the other Member States and the Commission.

3. The societies registered in the United Kingdom under the Friendly Societies Acts may continue the activities of life insurance and savings operations which, in accordance with their objects, they were carrying on as of 15 March 1979.

4. At the request of non-life insurance undertakings which comply with the requirements of Title I, Chapter VI, Sections 2, 4 and 5 Member States shall cease to apply restrictive measures such as those relating to mortgages, deposits and securities.

Article 307

Rights acquired by existing branches and insurance undertakings

1. Branches which started business, in accordance with the provisions in force in the Member State where that branch is situated, before 1 July 1994 shall be presumed to have been subject to the procedure laid down in Article 143 and 144.

2. Articles 145 and 146 shall not affect rights acquired by insurance undertakings carrying on business under the freedom to provide services before 1 July 1994.

SECTION 2 - REINSURANCE

Article 308

Transitional period for Articles 57(3) and 60(6) of Directive 2005/68/EC

A Member State may postpone the application of the provisions of Article 57(3) of Directive 2005/68/EC amending Article 15(3) of Directive 73/239/EEC and of the provision of Article 60(6) of Directive 2005/68/EC until 10 December 2008.

Article 309

Right acquired by existing reinsurance undertakings

1. Reinsurance undertakings subject to this Directive which were authorised or entitled to conduct reinsurance business in accordance with the provisions of the Member States in which they have their head offices before 10 December 2005 shall be deemed to be authorised in accordance with Article 14.

However, they shall be obliged to comply with the provisions of this Directive concerning the carrying on of the business of reinsurance and with the requirements set out in points (b), and (d) to (g) of Article 18(1), Articles 19, 20 and 24 and Title I Chapter VI, Sections 2, 3 and 4.

2. Member States may allow reinsurance undertakings referred to in paragraph 1 which at 10 December 2005 did not comply with point (b) of Article 18(1), Articles 19 and 20 and Title I Chapter VI, Sections 2, 3 and 4 until 10 December 2008 in order to comply with such requirements.

CHAPTER II - FINAL PROVISIONS

Article 310

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 4, 6-8, 10, 13, 14, 18, 23, 26-31, 34-54, 66, 67, 70, 71, 73-140, 142, 144, 146, 150, 160-165, 170, 171, 176, 188, 190, 208-268, 280, 299, 306 and Annex III, IV and V by 31 October 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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 311

Repeal

1. Directives 73/239/EEC, 78/473/EEC, 88/357/EEC, 92/49/EEC, 98/78/EC, 2001/17/EC, 2002/83/EC, and 2005/68/EC (…), as amended by the Directives listed in Annex VI, Part A, are repealed with effect from the day after the date set out in Article 310 (1), without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex VI, Part B.
References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex VI.

2. Directives 64/225/EEC, 73/240/EEC, 76/580/EEC, 84/641/EEC and 87/344/EEC are repealed as amended by the Directives listed in Annex VI, Part A, with effect from the day after the date set out in Article 310 (1), without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex VI, Part B.

Article 312

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.*
Articles 1-3, 5, 9, 11, 12, 15-17, 19-22, 24-25, 32, 33, 55-65, 68, 69, 72, 141, 143, 145, 147- 149, 151-159, 166-169, 172-175, 177-187, 189, 191-207, 269-279, 281-298, 300-305, 307-313 and Annexes I and II, V, VI and VII shall apply from 1. November 2012.

Article 313

Addressees

This Directive is addressed to the Member States.

ANNEXES: I and II

Annexes I and II of the Commission proposal are accepted by the Council.

ANNEX III

LEGAL FORMS OF UNDERTAKINGS

A. Forms of non-life insurance undertakings

(1) in the case of the Kingdom of Belgium: «société anonyme —naamloze vennootschap» — , «société en commandite par actions —commanditaire vennootschap op aandelen» — ,«association d'assurance mutuelle —onderlinge verzekeringsvereniging» — ,«société coopérative —coöperatieve vennootschap» - «société mutualiste – maatschappij van onderlinge bijstand»;

(2) in the case of the Republic of Bulgaria: "акционерно дружество";

(3) in the case of the Czech Republic: «*akciová společnost*», «*družstvo*»;

(4) in the case of the Kingdom of Denmark: «aktieselskaber», «gensidige selskaber»;

(5) in the case of the Federal Republic of Germany: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit», «Öffentlich-rechtliches Wettbewerbsversicherungsunternehmen»;

(6) in the case of the Republic of Estonia: «*aktsiaselts*»;

(7) in the case of Ireland: incorporated companies limited by shares or by guarantee or unlimited;

(8) in the case of the Hellenic Republic: «ανώνυμη εταιρία», «αλληλασφαλιστικός συνεταιρισμός»;

(9) in the case of the Kingdom of Spain: «sociedad anónima», «sociedad mutua», «sociedad cooperativa»;

(10) in the case of the French Republic: «société anonyme», «société d'assurance mutuelle», «institution de prévoyance régie par le code de la sécurité sociale», «institution de prévoyance régie par le code rural» and «mutuelles régies par le code de la mutualité»;

(11) in the case of the Italian Republic: «società per azioni», «società cooperativa», «mutua di assicurazione»;

(12) in the case of the Republic of Cyprus: «*Εταιρεία περιορισμένης ευθύνης με μετοχές ή εταιρεία περιορισμένης ευθύνης χωρίς μετοχικό κεφάλαιο*»;

(13) in the case of the Republic of Latvia: «*apdrošināšanas akciju sabiedrība*», «*savstarpējās apdrošināšanas kooperatīvā biedrība*»;

(14) in the case of the Republic of Lithuania: «*akcinės ~~s~~ bendrovės ~~s~~*», «~~*uždarosios*~~ ⌦ *uždaroji* ⌫ *akcinės ~~s~~ bendrovės ~~s~~*»;

(15) in the case of the Grand Duchy of Luxembourg: «société anonyme», «société en commandite par actions», «association d'assurances mutuelles», «société coopérative»;

(16) in the case of the Republic of Hungary: «*biztosító részvénytársaság*», «*biztosító szövetkezet*», «*biztosító egyesület*», «*külföldi székhelyű biztosító magyarországi fióktelepe*»;

(17) in the case of the Republic of Malta: «limited liability company/ kumpannija b` responsabbilta` limitata»;

(18) in the case of the Kingdom of the Netherlands: «naamloze vennootschap», «onderlinge waarborgmaatschappij»;

(19) in the case of the Republic of Austria: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit»;

(20) in the case of the Republic of Poland: «*spółka akcyjna*», «*towarzystwo ubezpieczeń wzajemnych*»;

(21) in the case of the Portuguese Republic: «sociedade anónima», «mútua de seguros»;

(22) in the case of Romania: "societăţi pe acţiuni", "societăţi mutuale";

(23) in the case of the Republic of Slovenia: «*delniška družba*», «*družba za vzajemno zavarovanje*»;

(24) in the case of the Slovak Republic: «*akciová spoločnost*»;

(25) in the case of the Republic of Finland: «keskinäinen vakuutusyhtiö —ömsesidigt försäkringsbolag» — , «vakuutusosakeyhtiö —försäkringsaktiebolag» — , «vakuutusyhdistys —försäkringsförening»;

(26) in the case of the Kingdom of Sweden: «försäkringsaktiebolag», «ömsesidiga försäkringsbolag», «understödsföreningar»;

(27) in the case of the United Kingdom: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered under the Friendly Societies Acts, the association of underwriters known as Lloyd's.

(28) in any case and as an alternative to the forms listed in points (1) to (27), the form of a European Company (SE) as defined in Council Regulation (EC) No 2157/2001 [75] .

B. Forms of life insurance undertakings:

(1) in the case of the Kingdom of Belgium: «société anonyme/naamloze vennootschap», «société en commandite par actions/commanditaire vennootschap op aandelen», «association d'assurance mutuelle/onderlinge verzekeringsvereniging», «société coopérative/coöperatieve vennootschap»;

(2) in the case of the Republic of Bulgaria: "акционерно дружество", "взаимозастрахователна кооперация";

(3) in the case of the Czech Republic: «akciová společnost», «družstvo»;

(4) in the case of the Kingdom of Denmark: «aktieselskaber», «gensidige selskaber», «pensionskasser omfattet af lov om forsikringsvirksomhed (tværgående pensionskasser)»;

(5) in the case of the Federal Republic of Germany: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit», «öffentlich-rechtliches Wettbewerbsversicherungsunternehmen»;

(6) in the case of the Republic of Estonia: «aktsiaselts»;

(7) in the case of Ireland: «incorporated companies limited by shares or by guarantee or unlimited», «societies registered under the Industrial and Provident Societies Acts» and «societies registered under the Friendly Societies Acts»;

(8) in the case of the Hellenic Republic: «ανώνυμη εταιρία»;

(9) in the case of the Kingdom of Spain: «sociedad anónima», «sociedad mutua», «sociedad cooperativa»;

[75] OJ L 294, 10.11.2001, p. 1.

(10) in the case of the French Republic: «société anonyme», «société d'assurance mutuelle», «institution de prévoyance régie par le code de la sécurité sociale», «institution de prévoyance régie par le code rural» and «mutuelles régies par le code de la mutualité»;

(11) in the case of the Italian Republic: «societá per azioni», «societá cooperativa», «mutua di assicurazione»;

(12) in the case of the Republic of Cyprus: «Εταιρεία περιορισμένης ευθύνης με μετοχές ή εταιρεία περιορισμένης ευθύνης με εγγύηση»;

(13) in the case of the Republic of the Latvia: «apdrošināšanas akciju sabiedrība», «savstarpējās apdrošināšanas kooperatīvā biedrība»;

(14) in the case of the Republic of Lithuania: «*akcinės bendrovės*», « *uždaroji akcinės bendrovės*»;

(15) in the case of the Grand Duchy of Luxembourg: «société anonyme», «société en commandite par actions», «association d'assurances mutuelles», «société coopérative»;

(16) in the case of the Republic of Hungary: «biztosító részvénytársaság», «biztosító szövetkezet», «biztosító egyesület», «külföldi székhelyű biztosító magyarországi fióktelepe»;

(17) in the case of the Republic of Malta: «limited liability company/ kumpannija b` responsabbilta` limitata»;

(18) in the case of the Kingdom of the Netherlands: «naamloze vennootschap», «onderlinge waarborgmaatschappij»;

(19) in the case of the Republic of Austria: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit»;

(20) in the case of the Republic of Poland: «spółka akcyjna», «towarzystwo ubezpieczeń wzajemnych»;

(21) in the case of the Portuguese Republic: «sociedade anónima», «mútua de seguros»;

(22) in the case of Romania: "societăţi pe acţiuni", "societăţi mutuale";

(23) in the case of the Republic of Slovenia: «delniška družba», «družba za vzajemno zavarovanje»;

(24) in the case of the Slovak Republic: «akciová spoločnost»;

(25) in the case of the Republic of Finland: «keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag», «vakuutusosakeyhtiö/försäkringsaktiebolag», «vakuutusyhdistys/försäkringsförening»;

(26) in the case of Kingdom of Sweden: «försäkringsaktiebolag», «ömsesidiga försäkringsbolag», «understödsföreningar»;

(27) in the case of the United Kingdom: «incorporated companies limited by shares or by guarantee or unlimited», «societies registered under the Industrial and Provident Societies Acts», «societies registered or incorporated under the Friendly Societies Acts», «the association of underwriters known as Lloyd's».

(28) in any case and as an alternative to the forms listed in points (1) to (27), the form of a European company (SE) as defined in Regulation (EC) No 2157/2001 .

C. Forms of reinsurance undertakings:

(1) in the case of the Kingdom of Belgium: «société anonyme/naamloze vennootschap», «société en commandite par actions/commanditaire vennootschap op aandelen», «association d'assurance mutuelle/onderlinge verzekeringsvereniging», «société coopérative/coöperatieve vennootschap»;

(2) in the case of the Republic of Bulgaria "акционерно дружество";

(3) in the case of the Czech Republic: «akciová společnost»;

(4) in the case of the Kingdom of Denmark: «aktieselskaber», «gensidige selskaber»;

(5) in the case of the Federal Republic of Germany: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit», «Öffentlich-rechtliches Wettbewerbsversicherungsunternehmen»;

(6) in the case of the Republic of Estonia: «aktsiaselts»;

(7) in the case of Ireland: incorporated companies limited by shares or by guarantee or unlimited;

(8) in the case of the Hellenic Republic: «ανώνυμη εταιρία», «αλληλασφαλιστικός συνεταιρισμός»;

(9) in the case of the Kingdom of Spain: «sociedad anónima»;

(10) in the case of the French Republic: «société anonyme», «société d'assurance mutuelle», «institution de prévoyance régie par le code de la sécurité sociale», «institution de prévoyance régie par le code rural» and «mutuelles régies par le code de la mutualité»;

(11) in the case of the Italian Republic: «società per azioni»;

(12) in the case of the Republic of Cyprus: «Εταιρεία Περιορισμένης Ευθύνης με μετοχές» ή «Εταιρεία Περιορισμένης Ευθύνης με εγγύηση»;

(13) in the case of the Republic of Latvia: «akciju sabiedrība», «sabiedrība ar ierobežotu atbildību»;

(14) in the case of the Republic of Lithuania: «akcinė bendrovė», «uždaroji akcinė bendrovė»;

(15) in the case of the Grand Duchy of Luxembourg: «société anonyme», «société en commandite par actions», «association d'assurances mutuelles», «société coopérative»;

(16) in the case of the Republic of Hungary: «biztosító részvénytársaság», «biztosító szövetkezet», «harmadik országbeli biztosító magyarországi fióktelepe»;

(17) in the case of the Republic of Malta: «limited liability company/kumpannija tà responsabbiltà limitata»;

(18) in the case of the Kingdom of the Netherlands: «naamloze vennootschap», «onderlinge waarborgmaatschappij»;

(19) in the case of the Republic of Austria: «Aktiengesellschaft», «Versicherungsverein auf Gegenseitigkeit»;

(20) in the case of the Republic of Poland: «spółka akcyjna», «towarzystwo ubezpieczeń wzajemnych»;

(21) in the case of the Portuguese Republic: «sociedade anónima», «mútua de seguros»;

(22) in the case of Romania “societate pe actiuni”;

(23) in the case of the Republic of Slovenia: «delniška družba»;

(24) in the case of the Slovak Republic: «akciová spoločnost»;

(25) in the case of the Republic of Finland: «keskinäinen vakuutusyhtiö/ömsesidigt försäkringsbolag», «vakuutusosakeyhtiö/försäkringsaktiebolag», «vakuutusyhdistys/försäkringsförening»;

(26) in the case of the Kingdom of Sweden: «försäkringsaktiebolag», «ömsesidigt försäkringsbolag»;

(27) in the case of the United Kingdom: incorporated companies limited by shares or by guarantee or unlimited, societies registered under the Industrial and Provident Societies Acts, societies registered or incorporated under the Friendly Societies Acts, «the association of underwriters known as Lloyd's».

(28) in any case and as an alternative to the forms listed in points (1) to (27), the form of a European Company (SE) as defined in Regulation (EC) No 2157/2001.

ANNEX IV

SOLVENCY CAPITAL REQUIREMENT (SCR) STANDARD FORMULA

1. Calculation of the Basic Solvency Capital Requirement

The Basic Solvency Capital Requirement set out in Article 104(1) shall be equal to the following:

$$Basic\ SCR = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the risk module i and SCR_j denotes the risk module j, and where "i,j" means that the sum of the different terms should cover all possible combinations of i and j. In the calculation, SCR_i and SCR_j are replaced by the following:

– $SCR_{non\text{-}life}$ denotes the non-life underwriting risk module;

– SCR_{life} denotes the life underwriting risk module;

– $SCR_{(...)\,health}$ denotes the (…) health underwriting risk module;

– SCR_{market} denotes the market risk module;

– $SCR_{default}$ denotes the counterparty default risk module.

The factor $Corr_{i,j}$ denotes the item set out in row i and in column j of the following correlation matrix:

j / *i*	*Market*	*Default*	*Life*	*(...) Health*	*Non-life*
Market	1	0.25	0.25	0.25	0.25
Default	0.25	1	0.25	0.25	0.5
Life	0.25	0.25	1	0.25	0
(...) Health	0.25	0.25	0.25	1	0
Non-life	0.25	0.5	0	0	1

2. Calculation of the non-life underwriting risk module

The non-life underwriting risk module set out in Article 105(2) shall be equal to the following:

$$SCR_{non-life} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the sub-module i and SCR_j denotes the sub-module j, and where "i,j" means that the sum of the different terms should cover all possible combinations of i and j. In the calculation, SCR_i and SCR_j are replaced by the following:

– $SCR_{nl\ premium\ and\ reserve}$ denotes the non-life premium and reserve risk sub-module;

– $SCR_{nl\ catastrophe}$ denotes the non-life catastrophe risk sub-module.

3. Calculation of the life underwriting risk module

The life underwriting risk module set out in Article 105(3) shall be equal to the following:

$$SCR_{life} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the sub-module i and SCR_j denotes the sub-module j, and where "i,j" means that the sum of the different terms should cover all possible combinations of i and j. In the calculation, SCR_i and SCR_j are replaced by the following:

– $SCR_{mortality}$ denotes the mortality risk sub-module;

– $SCR_{longevity}$ denotes the longevity risk sub-module;

– $SCR_{disability}$ denotes the disability - morbidity risk sub-module;

– $SCR_{life\ expense}$ denotes the life expense risk sub-module;

– $SCR_{revision}$ denotes the revision risk sub-module;

– SCR_{lapse} denotes the lapse risk sub-module;

– $SCR_{life\ catastrophe}$ denotes the life catastrophe risk sub-module.

(…)

5. Calculation of the market risk module

Structure of the market risk module

The market risk module, set out in Article 105(5) shall be equal to the following:

$$SCR_{market} = \sqrt{\sum_{i,j} Corr_{i,j} \times SCR_i \times SCR_j}$$

where SCR_i denotes the sub-module i and SCR_j denotes the sub-module j, and where "i,j" means that the sum of the different terms should cover all possible combinations of i and j. In the calculation, SCR_i and SCR_j are replaced by the following:

– $SCR_{interest\ rate}$ denotes the interest rate risk sub-module;

– SCR_{equity} denotes the equity risk sub-module;

– $SCR_{property}$ denotes the property risk sub-module;

– SCR_{spread} denotes the spread risk sub-module;

– $SCR_{concentration}$ denotes the market risk concentrations sub-module;

– $SCR_{currency}$ denotes the currency risk sub-module.

ANNEX V

Annex V of the Commission proposal is accepted by the Council.

ANNEX VI

Part A

Repealed Directives with list of their successive amendments

(referred to in Article 312)

[Reference to Directive 2007/44/EC deleted. The rest of Annex VI of the Commission proposal is accepted by the Council.]

ANNEX VII

Annex VII of the Commission proposal is accepted by the Council.