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Delegations will find attached document COM(2021) 581 final.

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2021/0295 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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

(Text with EEA relevance)

{SEC(2021) 620 final} - {SWD(2021) 260 final} - {SWD(2021) 261 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

The economic and social importance of insurance[1] warrants intervention by public authorities, in the form of prudential supervision. Insurers provide protection against future events that may result in a loss, and channel household savings into the financial markets and the real economy. Directive 2009/138/EC[2] ("Solvency II") sets out prudential rules for the insurance sector and aims to enable a single market for insurance services, while also protecting policyholders.

The European Commission has a legal mandate to conduct a comprehensive review of pivotal components of the Solvency II Directive, in particular its risk-based capital requirements and rules on valuation of long-term liabilities, and to draw conclusions from the first 5 years of experience with the framework. This experience has also shown that the proportionality of Solvency II could be improved, and has underlined the absence of specific EU-level provisions to address the build-up of systemic risks, to ensure preparedness for crises or to resolve insurers, where necessary.

Moreover, the framework needs to be consistent with the EU's political priorities. In particular, the insurance sector should play a role in financing the **post COVID-19 economic recovery**, in completing the **Capital Markets Union** (CMU)[3] and in achieving the targets of the **European Green Deal**[4]. More specifically, the sector will be instrumental to "re-equitisation" in the corporate sector and financing the transition to sustainability.

Other European institutions also regard the review as a pivotal initiative to support the objectives of the CMU. The European Parliament's report on further development of the CMU[5] requests the Commission to assess whether capital requirements for investments in businesses, notably small and medium-sized enterprises (SMEs), discourage long-term investments. The Council Conclusions[6] on the CMU Action Plan invite the Commission to strengthen the role of insurers as long-term investors and assess ways to incentivise long-term investments in businesses, particularly SMEs, without endangering financial stability or investor protection.

Against this background, the Commission identified the following objectives for the review:

- provide incentives for insurers to contribute to the long-term sustainable financing of the economy;
- improve risk-sensitivity;

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1 For the purpose of this explanatory memorandum, and unless stated otherwise, the term "insurance" will refer to both "insurance and reinsurance".

2 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ L 335, 17.12.2009, p. 1).

3 COM/2020/590

4 COM/2019/640

5 2020/2036(INI)

6 Council Conclusions on the Commission's CMU Action Plan (12898/1/20 REV 1).

- mitigate excessive short-term volatility in insurers' solvency positions;
- enhance quality, consistency and coordination of insurance supervision across the EU, and improve protection of policyholders and beneficiaries, including when their insurer fails;
- better address the potential build-up of systemic risk in the insurance sector.

- **Consistency with existing policy provisions in the policy area**

This proposal builds on and strengthens the prudential framework for insurance companies set out in Directive 2009/138/EC, as explained in more detail in section 5 below. The Solvency II Directive represents, alongside Delegated Regulation (EU) 2015/35[7], the cornerstone of the EU prudential framework for insurance. A Communication[8] adopted together with this proposal explains in more detail the interaction between the proposal and forthcoming amendments to Delegated Regulation (EU) 2015/35.

- **Consistency with other Union policies**

This proposal is adopted as part of one package, together with a legislative proposal on resolution for insurance undertakings; this package aims to enhance the functioning of and trust in the single market for insurance. The proposals in the package tie into each other, as the proposal amends the rules on supervision before an insurance company fails, while the new standardising rules on resolution address the procedures and powers following such a failure.

Through amendments to the rules on valuation of insurers' liabilities, this proposal helps to complete the CMU. In particular, the relevant amendments make undue pro-cyclical behaviour less likely and reflect better the long-term nature of the insurance business. These changes will be accompanied by additional measures under Delegated Regulation (EU) 2015/35, to ensure the appropriateness of the risk margin calculation and of the eligibility criteria for the long-term equity asset class.

At this stage, the Commission is pursuing several initiatives to increase private financing of the transition to a carbon-neutral economy and to ensure that climate and environmental risks are managed by the financial system. To this end, the Commission adopted a proposal for a Corporate Sustainability Reporting Directive[9] clarifying non-financial reporting requirements for sustainability and extending the scope, among other things, to medium-sized insurance undertakings. To avoid duplication, this proposal does not address sustainability-related disclosure requirements.

By introducing a requirement to conduct climate change scenario analysis, the proposal contributes to the strategy for financing the transition to a sustainable economy[10], which aims to strengthen the foundations for sustainable investments, to fully integrate sustainability considerations into the financial system and to manage these.

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[7] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (OJ L 12, 17.1.2015, p. 1).

[8] COM(2021)580

[9] COM(2021)189

[10] COM(2021)390

The Commission will also take due care of the need to avoid inconsistency between this proposal and upcoming amendments to rules for the banking sector.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The Solvency II Directive provides for a comprehensive regulatory framework on the taking-up and pursuit of insurance business within the EU. The legal bases of the current Directive are Articles 53(1) and 62 of the Treaty on the Functioning of the European Union; Union action in accordance with these Articles is needed to continue aligning the current rules or to introduce new standardised rules.

• Subsidiarity

According to the principle of subsidiarity, Union action may only be taken if the envisaged aims cannot be achieved by Member States alone. Regulation of insurance at European level is long established, because only Union action can set a common regulatory framework for insurers that benefit from freedom of establishment and freedom to provide services. In this regard, this proposal, like the legislation it seeks to amend, is in full compliance with the principle of subsidiarity.

• Proportionality

This proposal aims to amend certain provisions of the Solvency II Directive, in particular those on capital requirements, on valuation of insurance liabilities towards policyholders and on cross-border supervision. It also introduces necessary clarifications and changes to provisions implementing the principle of proportionality. These changes are necessary and proportionate to improve the functioning of the regulatory framework for insurers and to attain the objectives of Solvency II.

• Choice of the instrument

This proposal aims to amend the existing Solvency II Directive, and therefore the instrument chosen is an amending Directive.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

• Ex-post evaluations/fitness checks of existing legislation

The annex to the accompanying impact assessment contains an evaluation of the Solvency II framework. The principal conclusions are that the framework is broadly effective and coherent, continues to address needs and problems, and brings the intended added value. Nonetheless, it also highlights a number of issues in implementing its principles and requirements, and with the supervisory convergence process. Furthermore, the framework does not fully take into account the new financial and economic environment, particularly as regards low interest rates.

In addition, there is still excessive short-term volatility, despite existing tools aiming to mitigate such effects. Capital requirements need improving to ensure risk-sensitivity and appropriate treatment of long-term investments. Furthermore, they do not take into account the sustainable nature of the assets held by insurers. Some characteristics of the reporting and disclosure provisions could be improved and, more generally, the implementation of proportionality has been insufficient to effectively reduce the regulatory burden for smaller insurers.

The evaluation also points to regulatory and supervisory shortcomings in policyholder protection. There are opportunities to further align supervisory processes and improve cooperation between supervisors in the case of cross-border activities. Moreover, supervisory authorities have only limited tools to address the potential build-up of systemic risk in the insurance sector and undertake appropriate macro-prudential supervision.

- **Stakeholder consultations**

The Commission carried out various consultation activities for this review. On 29 January 2020, it held a public conference on the review, with representatives from the insurance industry, insurance associations, public authorities, civil society and the European Parliament.

The Commission also ran a public consultation from 1 July 2020 to 21 October 2020, receiving 73 responses from a variety of stakeholders representing the insurance industry (56%), civil society (14%) and public authorities (11%). The Commission published a summary report on the feedback to this consultation on 1 February 2021[11]. In addition, the Commission discussed various aspects of the review during several meetings of a group of Member State experts.

These consultation activities complement three consultations run by EIOPA between July 2019 and January 2020.

- **Collection and use of expertise**

Following a formal request for advice[12] sent by the Commission in February 2019, EIOPA provided an Opinion[13] on the Solvency II review, along with a background analysis and an impact assessment, on 17 December 2020. EIOPA's Opinions informed the Commission's impact assessment and the development of this proposal. Annex 10 of the accompanying impact assessment lists additional sources considered when preparing this proposal.

- **Impact assessment**

This proposal is accompanied by an impact assessment[14]. The impact assessment was submitted to the Regulatory Scrutiny Board (RSB) on 19 March 2021, and received a positive opinion on 23 April 2021[15]. While the RSB commended the comprehensive and well-structured nature of the impact assessment, it recommended further developing the problem analysis and narrative, including in relation to proportionality. The impact assessment has been amended accordingly.

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11 Ref. Ares(2021)844869
12 Ref. Ares(2019)782244
13 Ref. EIOPA-BoS-20-749
14 SWD(2021)260
15 SEC(2021)620

The impact assessment identifies a set of preferred policy options that address five main problems:

i) disincentives for long-term investments in equity and inadequate reflection of sustainability risks;

ii) inadequate reflection of the low interest rates environment and, possibly, unduly high volatility in solvency positions;

iii) complexity for small and less risky insurers;

iv) recent failures of insurers operating across borders, which highlighted supervisory shortcomings and varying protection of policyholders across the EU following these failures;

v) tools to prevent systemic risks may prove to be insufficient.

The main trade-off in addressing these problems relates to the overall quantitative impact of the review. A significant increase in capital requirements would hinder insurers' contribution to the green and sustainable recovery. At the same time, a significant decrease would jeopardise policyholder protection and financial stability.

In fact, due to a phasing in of the changes on interest rates, the preferred policy options would result in significant capital relief, estimated at up to EUR 90 000 000 000 in the short term. At the end of the transitional period, the preferred policy options are estimated to result, compared with the current situation, in more or less stable or slightly increased capital in excess of regulatory requirements (depending on market conditions).

- **Regulatory fitness and simplification**

The proposed Directive improves regulatory fitness and simplifies the framework as follows:

- excluding more small firms from Solvency II;
- making more proportionate rules available automatically to "low-risk profile undertakings" and, after supervisory approval, to other insurers;
- simplifying the quantification of immaterial risks;
- ensuring that required disclosures do not go beyond what is necessary for the recipients.

As regards digital readiness, the provisions of the Solvency II Directive are already technology-neutral. In addition, existing empowerments for the Commission and EIOPA would allow further adjustments, notably on supervisory reporting and disclosures.

- **Fundamental rights**

The proposal respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular the freedom to conduct a business (Article 16) and consumer protection (Article 38).

4. BUDGETARY IMPLICATIONS

The proposal has no budgetary implications.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the progress towards achieving the specific objectives based on the non-exhaustive list of indicators in Section 8 of the accompanying impact assessment.

In five years, the Commission will carry out the next evaluation of the Solvency II Directive, including the amendments of this proposal, in line with the Commission's Better Regulation Guidelines.

This proposal does not require an implementation plan.

- **Explanatory documents**

No explanatory documents are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

Article 1 of the proposal amends Directive 2009/138/EC.

Proportionality

Paragraph 2 amends Article 4 to increase the size thresholds for the exclusions from the scope of Directive 2009/138/EC, allowing thus more small undertakings to be excluded.

Paragraph 12 clarifies in Article 29 the applicability of the proportionality principle with respect to delegated and implementing acts, in particular by introducing the new concept of low-risk profile undertakings.

Paragraph 13 introduces the new Articles 29a to 29e. Article 29a establishes criteria for the identification of low-risk profile undertakings, which can be supplemented in delegated acts. Article 29b establishes the process for the classification as low-risk profile undertakings.

Article 29c lists the proportionality measures available "automatically" to low-risk profile undertakings and establishes the rules in case of change of the risk profile. Article 29d sets out how undertakings not classified as low risk profile can be authorised to use proportionality measures. Article 29e sets out reporting obligations for the low-risk profile undertakings.

Paragraph 63 introduces the new Article 213a, which establishes the criteria for the identification of low-risk profile groups, as well as the rules on the use of proportionality measures by these insurance groups.

Paragraph 21 introduces a new paragraph 2a in Article 41 to allow low-risk profile undertakings to assign one person to hold several key functions. The paragraph also provides proportionality measures in relation to governance rules; in case of low-risk profile undertakings the internal policies listed in Article 41(3) need to be updated only every three years instead of annually.

Article 45 is amended to allow low-risk profile undertakings, captive insurance undertakings and captive reinsurance undertakings meeting certain criteria l to carry out the own risk and solvency assessment every two years instead of at least annually.

Changes to Article 77 would allow the use of prudent deterministic valuation of the best estimate for life obligations with options and guarantees not deemed material instead of the use of stochastic valuation techniques.

The new Article 109 introduces simplifications in the standard formula when a risk module or submodule is not material, provided that some specific criteria are met.

Quality of supervision

The amendment to Article 25 ensures that each refusal of an authorisation, including the reason, shall be notified to EIOPA and recorded in a database which can be consulted by supervisory authorities. The change to Article 26 introduces the possibility of joint assessment of an application for authorisation at the request of one of the supervisory authorities that need to be consulted by the supervisory authority of the home Member State.

The amendments to Articles 30, 36 and 42 aim to enhance the monitoring of compliance with fit and proper requirements as regards members of the administrative, management or supervisory body (AMSB) or persons that have other key functions in the insurance or reinsurance undertaking. Article 42(4) empowers the supervisory authorities to request the removal of an AMSB member or key function holder.

Reporting

The modifications to Article 35 and the new Article 35a adapt the reporting requirements for low-risk profile undertakings, notably to facilitate the access to exemptions and limitations on reporting for these entities.

The new to Article 35(5a) and the new Article 256b on the Regular Supervisory Report (RSR) by undertakings and groups lay down the principles and frequency for this narrative report. The new Article 35b sets out reporting deadlines and introduces the possibility to change them where justified by extraordinary circumstances.

Paragraphs 26 and 83 amend Article 51 and, respectively, Article 256 to modify the structure of the Solvency and Financial Condition Report (SFCR) by undertakings and groups, splitting its content into a part addressed to policyholders and a part addressed to other stakeholders.

Paragraphs 27 and 84 introduce through the new Articles 51a and 256c an auditing requirement for the prudential balance sheet, the group balance sheet and/or the single SFCR.

Paragraph 28 introduces in Article 52 the obligation for supervisors to submit to EIOPA statistics on the use of proportionality measures and simplifications in their market.

Paragraph 47 amends Article 112 to require undertakings using an internal model to report regularly to the supervisors an estimation of the Solvency Capital Requirement calculated with the standard formula.

Long-term guarantee measures

Paragraph 37 replaces Article 77a on the rules for the extrapolation of the relevant risk-free interest rate term structure. The amendments require that the extrapolation takes into account, where available, information from financial markets for maturities where the term structure is extrapolated. The resulting new extrapolation method is phased in linearly over a period running until 2032, during which insurers will have to disclose the impact of the new extrapolation method without phasing in.

Paragraph 38 amends Article 77d concerning the volatility adjustment. New cases of using the volatility adjustment will become subject to supervisory authorisation. Furthermore, a higher percentage of 85% of the risk-adjusted spread is taken into account in the volatility adjustment. To mitigate the risk that the volatility adjustment compensates beyond the losses on investments from an increase in credit spreads, an undertaking-specific 'credit-spread sensitivity ratio' is introduced. Finally, the country component of the volatility adjustment is replaced with a macro volatility adjustment for Member States whose currency is the euro in order to mitigate the impact of spread crises at country level while avoiding cliff edge effects.

These changes are complemented by paragraph 48, which introduces in Article 122 safeguards where an internal model takes into account the effect of credit spread movements on the volatility adjustment ("dynamic volatility adjustment").

Paragraph 44 amends Article 106(3) to allow the symmetric adjustment to the equity risk to increase or decrease capital charges by a maximum of 17%, instead of 10%.

Paragraph 51 amends Article 138 to ensure that EIOPA, instead of national supervisory authorities, consults the ESRB before declaring an exceptional adverse situation.

Paragraph 90 replaces Article 304(2) on the duration-based equity risk sub-module, the use of which should no longer be approved, with a grandfathering provision.

Paragraphs 95 and 96 amend Article 308c on the transitional measure on the risk-free interest rates and, respectively, Article 308d on the transitional measure on technical provisions. New approvals of the use of those transitional measures are restricted to a closed list of circumstances. Furthermore, companies using those measures will have to disclose the reasons for the use as well as an assessment of and measurers to reduce the dependency on the measures.

Paragraphs 39, 40 and 46 align Article 77e, Article 86 and, respectively, Article 111 on the empowerments for delegated and implementing acts with the changes described above. In addition, paragraph 40 introduces a new empowerment for delegated acts on asset eligibility criteria in the context of the matching adjustment.

Macro-prudential tools

Paragraph 24 integrates macroeconomic considerations and analysis in Article 45 on the Own Risk and Solvency Assessment by insurers. Insurers will be required to assess the impact of plausible macroeconomic and financial market developments, including adverse economic scenarios, on their specific risk profile, business decisions and solvency needs, and reciprocally how their activities may affect market drivers. Supervisory authorities will be required to provide input to specific undertakings, particularly as regards macroprudential risks and concerns arising from their analysis.

Paragraph 49 integrates macroeconomic considerations in Article 132 on the prudent person principle for investments. Insurers will be required to factor plausible macroeconomic and financial markets' developments into their investment strategy and assess the extent to which their investments may increase systemic risk. Supervisory authorities will be required to provide input to specific undertakings as regards particular macroprudential concerns.

Paragraph 54 introduces the new Articles 144a to 144d. Article 144a introduces requirements on liquidity management and planning to ensure the ability to settle financial obligations towards policyholders. Notably, insurers will have to develop liquidity risk indicators to monitor liquidity risk.

Article 144b enables supervisory authorities to intervene where liquidity vulnerabilities are not appropriately addressed by an insurer. In addition, supervisory authorities will have the possibility, in exceptional situations and as a last resort measure, to impose on individual companies or the entire market temporary freezes on redemption options on life insurance policies.

Article 144c introduces supervisory powers aiming to preserve the solvency position of specific undertakings during exceptional situations such as adverse economic or market events affecting large part or the whole insurance market. Subject to risk-based criteria and specific safeguards, distributions to shareholders and other subordinated lenders of a given undertaking can be suspended or restricted before an actual breach of the Solvency Capital Requirement.

Amendments related to the European Green Deal

Paragraph 25 introduces the new Article 45a on climate scenario analysis. Insurers will have to identify any material exposure to climate change risks and, where relevant, to assess the impact of long-term climate change scenarios on their business. Insurers classified as low-risk profile undertakings are exempted from scenario analyses.

Paragraph 91 introduces the new Article 304a with two mandates to EIOPA as regards sustainability risks. EIOPA is mandated to explore by 2023 a dedicated prudential treatment of exposures related to assets or activities associated substantially with environmental and/or social objectives and to review regularly the scope and the calibration of parameters of the standard formula pertaining to natural catastrophe risk.

Group supervision

Article 212 of the Solvency II Directive is amended to facilitate the identification of undertakings which form a group, in particular with respect to groups which are not in the scope of Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, and to horizontal groups. In addition, the definition of insurance holding company is clarified in a similar manner as the amendments to the definition of financial holding company in Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.

Article 213 is amended in order to bring insurance holding companies and mixed financial holding companies directly in the scope of the EU prudential framework. The new paragraph 3a requires appropriate internal governance and corporate structure for groups whose parent undertaking is a holding company, to allow for effective group supervision. Paragraphs 3b

and 3c are inserted to ensure appropriate enforcement powers, including, as a last resort measure, the power to require the group to restructure.

Paragraph 64 amends Article 214 to clarify when an undertaking can be excluded from the scope of group supervision, when group supervision can be waived or can be exercised at the level of an intermediate parent undertaking.

Articles 244, 245 and 265 are amended in order to extend the list of indicators based on which a group supervisors may define significant intragroup transactions and risk concentrations and to clarify the scope of reporting of intragroup transactions.

Paragraph 86 introduces in Article 258 a minimum set of powers that may be applied to insurance holding companies and mixed financial holding companies.

Paragraph 87 amends Article 262 by clarifying the objectives and necessary powers where "other methods" are applied for the supervision of groups whose ultimate parent undertakings have their head office outside the EEA.

A new Article 229a is inserted in order to grant the possibility, subject to supervisory approval, to use a simplified approach to the integration of non-material related undertakings in the group solvency calculation. Materiality thresholds are introduced.

Articles 220, 222, 228, 230, 233, 234 and 308b(17) are amended and a new article 233a is inserted in order to provide the following clarifications on rules governing group solvency calculation:

- the type of undertakings that may be included through method 2;
- how the consolidated group Solvency Capital Requirement should be calculated in the case of a combination of methods;
- how to include undertakings from other financial sectors, e.g. credit institutions, in the group solvency calculation;
- how to assess group own funds, notably the concept of "clear of encumbrances", the treatment of transitional measures on technical provisions and on the risk-free rate, and the treatment of own-funds items that cannot effectively be made available to cover the Solvency Capital Requirement;
- in the case of a use of method 1 or a combination of methods, how to calculate the floor to the consolidated group Solvency Capital Requirement.

Furthermore, a revised "Minimum Consolidated Group Solvency Capital Requirement" is introduced mirroring the rules on the Minimum Capital Requirement at individual level.

Articles 246 and 257 are amended in order to clarify the application *mutatis mutandis* at group level of governance rules applicable to individual undertakings. Those amendments include the role of the administrative, management or supervisory body of the parent undertaking and require that groups ensure consistency of the group written policies with those adopted by related undertakings. Finally, they clarify that the persons in charge of other key functions within insurance holding companies and mixed financial holding companies should be fit and proper.

In addition, Articles 246a and 246b are inserted in order to specify how the new macroprudential rules apply at the level of insurance groups.

Supervision of cross-border insurance business

The provisions on authorisation in Article 18 are amended by a requirement on applicants to provide information on previous rejections or withdrawals of authorisation in other Member States and on supervisory authorities to take that into account in the assessment of applications. In the context of the authorisation process, changes to Article 23 ensure that supervisory authorities will also be informed about intended cross-border business.

Paragraph 15 introduces in Article 33a minimum requirements regarding the exchange of information between the supervisory authorities in home and host Member States concerning the insurers and their activities in the host Member State.

Amendments to Articles 149 and 152 clarify that insurance undertakings should notify material changes and emerging risks related to ongoing cross-border insurance activities. Supervisory authorities should exchange such information.

Paragraph 58 of Article 152b enhances the role of EIOPA in complex cross-border cases where the supervisory authorities involved fail to reach a common view in a cooperation platform.

The amendment to Article 153 ensures timely access to information by a supervisory authority of a host Member State.

Article 159a empowers the supervisory authority of the host Member State to request from the supervisory authority of the home Member State information on the solvency position of the undertaking and, in case of strong concerns, to request carrying out a joint onsite inspection. EIOPA is given a role in resolving disagreements between supervisory authorities.

Transitional measures introduced by Directive 2014/51/EU

Paragraph 94(b) replaces an expired transitional measure in the context of exposures to Member States' central governments or central banks denominated and funded in the domestic currency of another Member State. Under a new grandfathering provision, exposures of this type incurred before 2020 can benefit from the same treatment as exposures to Member States' central governments or central banks denominated and funded in their own domestic currency. The new grandfathering provision is, unlike the previous transitional measure, not set to expire.

Minor updates and fixes

Several paragraphs modify Directive 2009/138/EC for minor updates and fixes, in particular to align definitions, intra and extra-law references with changes introduced in other paragraphs and to remove obsolete references to the United Kingdom.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee[16],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Directive 2009/138/EC of the European Parliament and of the Council[17] has created more risk-based and more harmonised prudential rules for the insurance and reinsurance sector. Some of the provisions of that Directive are subject to review clauses. The application of that Directive has substantially contributed to strengthening the financial system in the Union and rendered insurance and reinsurance undertakings more resilient to a variety of risks. Although very comprehensive, that Directive does not address all identified weaknesses affecting insurance and reinsurance undertakings.

(2) The Covid-19 pandemic has caused tremendous socio-economic damage and left the EU economy in need of a sustainable, inclusive and fair recovery. This has made the work on the Union's political priorities even more urgent, in particular ensuring that the economy works for people and attaining the objectives of the European Green Deal. The insurance and reinsurance sector can provide private sources of financing to European businesses and can make the economy more resilient by supplying

[16] OJ C […], […], p. […].

[17] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1.).

protection against a wide range of risks. With this dual role, the sector has a great potential to contribute to the achievement of the Union's priorities.

(3) As underlined in the Commission's Communication of 24 September 2020 'A Capital Markets Union for people and businesses'[18], incentivising institutional investors, in particular insurers, to make more long-term investments will be instrumental in supporting re-equitisation in the corporate sector. To facilitate insurers' contribution to the financing of the economic recovery of the Union, the prudential framework should be adjusted to better take into account the long-term nature of the insurance business. In particular, when calculating the Solvency Capital Requirement under the standard formula, the possibility to use a more favourable standard parameter for equity investments which are held with a long-term perspective should be facilitated, provided that insurance and reinsurance undertakings comply with sound and robust criteria, that preserve policyholder protection and financial stability. Such criteria should aim to ensure that insurance and reinsurance undertakings are able to avoid forced selling of equities intended to be held for the long term, including under stressed market conditions.

(4) In its Communication of 11 December 2019 on the European Green Deal[19], the Commission made a commitment to integrate better into the Union's prudential framework the management of climate and environmental risks. The European Green Deal is the Union's new growth strategy, which aims to transform the Union into a modern, resource-efficient and competitive economy with no net emissions of greenhouse gases by 2050. It will contribute to the objective of building an economy that works for the people, strengthening the Union's social market economy, helping to ensure that it is future-ready and that it delivers stability, jobs, growth and investment. In its proposal of 4 March 2020 for a European Climate Law, the Commission proposed to make the objective of climate neutrality and climate resilience by 2050 binding in the Union. That proposal was adopted by the European Parliament and by the Council and it entered into force on 29 July 2021[20]. The Commission's ambition to ensure global leadership by the EU on the path towards 2050 was reiterated in the 2021 Strategic Foresight Report[21], which identifies the building of resilient and future-proof economic and financial systems as a strategic area of action.

(5) The EU sustainable finance framework will play a key role in meeting the targets of the European Green Deal and environmental regulation should be complemented by a sustainable finance framework which channels finance to investments that reduce exposure to these climate and environmental risks. In its Communication of 6 July 2021 on a Strategy for Financing the Transition to a Sustainable Economy[22], the Commission committed to propose amendments to Directive 2009/138/EC to consistently integrate sustainability risks in risk management of insurers by requiring climate change scenario analysis by insurers.

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18 COM/2050/590 final

19 COM(2019)640 final

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

21 COM(2021)750 final

22 COM(2021)390

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

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

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

(9) Prior to the granting of authorisation, the supervisory authority of the home Member State should consult the supervisory authorities of any Member States concerned. In view of increased cross-border insurance activities, it is necessary to enhance the convergent application of Union law in cases of cross-border insurance activity and the exchange of information between the supervisory authorities, in particular before authorisations are granted. Therefore, where several supervisory authorities need to be consulted, any supervisory authority concerned should be allowed to request a joint assessment of an application for authorisation from the supervisory authority of the Member State where the authorisation process is ongoing.

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

(11) Undertakings complying with the risk-based criteria should be able to be classified as low-risk profile undertakings pursuant to a simple notification process. Where, within one month after such notification, the supervisory authority does not oppose the classification for duly justified reasons linked to the assessment of the relevant criteria, that undertaking should be deemed as low-risk profile undertaking. Once classified as a low-risk profile undertaking, in principle, it should automatically benefit from

identified proportionality measures on reporting, governance, revision of written policies, own-risk solvency assessment and disclosure requirements.

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

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

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

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

(16) Cooperation between the supervisory authority of the home Member State that granted authorisation to an insurance or reinsurance undertaking and the supervisory authorities of the Member States where that undertaking pursues activities by establishing branches or by providing services, should be strengthened in order to better prevent potential problems and to enhance the protection of policyholders across the Union. This cooperation should include more information coming from the supervisory authority of the home Member State, in particular regarding the outcome of the supervisory review process related to the cross-border activity.

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

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

(19) Reporting and disclosure deadlines should be clearly laid down in Directive 2009/138/EC. However, it should be recognised that extraordinary circumstances such as sanitary emergencies, natural catastrophes and other extreme events could make it impossible for insurance and reinsurance undertakings to submit such reports and disclosures, within the established deadlines. To this end, the Commission should be empowered to extend the deadlines under such circumstances.

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

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

(22) Insurance and reinsurance undertakings should factor any relevant macroprudential information provided by the supervisory authorities in their own-risk and solvency assessment. The supervisory authorities should analyse the own-risk and solvency assessment supervisory reports of undertakings within their jurisdictions, aggregate them and provide input to undertakings on the elements that should be considered in their future own-risk and solvency assessments, particularly as regards macroprudential risks. Member States should ensure that, where they entrust an authority with a macroprudential mandate, the outcome and the findings of macroprudential assessments by the supervisory authorities are shared with that macroprudential authority.

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

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

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

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

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

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

(29) Disclosure requirements should not be excessively burdensome for insurance and reinsurance undertakings. To this end, some simplifications and proportionality measures should be included in Directive 2009/138/EC, in particular when they do not jeopardise the readability of the data provided by insurance and reinsurance undertakings.

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

(31) The burden of the auditing requirement does not seem to be justified for low-risk profile undertakings, which are not expected to be relevant for the financial stability of the Union and whose policyholders are not numerous. One of the criteria that low-risk profile undertakings are required to meet is that they be small in size. To alleviate this burden, an exclusion from this requirement should be granted.

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

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

(34) The determination of the relevant risk-free interest rate term structure should balance the use of information derived from relevant financial instruments with the ability of insurance and reinsurance undertakings to hedge interest rates derived from financial instruments. In particular, it can happen that smaller insurance and reinsurance undertakings do not have the capacities to hedge interest rate risk with instruments other than bonds, loans or similar assets with fixed cash-flows. The relevant risk-free interest rate term structure should therefore be extrapolated for maturities where the markets for bonds are no longer deep, liquid and transparent. However, the method for the extrapolation should make use of information derived from relevant financial instruments other than bonds, where such information is available from deep, liquid and transparent markets for maturities where the bond markets are no longer deep, liquid and transparent. To ensure certainty and harmonised application while also allowing for timely reaction to changes in market conditions, the Commission should adopt delegated acts to specify how the new extrapolation method should apply.

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

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

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

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

(39) In order to ensure that the same treatment is applied to all insurance and reinsurance undertakings calculating the volatility adjustment, or to take account of market developments, the Commission should be empowered to adopt delegated acts specifying the calculation of undertaking-specific elements of the volatility adjustment.

(40) For the purposes of calculating their own funds under Regulation (EU) No 575/2013 of the European Parliament and of the Council[23], institutions which belong to financial conglomerates that are subject to Directive 2002/87/EC of the European Parliament

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

and of the Council[24] may be permitted not to deduct their significant investments in insurance or reinsurance undertakings, provided that certain criteria are met. There is a need to ensure that prudential rules applicable to insurance or reinsurance undertakings and credit institutions allow for an appropriate level-playing field between banking-led and insurance-led financial groups. Therefore, insurance or reinsurance undertakings should also be permitted not to deduct from their eligible own funds participations in credit and financial institutions, subject to similar conditions. In particular, either group supervision in accordance with Directive 2009/138/EC or supplementary supervision in accordance with Directive 2002/87/EC should apply to a group encompassing both the insurance or reinsurance undertaking and the related institution. In addition, the institution should be an equity investment of strategic nature for the insurance or reinsurance undertaking and supervisory authorities should be satisfied as to the level of integrated management, risk management and internal controls regarding the entities in the scope of group supervision or supplementary supervision.

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

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

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

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

covering a corresponding best estimate of insurance or reinsurance obligations form a ring-fenced fund.

(44) As part of the supervisory review process, it is important for supervisory authorities to be able to compare information across the companies they supervise. Partial and full internal models allow to capture the individual risk of a company better and Directive 2009/138/EC allows insurance and reinsurance undertakings to use them for determining capital requirements without limitations stemming from the standard formula. However, partial and full internal models make comparisons across companies more difficult and supervisory authorities would therefore benefit from access to the outcome of the calculation of standard formula capital requirements. All insurance and reinsurance undertakings should therefore regularly report such information to their supervisors.

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

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

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

(48) Directive 2009/138/EC provides for an extension of the recovery period in cases of breaches of the Solvency Capital Requirement where the European Insurance and Occupational Pensions Authority (EIOPA) has declared the existence of exceptional adverse situations. The declarations can be made following requests by national supervisory authorities, who are required to consult the European Systemic Risk Board

(ESRB) where appropriate before the request. The consultation with the ESRB in a decentralised manner by national supervisory authorities is less efficient than a consultation with the ESRB in a centralised manner by EIOPA. In order to ensure an efficient process, it should be EIOPA, and not the national supervisory authorities, that consults the ESRB before the declaration of the existence of exceptional adverse situations, where the nature of the situation allows such prior consultation.

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

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

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

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

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

(54) Supervisory authorities should have the necessary powers to preserve the solvency position of specific insurance or reinsurance undertakings during exceptional situations such as adverse economic or market events affecting a large part or the totality of the insurance and reinsurance market, in order to protect policyholders and

preserve financial stability. Those powers should include the possibility to restrict or suspend distributions to shareholders and other subordinated lenders of a given insurance or reinsurance undertaking before an actual breach of the Solvency Capital Requirement occurs. Those powers should be applied on a case-by-case basis, respect common risk-based criteria and not undermine the functioning of the internal market.

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

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

(57) Under Directive 2009/138/EC, as amended by Directive (EU) 2019/2177 of the European Parliament and of the Council[25], EIOPA has the power to set up and coordinate collaboration platforms to enhance collaboration between the relevant supervisory authorities where an insurance or reinsurance undertaking carries out, or intends to carry out, activities which are based on the freedom to provide services or the freedom of establishment. However, in view of the complexity of the supervisory issues dealt with within those platforms, in several cases, national supervisory authorities fail to reach a common view on how to address issues related to an insurance or reinsurance undertaking which is operating on a cross-border basis. In the event that the supervisory authorities involved in the collaboration platforms cannot reach an agreement on issues related to an insurance or reinsurance undertaking which is operating on a cross-border basis, EIOPA should have the power to settle the disagreement in accordance with Article 19 of Regulation (EU) No 1094/2010.

(58) Under Directive 2009/138/EC, insurance or reinsurance undertakings are not required to provide information on the conduct of their business to the supervisory authorities of the host Member States in a timely manner. Such information may only be obtained by requesting it to the supervisory authority of the home Member State. However, such an approach does not ensure access to information in a reasonable period of time. Therefore, the supervisory authorities of the host Member States, like the supervisory

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

authority of the home Member State, should also have the power to directly request information to insurance or reinsurance undertakings in a timely manner.

(59) Where an insurance or reinsurance undertaking carries out significant cross-border activities in a host Member State, the supervisory authority of that Member State should have the power to request basic information from the supervisory authority of the home Member State on the solvency position of that insurance or reinsurance undertaking. Where the supervisory authority of the host Member State has serious concerns regarding that solvency position, it should have the power to request the carrying out of a joint on-site inspection together with the supervisory authority of the home Member State, where there is a significant non-compliance with the Solvency Capital Requirement. EIOPA should be invited to participate. In this regard, EIOPA should indicate as soon as practicable whether it intends to participate. Where supervisory authorities disagree on the opportunity to carry out a joint on-site inspection, EIOPA should have the power to settle the disagreement in accordance with Article 19 of Regulation (EU) No 1094/2010.

(60) In order to be identified as an insurance holding company, a parent company should in particular have, as its main business, the acquisition and holding of participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings. Currently, supervisory authorities have different interpretations as to the meaning of "exclusively or mainly" in that context. Therefore, a clarification of that concept should be provided, similar to the clarification provided in Regulation (EU) No 575/2013, as amended by Regulation (EU) 2019/876 of the European Parliament and of the Council[26], for the banking sector. Subsidiary undertakings should be considered as "mainly insurance or reinsurance undertakings or third-country insurance or reinsurance undertakings" where such firms represent more than 50% of the insurance holding company's equity, consolidated assets, revenues, personnel or other indicator considered relevant by the supervisory authority.

(61) In some cases, several insurance and reinsurance undertakings form a de facto group and behave as such, although they do not meet the definition of a group as set out in Directive 2009/138/EC. Therefore, Title III of that Directive does not apply to such insurance and reinsurance undertakings. In such cases, in particular for horizontal groups with no capital links between different undertakings, the group supervisors should have the power to identify the existence of a group. Objective criteria should also be provided to make such an identification.

(62) Insurance and reinsurance groups are free to decide on the specific internal arrangements, distribution of tasks and organisational structure within the group as they see fit to ensure compliance with Directive 2009/138/EC. However, in a few cases, such arrangements and organisational structures can jeopardise effective group supervision. Therefore, group supervisors should have the power - in exceptional

[26] Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012 (OJ L 150 7.6.2019, p. 1).

circumstances and after consulting EIOPA and the other supervisory authorities concerned - to require changes to those arrangements or organisational structures. Group supervisors should duly justify their decision and explain why the existing arrangements or structures obstruct and jeopardise effective group supervision.

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

(64) There is a lack of clarity regarding the types of undertakings for which Method 2, namely a deduction and aggregation method as defined in Article 233 of Directive 2009/138/EC, may be applied when calculating group solvency, which is detrimental to the level-playing field in the Union. Therefore, it should be clearly specified which undertakings may be included in the group solvency calculation through Method 2. Such method should only apply to insurance and reinsurance undertakings, third-country insurance and reinsurance undertakings, undertakings belonging to other financial sectors, mixed financial holding companies, insurance holding companies, and other parent undertakings the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings.

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

(66) Directive 2009/138/EC, and Commission Delegated Regulation (EU) 2015/35[27] provide four methods of inclusion in the group solvency calculation of undertakings belonging to other financial sectors, including methods 1 and 2 set out in Annex I to Directive 2002/87/EC. This leads to inconsistent supervisory approaches and an uneven playing field, and generates undue complexity. Therefore, rules should be

[27] Commission Delegated Regulation (EU) 2015/35 of 10 October 2014 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 12, 17.1.2015, p. 1).

simplified so that undertakings belonging to other financial sectors always contribute to the group solvency by using the relevant sectoral rules regarding the calculation of own funds and capital requirements. Those own funds and capital requirements should simply be aggregated to the own funds and capital requirements of the insurance and reinsurance part of the group.

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

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

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

(70) The formula for calculating the minimum consolidated group Solvency Capital Requirement may lead to situations where that minimum is close, or even equal, to the consolidated group Solvency Capital Requirement. In such cases, non-compliance with that minimum may occur although compliance with the consolidated group Solvency Capital Requirement is ensured. Such unintended consequence should be avoided. Therefore, the calculation formula should be amended so that, similarly to individual insurance and reinsurance undertakings, the minimum consolidated group Solvency Capital Requirement is never higher than 45% of the consolidated group Solvency Capital Requirement.

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

(72) There is no legal provision specifying how to calculate group solvency when a combination of Method 1 and Method 2 is used. This leads to inconsistent practices and uncertainties, in particular in relation to the way of calculating the contribution to

the group Solvency Capital Requirement of insurance and reinsurance undertakings included through Method 2. Therefore, it should be clarified how group solvency is to be calculated when a combination of methods is used. In order to avoid material increases in capital requirements, it should be clarified that, for the purpose of calculating the consolidated group Solvency Capital Requirement, no equity risk capital charge is to be applied to such holdings. For the same reason, currency risk charge should only be applied to the value of those holdings that is in excess of the Solvency Capital Requirements of those related undertakings. Participating insurance or reinsurance undertakings should be allowed to take into account diversification between that currency risks and other risks underlying the calculation of the consolidated group Solvency Capital Requirement.

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

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

(75) Insurance holding companies and mixed financial holding companies can be parent undertakings of insurance or reinsurance groups. In that case, the application of group supervision is required on the basis of the consolidated situation of such holding companies. As the insurance or reinsurance undertakings controlled by such holding companies are not always able to ensure compliance with the requirements on group supervision, it is necessary to ensure that group supervisors have the appropriate supervisory and enforcement powers to ensure compliance by groups with Directive 2009/138/EC. Therefore, similar to amendments to Directive 2013/36/EU of the European Parliament and of the Council[28] introduced by Directive (EU) 2019/878 of the European Parliament and of the Council[29] for credit and financial institutions, group supervisors should have a minimum set of powers over holding companies, including the general supervisory powers that are applicable to insurance and reinsurance undertakings for the purpose of group supervision.

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

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

(76) Where insurance and reinsurance undertakings are part of a group whose parent undertaking has its head office in a third country that is not deemed equivalent or temporarily equivalent in accordance with Article 260 of Directive 2009/138/EC, exercising group supervision is more challenging. Group supervisors may decide to apply so-called "other methods" in accordance with Article 262 of that Directive. However, those methods are not clearly defined and the objectives that those other methods should achieve are uncertain. Therefore, the purpose of the other methods should be further specified, including a minimum set of measures that group supervisors should consider.

(77) Commission Delegated Regulation (EU) 2019/981[30] introduced a preferential treatment for long-term investments in equity. The duration-based equity risk submodule, which also aims at reflecting the lower risk of investing over a longer time horizon, but is of very limited use in the Union, is subject to criteria that are stricter than those applicable to long-term equity investments. Therefore, the new prudential category of long-term equity investments appears to obviate the need for the existing duration-based equity risk submodule. As there is no need to keep two distinct preferential treatments which have the same objective of rewarding long-term investments, the duration-based equity risk submodule should be deleted. However, in order to avoid a situation whereby those amendments lead to adverse effects, a grandfathering clause should be provided for with respect to insurers which are currently applying the duration-based equity risk submodule.

(78) Achieving the environmental and climate ambitions of the Green Deal requires the channelling of large amounts of investments from the private sector, including from insurance and reinsurance companies, towards sustainable investments. The provisions of Directive 2009/138/EC on the capital requirements should not impede sustainable investments by insurance and reinsurance undertakings but should reflect the full risk of investments in environmentally harmful activities. While there is not sufficient evidence at this stage on risk differentials between environmentally or socially harmful and other investments, such evidence may become available over the next years. In order to ensure an appropriate assessment of the relevant evidence, EIOPA should monitor and report by 2023 on the evidence on the risk profile of environmentally or socially harmful investments. Where appropriate, EIOPA's report should advise on changes to Directive 2009/138/EC and to the delegated and implementing acts adopted pursuant to that Directive. EIOPA may also inquire whether it would be appropriate that certain environmental risks, other than climate change-related, should be taken into account and how. For instance, if evidence so suggests, EIOPA could analyse the need for extending scenario analyses as introduced by this Directive in the context of climate change-related risks to other environmental risks.

(79) Climate change is affecting and will affect at least over the next decades the frequency and severity of natural catastrophes which are likely to further aggravate due to environmental degradation and pollution. This may also change the exposure of insurance and reinsurance undertakings to natural catastrophe risk and render invalid the standard parameters for natural catastrophe risk set out in Delegated Regulation

[30] Commission Delegated Regulation (EU) 2019/981 of 8 March 2019 amending Delegated Regulation (EU) 2015/35 supplementing Directive 2009/138/EC of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 161, 18.6.2019, p. 1).

(EU) 2015/35. In order to ensure that there is no persistent discrepancy between the standard parameters for natural catastrophe risk and the actual exposure of insurance and reinsurance companies to such risks, EIOPA should review regularly the scope of the natural catastrophe risk module and the calibrations of its standard parameters. For that purpose, EIOPA should take into account the latest available evidence from climate science and, where discrepancies are found, it should submit an opinion to the Commission accordingly.

(80) The requirements set out in Article 308b(12) of Directive 2009/138/EC should be amended to ensure consistency with the banking framework and a level playing field in the treatment of exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State. For this purpose, a grandfathering regime for such exposures should be introduced to exempt the relevant exposures from spread and market concentration risk capital charges, provided that the exposures were incurred before 1 January 2020.

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

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

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

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

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

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

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

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

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

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

(3) Article 6 is amended as follows:

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

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

(b) paragraph 2 is replaced by the following:

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

(c) paragraph 3 is deleted;

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

(5) Article 13 is amended as follows:

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

(b) the following points (10a), (10b), (10c) and (10d) are inserted:

‘(10a) ‘low-risk profile undertaking’ means an insurance and reinsurance undertaking that meets the conditions set out in Article 29a and has been classified as such in accordance with Article 29b;

(10b) ‘audit firm’ means an audit firm within the meaning of Article 2, point (3), of Directive 2006/43/EC of the European Parliament and of the Council*;

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

(10d) ‘low-risk profile group’ means a group that complies with the conditions laid down in Article 213a and has been classified as such by the group supervisor pursuant to paragraph 2 of that Article;

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

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

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

‘(16) ‘subsidiary undertaking’ means any subsidiary undertaking as referred to in Article 22(1) and (2) of Directive 2013/34/EU, including subsidiaries thereof, as well as an undertaking which supervisory authorities are to consider as subsidiary undertaking in accordance with Article 212 of this Directive;

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

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

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

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

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

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

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

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

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

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

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* Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, (OJ L 176, 27.6.2013, p. 338).’;

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

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

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

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

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

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

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

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

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

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

‘(f) the market where the insurance or reinsurance undertaking concerned intends to operate;’;

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

(9) in Article 25, the following paragraph is added:

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

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

(10) in Article 25a, the words ‘the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (‘EIOPA’) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[6]’ are replaced by the word ‘EIOPA’;

(11) in Article 26, the following paragraph 4 is added:

‘4. Where several supervisory authorities need to be consulted pursuant to paragraph 1, any supervisory authority concerned may request the supervisory authority of the home Member State to jointly assess the application for authorisation. The supervisory authority of the home Member State shall consider the conclusions of the joint assessment when taking its final decision.’;

(12) Article 29 is amended as follows:

(a) paragraphs 3 and 4 are replaced by the following:

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

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

The draft regulatory technical standards submitted by EIOPA in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010, the draft implementing technical standards submitted in accordance with Article 15 of

that Regulation, and the guidelines and recommendations issued in accordance with Article 16 of that Regulation, shall ensure the proportionate application of this Directive, in particular in relation to low-risk profile undertakings.';

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

'5. The Commission may adopt delegated acts specifying or adapting the criteria laid down in Article 29a(1), points (e), (f) and (h).

6. In order to ensure consistent supervisory practices in the application of proportionality, EIOPA shall develop guidelines to facilitate common supervisory tools and further specifying the methodology to be used when classifying insurance and reinsurance undertakings as low-risk profile undertakings.';

(13) the following Articles 29a to 29e are inserted:

'Article 29a

Criteria for identifying low-risk profile undertakings

1. Member States shall ensure that insurance and reinsurance undertakings are classified as low-risk profile undertakings, according to the process set out in Article 29b, where, for two consecutive financial years prior to such classification, they meet the following criteria:

(a) For life insurance undertakings and for insurance undertakings pursuing both life and non-life insurance activities in accordance with Article 73 whose technical provisions related to the life insurance activities represent 20% or more of the total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, and whose annual gross written premium income related to the non-life insurance activities represents less than 40% of the total annual gross written premium, all of the following criteria shall be met:

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

(ii) business underwritten in Member States other than the home Member State where the undertaking received its authorisation in accordance with Article 14 is not higher than 5 % of its total annual gross written premium;

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

(iv) investments in non-traditional investments do not represent more than 20% of total investments;

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

The criteria laid down in points (ii) and (v) shall not apply to captive insurance undertakings or captive reinsurance undertakings.

(b) For non-life insurance undertakings, and for insurance undertakings pursuing both life and non-life insurance activities in accordance with Article 73 whose annual gross written premium income related to the non-life insurance activities represent 40% or more of its total annual gross written premium income and whose technical provisions related to the life insurance activities represent less than the 20% of its total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, all of the following criteria shall be met:

(i) the average combined ratio net of reinsurance of the last three years is less than 100 %;

(ii) business underwritten in Member States other than the home Member State where the undertaking received its authorisation in accordance with Article 14 is not higher than 5 % of its total annual gross written premium;

(iii) the annual gross written premium is not higher than EUR 100 000 000;

(iv) the sum of the annual gross written premiums in classes 3 to 7, 14 and 15 of Section A of Annex I is not higher than 30 % of total annual written premiums of non-life business;

(v) investments in non-traditional investments do not represent more than 20% of total investments;

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

The criteria laid down in points (ii) and (vi) shall not apply to captive insurance undertakings or captive reinsurance undertakings.

(c) For insurance undertakings pursuing both life and non-life insurance activities in accordance with Article 73 whose technical provisions related to the life insurance activities represent 20% or more of its total technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, as referred to in Article 76, and whose annual gross written premium income related to the non-life insurance activities represents 40% or more of its total annual gross written premium income, all of the following criteria shall be met:

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

(ii) the average combined ratio net of reinsurance of the last three years is less than 100 %;

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

(iv) the annual gross written premium is not higher than EUR 100 000 000;

(v) business underwritten in Member States other than the home Member State where the undertaking received its authorisation in accordance with Article 14 is not higher than 5 % of its total annual gross written premium;

(vi) the sum of the annual gross written premium in classes 3 to 7, 14 and 15 of Section A of Annex I is not higher than 30 % of total annual written premiums of non-life business;

(vii) investments in non-traditional investments do not represent more than 20% of total investments;

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

The criteria laid down in points (v) and (viii) shall not apply to captive insurance undertakings or captive reinsurance undertakings.

For the purpose of this Article, traditional investments shall consist of bonds, equities, cash and cash equivalents and deposits and total investments shall consist of all assets, including derivatives, and excluding investments covering unit-index linked contracts, excluding property for own use, excluding plant and equipment for own use, excluding property under construction for own used.

2. For insurance and reinsurance undertakings which have obtained authorisation in accordance with Article 14 for less than two years, compliance with the criteria set out in paragraph 1 of this Article shall be assessed only with respect to the last financial year prior to the classification.

3. The following insurance and reinsurance undertakings shall never be classified as low-risk profile undertakings:

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

(b) undertakings which are parent undertakings of an insurance group within the meaning of Article 212, to which group supervision applies in accordance with Article 213(2), point (a) or (b), unless the group is classified as a low-risk profile group.

Article 29b

Process of classification for undertakings complying with the criteria

1. Member States shall ensure that insurance and reinsurance undertakings complying with the conditions set out in Article 29a(1) and (3) may notify the supervisory authority of such compliance with a view to be classified as low-risk profile undertakings.

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

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

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

   (c) an early identification of the proportionality measures the undertaking expects to implement, in particular if the best estimate simplification is intended to be used and whether the undertaking plans to use the simplified method to calculate technical provisions laid down in Article 77(7).

3. The supervisory authority may oppose the classification as low-risk profile undertaking within one month of receipt of the notification referred to in paragraph 1 of this Article on grounds related exclusively to the non-compliance with the conditions foreseen under Article 29a. A decision of the supervisory authority to oppose to the classification shall be done in writing and state the reasons of the supervisory authority's disagreement. Absent such decision, the insurance undertaking shall be classified as low-risk profile undertaking as of the end of the one month opposition period or an earlier date where the supervisory authority has issued a decision earlier confirming compliance with criteria.

4. With respect to requests received by supervisory authorities within the first six months of [OP please insert date = entry into application of this Directive], the period referred to in paragraph 2 shall be extended to two months.

5. The insurance and reinsurance undertakings shall be classified as low-risk profile undertaking for as long as such classification does not cease in accordance with this paragraph.

Where a low-risk profile undertaking no longer complies with any of the criteria set out in Article 29a(1) it shall inform the supervisory authority without delay. Where such non-compliance continuously persists over two consecutive years, the undertaking shall notify the supervisory authority of this situation, and will cease to be classified as low-risk profile undertaking as from the third financial year.

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

Article 29c

Use of proportionality measures by undertakings classified as low-risk profile

1. Member States shall ensure that, without prejudice to specific requirements set out in each proportionality measure, insurance and reinsurance undertakings classified as low-risk profile undertakings may use all the proportionality measures provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 45a(5), Article 51(6), Article 51a(1), Article 77(7) and Article144a(4), and any proportionality measure provided for in the delegated acts adopted pursuant to this Directive.

2. Where the supervisory authority has serious concerns in relation to the risk profile of a low-risk profile undertaking, the supervisory authority may, in exceptional circumstances, request the undertaking concerned to refrain from using one or several proportionality measures listed in paragraph 1 provided this is justified in writing on consideration of the impact on the organisation of the undertaking and the specificities or change of its risk profile.

Article 29d

Use of proportionality measures by undertakings not classified as low-risk profile undertakings

1. Member States shall ensure that insurance and reinsurance undertakings that are not classified as low-risk profile undertakings may use any proportionality measure provided for in Article 35(5a), Article 41, Article 45(1b), Article 45(5), Article 77(7) and Article144a(4) and any proportionality measure provided for in the delegated acts adopted pursuant to this Directive, subject to prior approval from the supervisory authority.

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

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

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

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

2. The supervisory authority shall, within two months of receipt, assess the request and inform the undertaking of its approval or rejection, as well as of the proportionality measures granted. Where the supervisory authority approves the use of proportionality measures under certain terms or conditions, the approval decision shall contain the reasons for those terms and conditions. A decision of the supervisory authority to oppose the use of one or several proportionality measures listed in the request submitted by the undertaking shall be done in writing, and state the reasons for the supervisory authority's decision. Such reasons shall be linked to the risk profile of the undertaking,

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

4. With respect to requests received by supervisory authorities within the first six months of [OP please insert date = date of application of this Directive], the period referred to in paragraph 2 shall be four months.

5. Approval to use proportionality measures may be amended or withdrawn at any point in time if the insurance or reinsurance undertaking's risk profile has changed. The authority shall state in writing the reasons of its decision accordingly.

Article 29e

Monitoring of the use of proportionality measures

1. Member States shall require insurance and reinsurance undertakings using proportionality measures to report annually to their supervisory authorities information on the proportionality measures used as part of the information to be provided for supervisory purposes referred to in Article 35.

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

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

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

(15) the following Article 33a is inserted:

'Article 33a

Supervisory cooperation between home and host supervisory authorities

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

This cooperation shall cover at least the following aspects:

(a) the system of governance including the ability of the head office's management to understand the cross-border market specificities, risk management tools, internal controls in place and compliance procedures for the cross-border business;

(b) outsourcing arrangements and distribution partnerships;

(c) business strategy and claims handling;

(d) consumer protection.

2. The supervisory authority of the home Member State shall, in a timely manner, inform the supervisory authority of the host Member State about the outcome of its supervisory review process related to the cross-border activity where potential issues of compliance with the provisions applicable in the host Member State have been identified.

3. For the purpose of this Article, 'significant cross-border activities' are insurance and reinsurance activities carried out by an insurance or reinsurance undertaking under the right of establishment and those carried out under the freedom to provide services in a given host Member State, which exceed 5 % of the annual gross written premium of the undertaking, measured with reference to the last available financial statement of the undertaking.';

(16) Article 35 is amended as follows:

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

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

(b) the following paragraph 5a is inserted:

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

The frequency of the regular supervisory report shall be:

(a) every three years, for low-risk profile undertakings;

(b) at least every three years for insurance and reinsurance undertakings other than low-risk profile undertakings.’;

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

(d) paragraph 9 is replaced by the following:

‘9. The Commission shall adopt delegated acts in accordance with Article 301a specifying the information referred to in paragraphs 1 to 4 of this Article and criteria for limited supervisory reporting for captive insurance undertakings and reinsurance captive undertakings considering the nature, scale and complexity of the risks of these specific types of undertakings with a view to ensuring, to the appropriate extent, convergence of supervisory reporting.’;

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

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

(f) paragraph 11 is deleted;

(g) the following paragraph 12 is added:

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

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

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

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

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

(17) the following Article 35a is inserted:

'Article 35a

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

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

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

(b) the information is reported at least annually.

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

When determining the eligibility of undertakings for those limitations, supervisory authorities shall give priority to low-risk profile undertakings.

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

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

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

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

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

Supervisory authorities shall not exempt from reporting, on an item-by-item basis, insurance or reinsurance undertakings that are part of a group within the

meaning of Article 212(1), point (c), unless the undertaking can demonstrate to the satisfaction of the supervisory authority that reporting on an item-by-item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

The exemption from reporting on an item-by-item basis shall be granted only to undertakings that do not represent more than 20 % of a Member State's life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions. When determining the eligibility of undertakings for those limitations or exemptions, supervisory authorities shall give priority to low-risk profile undertakings.

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

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

- legal entities of the group of which the captive insurance undertaking or captive reinsurance undertaking is part,

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

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

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

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

(b) the level of risk concentrations;

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

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

5. For the purposes of paragraphs 1 and 2, as part of the supervisory review process, in respect of undertakings not classified as low-risk profile undertakings, supervisory authorities shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks of the undertaking, taking into account, at least:

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

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

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

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

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

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

6. In order to ensure the coherent and consistent application of paragraphs 1 to 5 of this Article, EIOPA shall issue guidelines in accordance with Article 16 of Regulation (EU) 1094/2010 to further specify:

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

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

(18) the following Article 35b is inserted:

'Article 35b

Reporting deadlines

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

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

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

4. The Commission may adopt delegated acts in accordance with Article 301a to change the deadlines laid down in paragraphs 1, 2, and 3 of this Article, provided that the change is necessary due to sanitary emergencies, natural catastrophes or other extreme events.';

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

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

(20) Article 37 is amended as follows:

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

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

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

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

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

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

(21) Article 41 is amended as follows:

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

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

(b) the following paragraph 2a is inserted:

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

When the undertaking has been classified as a low-risk profile undertaking, the persons responsible for the key functions of risk management, actuarial and compliance function may also perform any other key function different from internal audit, any other non-key function or be a member of the administrative, management or supervisory body provided that the following conditions are met:

(a) potential conflicts of interests are properly managed;

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

(c) paragraph 3 is replaced by the following:

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

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

(22) Article 42 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Insurance and reinsurance undertakings shall notify their supervisory authority if any of the persons referred to in paragraphs 1 and 2 no longer fulfil the requirements referred to in paragraph 1 or have been replaced for that reason.';

(b) the following paragraph 4 is added:

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

(23) Article 44 is amended as follows:

(a) paragraph 2 is amended as follows:

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

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

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

(ii) the following subparagraph is added:

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

(b) paragraph 2a is amended as follows:

(i) the first subparagraph is amended as follows:

– in point (b), point (i) is replaced by the following:

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

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

– point (c) is replaced by the following:

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

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

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

(24) Article 45 is amended as follows:

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

‘(d) consideration and analysis of the macroeconomic situation, and possible macroeconomic and financial markets’ developments, and, upon a reasoned request of the supervisory authority, macroprudential concerns, that may affect the specific risk profile, the approved risk tolerance limits, the business

strategy, the underwriting activities or the investment decisions, and the overall solvency needs referred to in point (a) of the undertaking;

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

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

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

'1a. For the purpose of paragraph 1, points (d) and (e), macroeconomic and financial markets' developments shall include, at least, changes in the following:

(a) the level of interest rates and spreads;

(b) the level of financial market indices;

(c) inflation;

(d) interconnectedness with other financial market participants;

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

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

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

(c) the following paragraph 2b is inserted:

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

(d) paragraph 5 is replaced by the following:

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

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

(a) the insurance undertaking is classified as low risk profile undertaking;

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

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

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

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

(e) the following paragraph 8 is added:

‘8. For the purpose of paragraph 1, points (d) and (e), of this Article, where authorities other than the supervisory authorities are entrusted with a macroprudential mandate, Member States shall ensure that the supervisory authorities share the findings of their macroprudential assessments of the own-risk and solvency assessment by insurance and reinsurance undertakings, as referred to in Article 45, with the relevant national authorities with a macroprudential mandate.

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

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

(25) the following Article 45a is inserted:

'Article 45a

Climate change scenario analysis

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

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

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

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

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

4. The long-term climate change scenarios referred to in the paragraph 2 shall be reviewed, at least every three years, and updated where necessary.

5. By way of derogation from paragraphs 2, 3 and 4, insurance and reinsurance undertakings that are classified as low-risk profile undertakings shall neither be required to specify climate change scenarios nor to assess their impact on the business of the undertaking.';

(26) Article 51 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

The solvency and financial condition report shall contain two separate parts. The first part shall consist of information addressed to policyholders and beneficiaries, and the second part shall consist of information addressed to other market participants. The two parts shall be disclosed separately or jointly indicating clearly that the solvency and financial condition report consists of both parts.';

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

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

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

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

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

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

(a) a description of the system of governance;

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

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

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

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

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

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

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

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

1c. Where the matching adjustment referred to in Article 77b is applied, the description referred to in paragraph 1b, points (b), (c)(i) and (c)(ii), of this Article shall also describe the matching adjustment and the portfolio of

obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position.

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

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

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

(d) paragraph 2 is replaced by the following:

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

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

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

(e) the following paragraphs 3 to 8 are added:

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

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

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

4. Captive reinsurance undertakings shall not be required to disclose the part addressed to policyholders and beneficiaries. Such undertakings shall only be required to include the quantitative data required by the implementing technical standards referred to in Article 56, and the part addressed to other stakeholders provided that these undertakings meet the following conditions:

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

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

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

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

5. By way of derogation from paragraph 1, reinsurance undertakings may not disclose the part of the solvency and financial condition report addressed to policyholders and beneficiaries.

6. By way of derogation from paragraph 1b of this Article, insurance undertakings that are classified as low-risk profile undertakings may disclose only the quantitative data required by the implementing technical standards referred to in Article 56 in the part of the solvency and financial condition report consisting of information addressed to other market participants, provided that they disclose a full report containing all the information required in this Article every three years.

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

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

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

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

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

(27) the following Article 51a is inserted:

'Article 51a
Audit requirements

1. For insurance and reinsurance undertakings other than low-risk profile undertakings and captive insurance undertakings and captive reinsurance undertakings, the balance sheet disclosed as part of the solvency and financial condition report or as part of the single solvency and financial condition report shall be subject to an audit.

2. Member States may extend the obligation laid down in paragraph 1 to captive insurance undertakings and captive reinsurance undertakings.

3. The audit shall be carried out by a statutory auditor or an audit firm, in accordance with the applicable international standards, unless this Directive, or delegated acts adopted pursuant to it establish other principles and requirements for the assessment of any item of the balance sheet. Statutory auditors and audit firms, when performing this task, shall comply with the duties of auditors set out in Article 72.

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

(28) Article 52 is amended as follows:

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

'(e) the number of insurance and reinsurance undertakings, divided by low-risk profile undertakings and others, using simplifications or other proportionality measures and the proportionality measures used by each undertaking;

(f) the number of groups, divided by low-risk profile group and others, using simplifications or other proportionality measures and the proportionality measures used by each group.';

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

‘(f) for each Member State, the number of insurance and reinsurance undertakings and the number of groups, divided by low-risk profile undertakings and others using simplifications or other proportionality measures and the simplifications and other proportionality measures used by each undertaking.’;

(c) paragraph 3 is replaced by the following:

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

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

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

(30) in Article 56, the first paragraph is replaced by the following:

‘The Commission shall adopt delegated acts, in accordance with Article 301a, that further specify the information that insurance and reinsurance undertakings are required to disclose. The Commission may adopt delegated acts in accordance with Article 301a to change the deadlines laid down in Article 51(7), provided that a change is necessary due to sanitary emergencies, natural catastrophes and other extreme events.’;

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

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

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

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

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

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

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

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

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

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

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

7. Notwithstanding paragraph 6, insurance and reinsurance undertakings that are classified as low-risk profile undertakings may use a prudent deterministic valuation of the best estimate for life obligations with options and guarantees that are not deemed material.’;

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

‘Article 77a

Extrapolation of the relevant risk-free interest rate term structure

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

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

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

The extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly from one or a set of forward rates in relation to the longest maturities for which the bonds can be observed in a deep, liquid and transparent market to an ultimate forward rate.

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

2. For the purpose of paragraph 1, second subparagraph, any parameters determining the speed of the convergence of the forward rates towards the ultimate forward rate of the extrapolation may be chosen such that on [OP please insert date = application date] the risk-free interest rate term structure is sufficiently similar to the risk-free interest rate term structure on that date determined in line with the rules for the extrapolation applicable on [OP please insert date = one day before date of application]. Those parameters of the extrapolation shall be decreased linearly at the beginning of each calendar year, during a transitional period. The final parameters of the extrapolation shall be applied as of 1 January 2032.

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

(38) Article 77d is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. An insurance and reinsurance undertaking may apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in Article 77(2) subject to prior approval by the supervisory authorities where all of the following conditions are met:

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

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

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

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

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

volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate pursuant to paragraph 1 of this Article.';

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

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

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

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

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

Where:

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

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

(c) *RCScu* is the risk-corrected spread for the currency *cu*.

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

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

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

4. For the euro, the volatility adjustment shall be increased by a macro volatility adjustment. The macro volatility adjustment shall be calculated as follows:

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

Where:

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

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

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

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

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

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

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

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

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

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

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

(39) Article 77e is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

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

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

(iii) following point (d) is added:

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

(b) the following paragraph 1a is inserted:

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

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

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

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

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

(e) the following paragraph 4 is added:

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

(40) Article 86 is amended as follows:

(a) paragraph 1 is amended as follows:

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

‘(aa) the prudent deterministic valuation referred to in Article 77(7) as well as the conditions under which that valuation may be used to value the best estimate of technical provisions with options and guarantees.’;

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

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

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

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

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

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

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

(i) a formula for the calculation of the spread referred to in paragraph 2 of that Article;

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

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

(iv) the transitional mechanism as referred to in Article 77a(2);’;

(b) the following paragraph 1a is inserted:

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

(c) the following paragraph 2a is inserted:

‘2a. In order to ensure uniform conditions of application of Article 77(7), EIOPA shall develop draft implementing technical standards specifying the set of scenarios to be used for the prudent deterministic valuation of the best estimate for life obligations referred to in that paragraph.

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

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

(41) Article 92 is amended as follows:

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

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

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

(a) the insurance or reinsurance undertaking is in one of the circumstances described in point (i) or (ii) of this point:

(i) the credit or financial institution and the insurance or reinsurance undertaking belong to the same group, as defined in Article 212, to which group supervision applies in accordance with Article 213(2), points (a), (b) and (c), and the related credit or financial institution is not subject to the deduction referred to in Article 228(6);

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

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

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

(b) paragraph 2 is replaced by the following:

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

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

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

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

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

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

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

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

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

(1) surplus funds falling under Article 91(2) shall be classified in Tier 1;

(2) letters of credit and guarantees which are held in trust for the benefit of insurance creditors by an independent trustee and provided by credit institutions authorised in accordance with Directive 2013/36/EU shall be classified in Tier 2;

(3) any future claims which mutual or mutual-type associations of shipowners with variable contributions solely insuring risks listed in classes 6, 12 and 17 in Part A of Annex I may have against their members by way of a call for supplementary contributions, within the following 12 months, shall be classified in Tier 2.’;

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

‘3. The symmetric adjustment made to the standard equity capital charge covering the risk arising from changes in the level of equity prices shall not result in an equity capital charge being applied that is more than 17 percentage points lower or higher than the standard equity capital charge.’;

(45) Article 109 is replaced by the following:

'Article 109

Simplifications in the standard formula

1. Insurance and reinsurance undertakings may use a simplified calculation for a specific sub-module or risk module where the nature, scale and complexity of the risks they face justifies it and where it would be disproportionate to require all insurance and reinsurance undertakings to apply the standardised calculation.

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

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

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

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

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

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

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

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

(b) the following subparagraph is added:

'For the purpose of the first subparagraph, point (h), the methods and adjustments to be used to reflect the reduced scope for risk diversification of insurance and reinsurance undertakings relating to ring-fenced funds shall not

apply to the portfolios of assets that are not ring-fenced funds and that are assigned to cover a corresponding best estimate of insurance or reinsurance obligations as referred to in Article 77b(1), point (a).';

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

'7. After having received approval from supervisory authorities to use an internal model, and each time they report the result of a calculation of the Solvency Capital Requirement pursuant to Article 102(1), insurance and reinsurance undertakings shall provide the supervisory authorities with an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Subsection 2.';

(48) in Article 122, the following paragraph 5 is added:

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

(a) the method to take into account the effect of credit spread movements on the volatility adjustment for the euro does not take into account a possible increase of the volatility adjustment by a macro volatility adjustment pursuant to Article 77d(4);

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

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

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

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

(49) Article 132 is amended as follows:

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

(b) the following paragraphs 5, 6 and 7 are added:

‘5. Member States shall ensure that insurance and reinsurance undertakings take account of possible macroeconomic and financial markets’ developments and, at the request of the supervisory authority, macroprudential concerns when they decide on their investment strategy.

6. Insurance and reinsurance undertakings shall assess the extent to which their investment strategy may affect macroeconomic and financial markets’ developments and have the potential to turn into sources of systemic risk, and incorporate such considerations as part of their investment decisions.

7. For the purpose of paragraphs 5 and 6 of this Article, macroeconomic developments and macroprudential concerns shall have the same meaning as in Article 45.’;

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

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

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

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

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

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

(52) Article 139 is replaced by the following:

‘Article 139

Non-Compliance with the Minimum Capital Requirement

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

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

Minimum Capital Requirement between two dates when such calculation is reported to the supervisory authority pursuant to Article 129(4).

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

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

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

(53) in Article 144, the following paragraph 4 is added:

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

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

'*CHAPTER VIIA*
Macroprudential tools

Article 144a
Liquidity risk management

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

2. For the purpose of paragraph 1, Member States shall ensure that insurance and reinsurance undertakings draw up and maintain a liquidity risk management plan projecting the incoming and outgoing cash flows in relation to their assets and liabilities. Member States shall ensure that insurance and reinsurance undertakings

develop a set of liquidity risk indicators to identify, monitor and address potential liquidity stress.

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

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

5. Member States shall ensure that, where insurance and reinsurance undertakings apply the matching adjustment referred to in Article 77b or the volatility adjustment referred to in Article 77d, they may combine the liquidity risk management plan referred to in paragraph 3 of this Article with the plan required in accordance with Article 44(2), third subparagraph.

6. In order to ensure consistent application of this Article, EIOPA shall develop draft regulatory technical standards to further specify the content and the frequency of update of the liquidity risk management plan.

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

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

Article 144b

Supervisory powers to remedy liquidity vulnerabilities in exceptional circumstances

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

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

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

3. Member States shall ensure that supervisory authorities have the power to temporarily suspend redemption rights of policyholders on life insurance policies of

undertakings facing significant liquidity risks that may cause a threat to the protection of policyholders or to the stability of the financial system.

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

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

Without prejudice to Article 144c (6), Member States shall ensure that the insurance and reinsurance undertakings concerned do not make distributions to shareholders and other subordinated creditors, and do not pay bonuses or other variable remuneration until the suspension of redemption rights is lifted by the supervisory authorities.

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

Member States shall ensure that supervisory authorities shall notify EIOPA and ESRB whenever the power referred to in paragraph 3 is exercised to address a risk for the stability of the financial system.

4. The power referred to in paragraph 3 may be exercised in relation to all undertakings operating in that Member State where the exceptional circumstances referred to in paragraph 3 affect the whole or a significant part of the insurance market.

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

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

5. Member States shall ensure that the authority referred to in paragraph 4, second subparagraph, shall notify EIOPA and, where the measure is taken to address a risk to the stability of the financial system, the ESRB of the use of the power referred to in paragraph 4.

The notification shall include a description of the measure applied, its duration, and a description of the reasons and risks that motivated the use of the power, including the

reasons why it was considered effective and proportionate in relation to its negative effects on policyholders.

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

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

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

(c) specify the conditions for ensuring the consistent application of the temporary suspension of redemption rights across the Union and the aspects to consider for equally and adequately protecting policyholders in all home and host jurisdictions.

Article 144c

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

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

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

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

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

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

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

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

3. The application of the measures referred to in paragraph 2 of this Article shall duly take into account the proportionality criteria referred to in Article 29(3), and the

existence of any preventively agreed risk tolerance limits and thresholds for internal capital planning.

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

5. The application of the measures referred to in paragraph 2 shall last for as long as the underlying reasons that justify the measure are present. Those measures shall be reviewed every three months and shall be removed as soon as the underlying conditions that motivated the measures are over.

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

7. In order to ensure consistent conditions of application of this Article, EIOPA shall, after consulting the ESRB, develop implementing technical standards to specify the existence of exceptional sector-wide shocks.

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

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

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

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

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

(b) the second subparagraph is deleted;

(56) Article 149 is replaced by the following:

'Article 149

Changes in the nature of the risks or commitments

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

2. Where there is a change in the business pursued by the insurance undertaking under the freedom to provide services that is materially affecting its risk profile or

materially influencing the insurance activities in one or more host Member States, the insurance undertaking shall inform the supervisory authority of the home Member State immediately. The supervisory authority of the home Member State shall inform the supervisory authorities of the host Member States concerned without delay.';

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

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

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

'5. Where two or more relevant authorities of a collaboration platform disagree about the procedure or content of an action to be taken, or inaction, in relation to an insurance or reinsurance undertaking, EIOPA may, at the request of any relevant authority or on its own initiative, assist the authorities in reaching an agreement in accordance with Article 19(1) of Regulation (EU) No 1094/2010.

6. In the event of disagreement within the platform and where there are serious concerns about negative effects on policyholders or about the content of an action or inaction to be taken in relation to an insurance or reinsurance undertaking, EIOPA may decide, on its own initiative, to initiate and coordinate on-site inspections. It shall invite the supervisory authority of the home Member State as well as other relevant supervisory authorities of the collaboration platform to participate in those on-site inspections.';

(59) Article 153 is replaced by the following:

'Article 153

Timeframe and language of information requests

The supervisory authority of the host Member State may require the information which it is entitled to request with regard to the business of an insurance undertaking operating in the territory of that Member State either from the supervisory authority of the home Member State of that undertaking or from the insurance undertaking. That information shall be supplied within a reasonable period of time in the official language or languages of the host Member State, or in another language accepted by the supervisory authority of the host Member State. Where the supervisory authority of the host Member State addresses the insurance undertaking directly, it shall inform the supervisory authority of the home Member State about the information request.';

(60) the following Article 159a is inserted:

'Article 159a

Additional requirements related to significant cross-border activities

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

(a) the Solvency Capital Requirement;

(b) the Minimum Capital Requirement;

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

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

For the purposes of this Article, 'significant cross-border activities' means insurance and reinsurance activities carried out under the right of establishment and those carried out under the freedom to provide services in a Member State for which the annual gross written premium exceeds 5 % of the annual gross written premium of the undertaking, measured with reference to the last available financial statements of the undertaking.

2. Where an insurance or reinsurance undertaking does not comply with or is likely not to comply with the Minimum Capital Requirement in the following three months, or where there is a significant non-compliance with the Solvency Capital Requirement, and in the absence of appropriate measures by the supervisory authority of the home Member State to appropriately remedy such situation, the supervisory authority of the host Member State in which that undertaking has significant cross-border activities, may request the supervisory authority of the home Member State to carry out jointly an on-site inspection of the insurance or reinsurance undertaking, explaining the reasons for such a request.

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

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

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

Where the supervisory authorities disagree on the conclusions of the joint on-site inspection, either of them may, within two month following the expiry of the period referred to in the second subparagraph , and without prejudice to the supervisory actions and powers to be taken by the supervisory authority of the home Member

State to address the non-compliance with the Solvency Capital Requirement or the non-compliance or likely non-compliance with the Minimum Capital Requirement, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. The matter shall not be referred to EIOPA after the expiry of the two-month period referred to in this subparagraph nor after an agreement on joint conclusions has been reached between supervisory authorities in accordance with the second subparagraph.

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

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

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

(61) Article 212 is amended as follows:

(a) paragraph 1 is amended as follows:

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

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

(iii) point (c) is amended as follows:

– point (i) is replaced by the following:

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

– the following point (iii) is added:

‘(iii) consists of a combination of points (i) and (ii);’;

(iv) point (f) is replaced by the following:

‘(f) ‘insurance holding company’ means a parent undertaking which is not a mixed financial holding company and 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; the subsidiary undertakings are mainly insurance or reinsurance undertakings or third-country insurance or reinsurance undertakings where more than 50 % of the parent undertaking’s equity, consolidated assets, revenues, personnel or other indicator considered relevant by the supervisory authority are associated with subsidiaries that are insurance or reinsurance undertakings, third-country insurance or reinsurance undertakings insurance holding companies or mixed financial holding companies;’;

(v) the following point (fa) is inserted:

‘(fa) ‘holding company of third-country insurance and reinsurance undertakings’ means a parent undertaking other than an insurance holding company or a mixed financial holding company within the meaning of Article 2(15) of Directive 2002/87/EC, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly third-country insurance or reinsurance undertakings.’;

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

‘For the purposes of this Title, the supervisory authorities shall also consider as a parent undertaking any undertaking which, in the opinion of the supervisory authorities, effectively exercises a dominant influence over another undertaking, including where this influence is exercised through centralised coordination, over the decisions of the other undertaking.’;

(c) the following paragraphs 3, 4, 5 and 6 are added:

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

Where such a group is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c), the group shall designate one of those undertakings as a parent undertaking which shall be responsible for complying with this Title. The other undertakings referred to in the first subparagraph shall be considered as subsidiary undertakings.

4. Where a group is identified in accordance with paragraphs 2 and 3, and where a parent undertaking or a subsidiary undertaking of that group is also the

ultimate participating undertaking of another group within the meaning of paragraph 1, point (c), that other group shall be considered as included in the scope of the group identified in accordance with paragraphs 2 and 3.

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

5. When identifying a relationship between at least two undertakings referred to in paragraphs 2 and 3, supervisory authorities shall consider all of the following factors:

(a) control or ability of a natural person or an undertaking to influence decisions, including financial ones, of an insurance or reinsurance undertaking, in particular due to the holding of capital or voting rights, representation in the administrative, management or supervisory body, or being among the persons who effectively run an insurance or reinsurance undertaking or who have other key, critical or important functions;

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

(c) evidence of coordination between two or more undertakings of financial decisions, strategies, or processes.

6. Where the group fails to designate a parent undertaking in accordance with paragraph 3, second subparagraph, the supervisory authorities shall designate a parent undertaking which is to be responsible for complying with this Title. The other undertakings in such group shall be considered as subsidiary undertakings.

When designating in accordance with the first subparagraph, supervisory authorities shall consider the following factors:

(a) the amount of technical provisions of each undertaking;

(b) the annual gross written premiums of each undertaking;

(c) the number of related insurance or reinsurance undertakings of each undertaking.

Supervisory authorities shall regularly assess whether the designation remains appropriate. Where this is not the case, the supervisory authorities shall designate another parent undertaking. That other authority shall be responsible for complying with this Title.';

(62) Article 213 is amended as follows:

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

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

(b) the following paragraph 2a is inserted:

‘2a. The scope of the group to which group supervision applies pursuant to paragraph 2 of this Article shall be identified in accordance with Article 212.’;

(c) the following paragraphs 3a, 3b and 3c are inserted:

‘3a. In the cases referred to in paragraph 2, point (b), the insurance holding company or mixed financial holding company shall ensure that all of the following conditions are fulfilled:

(a) the internal arrangements and distribution of tasks within the group are adequate for the purpose of complying with this Title and, in particular, are effective to:

(i) coordinate all the subsidiary undertakings of the insurance holding company or mixed financial holding company including, where necessary, through an adequate distribution of tasks among those undertakings;

(ii) prevent or manage intra-group conflicts; and

(iii) enforce the group-wide policies set by the parent insurance holding company or parent mixed financial holding company throughout the group;

(b) the structural organisation of the group of which the insurance holding company or mixed financial holding company is part does not obstruct or otherwise prevent the effective supervision of the group and its subsidiary insurance and reinsurance undertakings, taking into account, in particular:

(i) the position of the insurance holding company or mixed financial holding company in a multi-layered group;

(ii) the shareholding structure; and

(iii) the role of the insurance holding company or mixed financial holding company within the group.

3b. Where the conditions set out in paragraph 3a, point (a), are not satisfied, the group supervisor shall have the power to require the insurance holding company or mixed financial holding companies to change internal arrangements and distributions of tasks within the group.

Where the conditions set out in paragraph 3a, point (b), are not satisfied, the insurance holding company or mixed financial holding company shall be subject to appropriate supervisory measures by the group supervisor to ensure or restore, as the case may be, continuity and integrity of group supervision and compliance with the requirements laid down in this Title. In particular, Member States shall ensure that supervisory authorities have the power to require the insurance holding company or mixed financial holding company to

structure the group in a way which enables the relevant supervisory authority to effectively exercise group supervision. Such a power shall only be exercised in exceptional circumstances, after consulting EIOPA and, where applicable, other supervisory authorities concerned and shall be duly justified to the group.

3c. In the cases referred to in paragraph 2, points (a) and (b), of this Article where the structural organisation of a group which consist of undertakings linked to each other by a relationship as set out in Article 22(7) of Directive 2013/34/EU and their related undertakings, or which is identified on the basis of Article 212(3) of this Directive, is such that it obstructs or prevents the effective supervision of that group or it prevents that group from complying with this Title, the group shall be subject to appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of group supervision and compliance with this Title. In particular, Member States shall ensure that supervisory authorities have the power to require the establishment of an insurance holding company or a mixed financial holding company which has its head office in the Union, or the establishment of an undertaking in the Union which effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the insurance or reinsurance undertakings that are part of the group. In that case, that insurance holding company, mixed financial holding company or undertaking which effectively exercises centralised coordination shall be responsible for complying with this Title.';

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

(63) the following Article 213a is inserted:

'Article 213a

Use of proportionality measures at the level of the group

1. Groups within the meaning of Article 212 that are subject to group supervision in accordance with Article 213(2), points (a) and (b), shall be classified as low risk profile groups by their group supervisor, following the procedure set out in paragraph 2 of this Article where they meet all the following criteria at the level of the group for the last two financial years:

(a) where at least one insurance or reinsurance undertaking in the scope of the group is not a non-life undertaking, all of the following criteria shall be met:

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

(ii) the return on investments, excluding investments held for insurance obligations with index-linked and unit-linked benefits, is higher than the average guaranteed interest rates;

(iii) the total of the technical provisions of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles is not higher than EUR 1 000 000 000;

(b) where at least one insurance or reinsurance undertaking in the scope of the group is not a life undertaking, all of the following criteria shall be met:

(i) the averaged combined ratio net of reinsurance of the last three financial years is less than 100 %

(ii) the annual gross written premium of the group is not higher than EUR 100 000 000;

(iii) the sum of the annual gross written premiums in classes 3 to 7 and classes 14 and 15 of Section A of Annex I is not higher than 30% of total annual written premiums of non-life business of the group;

(c) business underwritten by insurance and reinsurance undertakings in the scope of the group which have their head offices in Member States other than the Member State of the group supervisor is not higher than 5 % of the total annual gross written premium of the group;

(d) business underwritten by the group in Member States other than the Member State of the group supervisor is not higher than 5 % of its total annual gross written premium;

(e) investments in non-traditional investments do not represent more than 20% of total investments;

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

2. Article 29b shall apply *mutatis mutandis* at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company

3. Groups to which group supervision applies in accordance with Article 213(2), points (a) and (b), for less than two years shall take into account only the last financial year when assessing whether they meet the criteria set out in paragraph 1 of this Article.

4. Without prejudice to paragraph 1, groups which use an approved partial or full internal model to calculate their group Solvency Capital Requirement shall never be classified as low risk profile groups.

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

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

(64) Article 214 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. The exercise of group supervision in accordance with Article 213 shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking or the mixed-activity insurance holding company taken individually.’;

(b) in paragraph 2, the following subparagraph is inserted after the first subparagraph:

‘When assessing whether an undertaking is of negligible interest with respect to the objectives of group supervision pursuant to the first subparagraph, point (b), the group supervisor shall ensure that all the following conditions are met:

(i) the size of the undertaking, in terms of total assets and of technical provisions, is small in comparison with that of other undertakings of the group and the group as a whole;

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

(iii) the qualitative and quantitative risks, including those stemming from intragroup transactions, that the undertaking poses or may pose to the whole group, are immaterial.’;

(c) the following paragraph 3 is added:

‘3. Where the exclusion of one or more undertakings from the scope of group supervision in accordance with paragraph 2 of this Article would result in a case that would not trigger the application of group supervision under Article 213(2), points (a), (b), and (c), the group supervisor shall consult EIOPA and, where applicable, other supervisory authorities concerned before taking the decision on exclusion. Such decision shall only be taken in exceptional circumstances and shall be duly justified to EIOPA and, where applicable, other supervisory authorities concerned. The group supervisor shall regularly reassess whether its decision remains appropriate. Where that is no longer the case, the group supervisor shall notify EIOPA and, where applicable, other supervisory authorities concerned that it will start exercising group supervision.

Before excluding the ultimate parent undertaking from group supervision pursuant to paragraph 2, point (b), the group supervisor shall consult EIOPA, and where applicable, other supervisory authorities concerned, and shall assess the impact of exercising group supervision at the level of an intermediate participating undertaking on the solvency position of the group. In particular, such an exclusion shall not be possible if it would result in a material improvement in the solvency position of the group.’;

(65) Article 220 is amended as follows:

(a) in paragraph 1, the words ‘set out in Articles 221 to 233’ are replaced by the words ‘set out in Articles 221 to 233a’;

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

‘However, Member States shall allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, after consulting the other supervisory authorities concerned and the group itself, to apply to that group method 2 in accordance with Articles 233 and 234, or, where the exclusive application of method 1 would not be appropriate, a combination of methods 1 and 2 in accordance with Articles 233a and 234.’;

(c) the following paragraph 3 is added:

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

(66) in Article 221, the following paragraph 1a is inserted:

‘1a. By way of derogation from paragraph 1 of this Article, for the sole purpose of Article 228, irrespective of whether method 1 or method 2 is used, ‘proportional share’ means the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking in the related undertaking.’;

(67) in Article 222, paragraph 4 is replaced by the following:

‘4. The sum of the own funds referred to in paragraphs 2 and 3 shall not exceed the contribution of the related insurance or reinsurance undertaking to the group Solvency Capital Requirement.’;

(68) in Article 226, the following paragraph 3 is added:

‘3. For the purposes of paragraphs 1 and 2, holding companies of third-country insurance and reinsurance undertakings shall also be treated as insurance or reinsurance undertakings.’;

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

(70) Article 228 is replaced by the following:

'Article 228

Treatment of specific related undertakings from other financial sectors

1. Irrespective of the method used in accordance with Article 220 of this Directive, for the purpose of calculating the group solvency, the participating insurance or reinsurance undertaking shall take into account the contribution to the group eligible own funds and to the group Solvency Capital Requirement of the following undertakings:

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

(b) UCITS management companies within the meaning of Article 2(1), point (b), of Directive 2009/65/EC and investment companies authorised pursuant to Article 27 of that Directive provided that they have not designated a management company pursuant to that Directive;

(c) alternative investment fund managers within the meaning of Article 4(1), point (b), of Directive 2011/61/EU;

(d) undertakings other than regulated undertakings which carry one or more of the activities referred to in Annex I to Directive 2013/36/EU where those activities constitute a significant part of their overall activity;

(e) institutions for occupational retirement provision within the meaning of Article 6, point (1) of Directive (EU) 2016/2341.

2. The contribution to the group eligible own funds of the related undertakings referred to in paragraph 1 of this Article shall be calculated as the sum of the proportional share of the own funds of each undertaking, where those own funds are calculated as follows:

(a) for each undertaking referred to in paragraph 1, point (a), of this Article in accordance with the relevant sectoral rules, as defined in Article 2, point (7), of Directive 2002/87/EC;

(b) for each related undertaking referred to in paragraph 1, point (b), of this Article in accordance with Article 2(1), point 1, of Directive 2009/65/EC;

(c) for each related undertaking referred to in paragraph 1, point (c), of this Article in accordance with Article 4(1), point (ad), of Directive 2011/61/EU;

(d) for each related undertaking referred to in paragraph 1, point (d), of this Article in accordance with the relevant sector rules as defined in Article 2, point (7), of Directive 2002/87/EC if they were regulated entities within the meaning of Article 2(4) of that Directive;

(e) for each related undertaking referred to in paragraph 1, point (e), of this Article the available solvency margin calculated in accordance with Article 17a of Directive (EU) 2016/2341.

For the purpose of the first subparagraph of this paragraph, the amount of own funds of each related undertaking corresponding to non-distributable reserves and other items identified by the group supervisor as having a reduced loss-absorbency capacity, as well as preference shares, subordinated mutual members account, subordinated liabilities, and deferred tax assets, that are included in the own funds in excess to the own fund requirements calculated in accordance with paragraph 3, shall not be taken into account, unless the participating insurance or reinsurance undertaking is able to justify, to the satisfaction of the group supervisor, that those items can be made available to cover the group Solvency Capital Requirement. When determining the composition of the excess own funds, the participating insurance or reinsurance undertaking shall take into account that certain requirements of some related undertakings shall only be met with Common Equity 1 capital or Additional Tier 1 capital within the meaning of Regulation (EU) No 575/2013.

3. The contribution to the group Solvency Capital Requirement of the related undertakings referred to in paragraph 1 shall be calculated as the sum of the proportional share of the capital requirement or notional capital requirement of each related undertaking, where that capital requirement or notional capital requirement is calculated as follows:

(a) for related undertakings referred to in paragraph 1, point (a), of this Article in accordance with the following:

(b) for each investment firm which is subject to own fund requirements in accordance with Regulation (EU) 2019/2033, the sum of the requirement laid down in Article 11 of that Regulation, the specific own funds requirements referred to in Article 39(2), point (a), of Directive (EU) 2019/2034, or the local own funds requirements in third countries;

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

– the sum of the requirement laid down in Article 92(1), point (c), of Regulation (EU) No 575/2013, including measures referred to in Articles 458 and 459 of that Regulation, the specific own funds requirements to address risks other than the risk of excessive leverage referred to in Article 104 of Directive 2013/36/EU, the combined buffer requirement defined in Article 128, point (6), of that Directive, or any the local own funds requirements in third countries;

– the sum of the requirements laid down in Article 92(1), point (d), of Regulation (EU) No 575/2013, including measures referred to in Articles 458 and 459 of that Regulation, the specific own funds requirements to address the risk of excessive leverage referred to in Article 104 of Directive 2013/36/EU, the leverage ratio buffer requirement laid down in Article 92(1a) of Regulation (EU) No 575/2013, or the local own funds requirements in third countries insofar as those requirements are to be met by Tier 1 capital;

(d) for each related undertaking referred to in paragraph 1, point (b), of this Article, in accordance with Article 7(1), point (a), of Directive 2009/65/EC;

(e) for each related undertaking referred to in paragraph 1, point (c), of this Article, in accordance with Article 9 of Directive 2011/61/EU;

(f) for each related undertaking referred to in paragraph 1, point (d), of this Article, the capital requirement with which the related undertaking would have to comply under the relevant sector rules as defined in Article 2, point (7), of Directive 2002/87/EC if it was a regulated entity within the meaning of Article 2, point (4), of that Directive;

(g) for each related undertaking referred to in paragraph 1, point (e), of this Article, the required solvency margin calculated in accordance with Article 17b of Directive (EU) 2016/2341.

4. Where several related undertakings referred to in paragraph 1 form a subgroup which is subject to a capital requirement on a consolidated basis in accordance with one of the Directives or Regulations referred to in paragraph 3, the group supervisor may allow calculating the contribution of those related undertakings to the group eligible own funds as the proportional share of that subgroup's own funds instead of applying paragraph 2, points (a) to (e), to each individual undertaking belonging to that subgroup. In that case, the participating insurance or reinsurance undertaking shall also calculate the contribution of those related undertakings to the group Solvency Capital Requirement as the proportional share of that subgroup's capital requirement, instead of applying paragraph 3, points (a) to (e), to each individual undertaking belonging to that subgroup.

For the purposes of the first subparagraph of this paragraph, paragraphs 2 and 3, shall apply *mutatis mutandis* to the subgroup.

5. Notwithstanding paragraphs 1 to 4, Member States shall allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, at the request of the participating undertaking or on their own initiative, to deduct any participation as referred to in paragraph 1, points (a) to (d) from the own funds eligible for the group solvency of the participating undertaking.';

(71) in Title III, Chapter II, Section 1, Subsection 3, the following Article 229a is added:

'Article 229a
Simplified calculations

1. For the purposes of Article 230, the group supervisor, after consulting the other supervisory authorities concerned, may allow the participating insurance or reinsurance undertaking to apply a simplified approach to participations in related undertakings that are immaterial.

The application of the simplified approach, referred to in the first subparagraph, to one or several related undertakings shall be duly justified by the participating

undertaking to the group supervisor, considering the nature, scale and complexity of the risks of the related undertaking or undertakings.

Member States shall require the participating undertaking to assess, on an annual basis, whether the use of the simplified approach is still justified, and shall publicly disclose, in its group solvency and financial condition report, the list and size of the related undertakings subject to that simplified approach.

2. For the purpose of paragraph 1, the participating insurance and reinsurance undertaking shall demonstrate, to the satisfaction of the group supervisor, that the application of the simplified approach to participations in one or several related undertakings is sufficiently prudent to avoid an underestimation of risks stemming from that undertaking or from those undertakings when calculating the group solvency.

When applied to a third-country insurance or reinsurance undertaking which has its head office in a country that is not equivalent or provisionally equivalent within the meaning of Article 227, the simplified approach shall not result in a contribution of the related undertaking to the group Solvency Capital Requirement that is lower than the capital requirement of that undertaking, as laid down by the third country concerned.

The simplified approach shall not be applied to a related third-country insurance or reinsurance undertaking, where the participating insurance or reinsurance undertaking has no reliable information on the capital requirement as laid down in that third country.

3. For the purposes of paragraph 1, related undertakings shall be deemed immaterial where the book value of each of them represents less than 0,2 % of the group's consolidated accounts and the sum of the book values of all such undertakings represents less than 0,5 % of the group's consolidated accounts.';

(72) Article 230 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The calculation of the group solvency of the participating insurance or reinsurance undertaking shall be carried out on the basis of the consolidated accounts.

The group solvency of the participating insurance or reinsurance undertaking is the difference between the following:

(a) the sum of the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data, and the contribution to the group eligible own funds of related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(2) or (4);

(b) the sum of the Solvency Capital Requirement at group level calculated on the basis of consolidated data and the contribution to the group Solvency Capital Requirement of the related

undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(3) or (4).

For the purposes of the second subparagraph, holdings in related undertakings referred to in Article 228(1) shall not be included in the consolidated data.

Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 and Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data. In particular, an own fund item that is issued by a participating undertaking shall not be considered clear of encumbrances within the meaning of Article 93(2), second subparagraph, point (c), if the repayment of this item cannot be refused to its holder when a related insurance or reinsurance undertaking is wound up.';

(b) paragraph 2 is amended as follows:

(i) in the second subparagraph, the following points (c) and (d) are added:

'(c) the proportional share of the local capital requirements, at which the authorisation would be withdrawn, for related third-country insurance and reinsurance undertakings;

(d) the proportional share of the notional Minimum Capital Requirement of the insurance holding companies and mixed financial holding companies.';

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

'For the purposes of paragraph 2, second subparagraph, point (d), of this Article, the notional Minimum Capital Requirement of an insurance holding company and of a mixed financial holding company shall be equal to 35 % of its notional Solvency Capital Requirement, where the notional Solvency Capital Requirement is calculated in accordance with Article 226(1), second subparagraph.';

(iii) the fourth subparagraph is deleted;

(c) the following paragraph 3 is added:

'3. Participating insurance and reinsurance undertakings shall comply with their minimum consolidated group Solvency Capital Requirement, which is the lowest of the following:

(a) 45 % of the outcome of the calculation referred to in paragraph 1, second subparagraph, point (b);

(b) the outcome of the calculation referred to in paragraph 2, second subparagraph.

That minimum shall be covered by eligible basic own funds as determined in accordance with Article 98(4), and calculated on the basis of consolidated data.

For that purpose, holdings in related undertakings referred to in Article 228(1) shall not be included in the consolidated data.

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 221 to 229 shall apply *mutatis mutandis*. Article 139(1) and (2) shall apply *mutatis mutandis*.';

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

(74) Article 233 is amended as follows:

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

'(b) the value in the participating insurance or reinsurance undertaking of related undertakings referred to in Article 220(3) and in Article 228(1) and the aggregated group Solvency Capital Requirement, as provided for in paragraph 3.';

(b) paragraph 2 is amended as follows:

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

'(b) the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of each individual related insurance or reinsurance undertaking.';

(ii) the following point (c) is added:

'(c) the contribution to the group eligible own funds of related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(2) or Article 228(4);

(c) paragraph 3 is amended as follows:

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

'(b) the proportional share of the Solvency Capital Requirement of each individual related insurance or reinsurance undertaking.'

(ii) the following point (c) is added:

'(c) the contribution to the group Solvency Capital Requirement of related undertakings referred in Article 228(1), where that contribution is calculated in accordance with Article 228(3) or Article 228(4).';

(75) the following Article 233a is inserted:

'Article 233a

Combination of methods 1 and 2

1. The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:

   (a) the sum of the following:

      (i) for undertakings to which method 1 is applied, the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;

      (ii) for each related insurance or reinsurance undertaking to which method 2 is applied, the proportional share of the own funds eligible for its Solvency Capital Requirement;

      (iii) the contribution of related undertakings referred to in Article 228(1), calculated in accordance with Article 228(2) or Article 228(4); and

   (b) the sum of the following:

      (i) for undertakings to which method 1 is applied, the consolidated group Solvency Capital Requirement, calculated in accordance with Article 230(2) on the basis of consolidated data;

      (ii) for each insurance or reinsurance undertaking to which method 2 is applied, the proportional share of its Solvency Capital Requirement;

      (iii) the contribution of related undertakings referred to in Article 228(1), calculated in accordance with Article 228(3) or Article 228(4).

2. For the purposes of paragraph 1, point (a) (i), and paragraph 1, point (b) (i) of this Article, holdings in related undertakings referred to in Article 228(1) shall not be included in the consolidated data.

3. For the purposes of paragraph 1, point (a) (i), and paragraph 1, point (b)t (i) of this Article, holdings in related undertakings referred to in Article 220(3) to which method 2 is applied shall not be included in the consolidated data.

   For the purposes of paragraph 1, point (b) (i), of this Article, the value of holdings in undertakings referred to in Article 220(3) to which method 2 is applied, in excess of their own Solvency Capital Requirement, shall be included in the consolidated data when calculating the sensitivity of assets and liabilities to changes in the level or in the volatility of currency exchange rates ('currency risk'). However, the value of those holdings shall not be assumed to be sensitive to changes in the level or in the volatility of market prices of equities ('equity risk').

4. Article 233(4) shall apply *mutatis mutandis* for the purpose of paragraph 1, points (a)(ii) and (b)(ii), of this Article.

5. Article 231 shall apply *mutatis mutandis* in the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company.

6. Participating insurance and reinsurance undertakings shall comply with their minimum consolidated group Solvency Capital Requirement, which is the minimum of the following:

   (a) 45 % of the sum of the consolidated group Solvency Capital Requirement referred to in paragraph 1, point (b)(i), and of the contribution referred to in paragraph 1, point (b)(iii);

   (b) the outcome of the calculation referred to in Article 230(2), second subparagraph.

   The minimum consolidated group Solvency Capital Requirement shall be covered by eligible basic own funds as determined in accordance with Article 98(4), calculated on the basis of consolidated data. For the purpose of that calculation, holdings in related undertakings referred to in Article 228(1) shall not be included in the consolidated data.

   For the purpose of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 221 to 229 shall apply *mutatis mutandis*. Article 139(1) and (2) shall apply *mutatis mutandis*.

7. In determining whether the amount calculated in paragraph 1, point (b)(ii), of this Article appropriately reflects the risk profile of the group with regard to undertakings referred to in Article 220(3) to which Method 2 is applied, the supervisory authorities concerned shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered because they are difficult to quantify.

   Where the risk profile of the group with regard to undertakings referred to in Article 220(3) to which Method 2 is applied deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement referred to in Article 233(3), a capital add-on to the amount calculated in paragraph 1, point (b)(ii), of this Article may be imposed.

   Article 37(1) to (5), together with the delegated acts and implementing technical standards adopted in accordance with Article 37(6), (7) and (8), shall apply *mutatis mutandis*.';

(76) Article 234 is replaced by the following:

'Article 234

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

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

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

(b) the technical details to the simplified approach set out in Article 229a(1), as well as the criteria based on which supervisory authorities may approve the use of the simplified approach;

(c) the application of Articles 230 to 233a, reflecting the economic nature of specific legal structures.

The Commission may adopt delegated acts in accordance with Article 301a specifying the criteria based on which the group supervisor may approve the application of the simplified approach set out in Article 229a(2).';

(77) in Article 244(3), the third subparagraph is replaced by the following:

'In order to identify significant risk concentration to be reported, the group supervisor, after consulting the other supervisory authorities concerned and the group, shall impose appropriate thresholds based on Solvency Capital Requirements, technical provisions, eligible own funds, other quantitative or qualitative risk-based criteria deemed appropriate or a combination thereof.';

(78) Article 245 is amended as follows:

(a) in paragraph 1, the words 'paragraphs 2 and 3' are replaced by the words 'paragraphs 2, 3 and 3a';

(b) the following paragraph 3a is inserted:

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

(79) Article 246 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The requirements set out in Title I, Chapter IV, Section 2 shall apply mutatis mutandis at the level of the group. The system of governance of the group shall cover participating insurance or reinsurance undertakings, parent insurance holding companies or parent mixed financial holding companies, as well as to all related undertakings in the scope of the group within the meaning of Article 212 which is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c). The system of

governance of the group shall also cover all undertakings that are managed by the participating undertaking or its subsidiaries jointly with one or more undertakings that are not part of the same group.

Without prejudice to the first subparagraph of this paragraph, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to Article 213(2), points (a) and (b), so that those systems and reporting procedures can be controlled at the level of the group.

Member States shall ensure that the administrative, management or supervisory body of the ultimate parent insurance or reinsurance undertaking, insurance holding company mixed financial holding company which has its head office in the Union, or the designated participating undertaking in accordance with Article 212(3), has the ultimate responsibility for the compliance, by the group to which group supervision applies in accordance with Article 213(2), points (a), (b) and (c), with the laws, regulations and administrative provisions adopted pursuant to this Directive. The administrative, management or supervisory body of each insurance and reinsurance undertaking within the group shall remain responsible for its own compliance with all requirements, as specified in Article 40 and Article 213(1), second subparagraph.

The risk management system shall cover at least all insurance and reinsurance activities conducted within the group, as well as material non-insurance activities. It shall also cover the risks stemming from those activities to which the group is or could be exposed, and their interdependencies.

Without prejudice to the first subparagraph of this paragraph, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to Article 213(2), points (a) and (b), so that those systems and reporting procedures can be controlled at the level of the group.';

(b) in paragraph 2, the following subparagraphs are added :

'The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall regularly monitor the activities of its related undertakings, including related undertakings referred to in Article 228(1) and non-regulated undertakings. That monitoring shall be commensurate with the nature, scale and complexity of the risks that the related undertakings generate or could generate at the level of the group.

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall have written policies at the level of the group, and shall ensure consistency with the group policies of the written policies of all regulated undertakings in the scope of the group. It shall also ensure that group policies are implemented in a consistent manner by all regulated undertakings in the scope of the group.';

(c) in paragraph 4, first subparagraph, the second sentence is replaced by the following:

‘The own-risk and solvency assessment conducted at group level shall cover at least all insurance and reinsurance activities conducted within the group, as well as material non-insurance activities. It shall also cover the risks stemming from those activities to which the group is or could be exposed, and their interdependencies. It shall be subject to supervisory review by the group supervisor in accordance with Chapter III.’;

(d) the following paragraph 5 is added:

‘5. Member States shall require the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company to ensure that the group has robust governance arrangements which include a clear organisational structure with well-defined, transparent and consistent lines of responsibility and segregation of duties within the group. The system of governance of the group shall endeavour to prevent conflicts of interest, or where this is not possible, shall manage them.

The persons who effectively run an insurance or reinsurance group are the persons who effectively run the parent or participating undertaking referred to in paragraph 1, second subparagraph.

Member States shall require the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company to identify the persons responsible for other key functions within the insurance or reinsurance group that is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c). The administrative, management or supervisory body referred to in paragraph 1, second subparagraph, of this Article shall be responsible for the activities carried out by those persons.

Where the persons who effectively run an insurance or reinsurance group or are responsible for other key functions are also the persons who effectively run one or several insurance or reinsurance undertakings or other related undertakings, or are responsible for other key functions within any of those undertakings, the participating undertaking shall ensure that the roles and responsibilities at group level are clearly segregated from those applicable at the level of each individual undertaking.’;

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

‘CHAPTER IIA
Macroprudential rules at group level

Article 246a
Liquidity Risk Management at group level

1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to draw up and

maintain a liquidity risk management plan at the level of the group. Article 144a shall apply *mutatis mutandis*.

2. By way of derogation from Article 144a, Member States shall ensure that insurance or reinsurance subsidiaries which are in the scope of group supervision in accordance with Article 213(2), points (a) and (b), are exempted from the drawing up and maintaining a liquidity risk management plan at individual level whenever the liquidity risk management plan pursuant to paragraph 1 of this Article covers the liquidity management and liquidity needs of the subsidiaries concerned.

Member States shall require each individual insurance or reinsurance undertaking benefitting from the exemption pursuant to first subparagraph to submit the parts of the liquidity risk management plan covering the situation of the whole group and their own situation to its supervisory authority.

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

4. In order to ensure consistent application of this Article, EIOPA shall develop regulatory technical standards to further specify the content and frequency of update of the liquidity risk management framework plan at group level.

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

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

Article 246b
Other macroprudential rules

Articles 144b and 144c shall apply *mutatis mutandis* at the level of the participating insurance or reinsurance undertaking, insurance holding company or mixed financial holding company.';

(81) in Article 252, first paragraph, the words 'a credit institution as defined in Directive 2006/48/EC or an investment firm as defined in Directive 2004/39/EC' are replaced by the words 'a credit institution as defined in Regulation (EU) No 575/2013 or an investment firm as defined in Directive 2014/65/EU';

(82) in Article 254, the following paragraph 3 is added:

'3. The participating insurance and reinsurance undertaking, the insurance holding company and the mixed financial holding company shall submit to the group supervisor the information referred to in this Article on an annual basis within 20 weeks after the undertaking's financial year end, and, when the information referred

to in this Article is required on quarterly basis, within 11 weeks after the end of each quarter.';

(83) Article 256 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group. This report shall contain information about the group addressed to other market participants, as referred to in Article 51(1b). Articles 51, 53, 54 and 55 shall apply mutatis mutandis.

Member States shall ensure that the participating insurance and reinsurance undertakings, the insurance holding company or the mixed financial holding company disclose the information referred to in this Article on an annual or less frequent basis within 24 weeks after the undertaking's financial year end.';

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

'(b) the information for any of the subsidiaries within the group, which information must be individually identifiable, including both parts of the solvency and financial condition report, and must be disclosed in accordance with Articles 51, 53, 54 and 55.';

(c) paragraph 4 is replaced by the following:

'4. The Commission shall adopt delegated acts in accordance with Article 301a further specifying the information which must be disclosed in the single solvency and financial condition report referred to in paragraph 2 of this Article and the solvency and financial condition report at the level of the group referred to in paragraph 1 of this Article.';

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

'5. In order to ensure uniform conditions of application in relation to the single and group solvency and financial condition report, EIOPA shall develop draft implementing technical standards on the procedures and templates for, and the means of, disclosure of the single and group solvency and financial report as laid down in this Article.';

(84) the following Articles 256b and 256c are inserted:

'Article 256b

Group regular supervisory report

1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to submit to the supervisory authorities, on an annual basis, a

regular supervisory report at the level of the group. Article 35(5a) shall apply *mutatis mutandis*.

Member States shall ensure that insurance and reinsurance undertakings submit the information referred to in this Article on an annual or less frequent basis in 24 weeks after the undertaking's financial year end.

2. A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the agreement of the supervisory authorities concerned, provide a single regular supervisory report which shall comprise the following:

(a) the information at the level of the group which shall be reported in accordance with paragraph 1;

(b) the information for any of the subsidiaries within the group, which shall be individually identifiable, shall be reported in accordance with Article 35(5a) and it shall not result in less information than the one it would be provided by insurance and reinsurance undertakings submitting regular supervisory report in accordance with Article 35(5a).

Before granting the agreement in accordance with the first subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors. The non-agreement by the national supervisory authorities concerned shall be duly justified. If the single regular supervisory report in accordance with paragraph 2 is approved by the college of supervisors, each individual insurance and reinsurance undertaking shall submit the single regular supervisory report to its supervisory authority. Each supervisory authority shall have the power to supervise the specific part of the single regular supervisory report to the relevant subsidiary. If the single regular supervisory report submitted is not satisfactory for the national supervisory authorities, such approval can be withdrawn.

4. Where the report referred to in paragraph 2 fails to include information which the supervisory authority that authorised a subsidiary within the group requires comparable undertakings to provide, and where the omission is material, the supervisory authority concerned shall have the power to require the subsidiary concerned to report the necessary additional information.

5. Where the supervisory authority having authorised a subsidiary within the group identifies any non-compliance with Article 35(5a) or requests any amendment or clarification regarding the single regular supervisory report it shall also inform the college of supervisors and the group supervisor shall submit to the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company the same request.

6. The Commission shall adopt delegated acts in accordance with Article 301a further specifying the information which shall be reported.

Article 256c
Audit requirements

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

2. A separate report, including the identification of the type of assurance as well as the results of the audit, prepared by the audit firm shall be submitted to the group supervisory authority together with the solvency and financial condition report or the single solvency and financial condition report by the participating insurance or reinsurance undertakings, the insurance holding company or the mixed financial holding company.

3. Where there is a single solvency and financial condition report, the audit requirements imposed on a related insurance or reinsurance undertaking shall be complied with and the report referred to in Article 51a(4) shall be submitted to the supervisory authority of that undertaking by the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company.

4. Article 51a shall apply *mutatis mutandis*.';

(85) Article 257 is replaced by the following:

'Article 257
Fit and proper requirements for persons who effectively run an insurance holding company or a mixed financial holding company or who have other key functions

Member States shall require those who effectively run the insurance holding company or the mixed financial holding company, and where applicable, the persons who are responsible for other key functions, to be fit and proper to perform their duties.

Article 42 shall apply *mutatis mutandis*.';

(86) Article 258 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Supervisory authorities shall be given all supervisory powers to take measures in relation to insurance holding companies and mixed financial holding companies that are necessary to ensure that groups to which group supervision is applied in accordance with Article 213(2), points (a), (b) and (c), comply with all the requirements laid down in this Title. Those powers shall include the general supervisory powers referred to in Article 34.

Without prejudice to their provisions on criminal law, Member States shall impose sanctions on, or adopt measures relating to, insurance holding

companies and mixed financial holding companies which infringe laws, regulations or administrative provisions brought into force to transpose this Title, or in relation to the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such sanctions or measures are effective, in particular where the central administration or main establishment of an insurance holding company or mixed financial holding company is not located in the same Member State as its head office.';

(b) the following paragraphs 2a and 2b are inserted:

'2a. Where the group supervisor has established that the conditions set out in Article 213(3a) are not met or have ceased to be met, the insurance holding company or mixed financial holding company shall be subject to appropriate supervisory measures to ensure or restore, as the case may be, continuity and integrity of group supervision and to ensure compliance with the requirements laid down in this Title. In the case of a mixed financial holding company, the supervisory measures shall, in particular, take into account the effects on the financial conglomerate as a whole as well as on its related regulated undertakings.

2b. For the purposes of paragraphs 1 and 2a of this Article, Member States shall ensure that the supervisory measures which may be applied to insurance holding companies and mixed financial holding companies include, at least, the following:

(a) suspending the exercise of voting rights attached to the shares of the subsidiary insurance or reinsurance undertaking held by the insurance holding company or mixed financial holding company;

(b) issuing injunctions, sanctions or penalties against the insurance holding company, the mixed financial holding company or the members of the administrative, management or supervisory body of those companies;

(c) giving instructions or directions to the insurance holding company or mixed financial holding company to transfer to its shareholders the participations in its subsidiary insurance and reinsurance undertakings;

(d) designating on a temporary basis another insurance holding company, mixed financial holding company or insurance or reinsurance undertaking within the group as responsible for ensuring compliance with the requirements set out in this Title;

(e) restricting or prohibiting distributions or interest payments to shareholders;

(f) requiring insurance holding companies or mixed financial holding companies to divest from or reduce holdings in insurance or reinsurance undertakings or other related undertakings referred to in Article 228(1);

(g) requiring insurance holding companies or mixed financial holding companies to submit a plan on return, without delay, to compliance.

The group supervisor shall consult other supervisory authorities concerned and EIOPA before taking any of the measures referred to in the first subparagraph, where those measures affect undertakings which have their head offices in more than one Member State.';

(87) Article 262 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. Member States shall allow their supervisory authorities to apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings belonging to a group within the meaning of Article 212, and to which group supervision applies in accordance with Article 213(2), point (c). Those methods shall be agreed by the group supervisor, identified in accordance with Article 247, after consulting the other supervisory authorities concerned.

The methods referred to in the first subparagraph shall allow the objectives of the group supervision as specified in this Title to be achieved. Those objectives shall include the following:

(a) preserving the capital allocation and the composition of own funds of insurance and reinsurance undertakings and preventing material intra-group creation of capital where such intra-group capital creation is financed out of the proceeds of debt or other financial instruments that do not qualify as own funds items by the parent company;

(b) assessing and monitoring the risks stemming from undertakings both inside and outside the Union, and limiting the risk of contagion from those undertakings and from other non-regulated undertakings to insurance and reinsurance undertakings within the group, and to the subgroup the ultimate parent undertaking of which is an insurance or reinsurance undertaking, an insurance holding company or a mixed financial company that has its head office in the Union, as referred to in Article 215, where such a subgroup exists.

The methods referred to in the first subparagraph shall be appropriately justified, documented, and notified to the other supervisory authorities concerned, EIOPA and the Commission.';

(b) the following paragraph 3 is added:

'3. For the purposes of paragraph 2 of this Article, the supervisory authorities concerned may in particular apply one or several of the following methods to insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies that are part of a group which is subject to group supervision in accordance with Article 213(2), point (c):

(a) designating one insurance or reinsurance undertaking that shall be responsible for compliance with the requirements set out in this Title, where the insurance and reinsurance undertakings that belong

to the group do not have a common parent undertaking in the Union;

(b) requiring the establishment of an insurance holding company which has its head office in the Union, or a mixed financial holding company which has its head office in the Union where the insurance and reinsurance undertakings that belong to the group do not have a common parent undertaking in the Union, and applying this Title to the insurance and (reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company;

(c) where several insurance and reinsurance undertakings that belong to the group form a subgroup whose parent undertaking has its head office in the Union, in addition to applying this Title to this subgroup, taking additional measures or imposing additional requirements, including requirements referred to in points (d), (e), and (f) of this subparagraph and enhanced supervision of risk concentration within the meaning of Article 244 and of intragroup transactions within the meaning of Article 245, with the aim of achieving the objective referred to in paragraph 2, second subparagraph, point (b), of this Article;

(d) requiring the members of the administrative, management or supervisory body of the ultimate parent undertaking in the Union to be independent from the ultimate parent undertaking outside the Union;

(e) prohibiting, limiting, restricting, monitoring or requiring prior notification of transactions, including dividend distributions and coupon payments on subordinated debt, where such transactions are or could be a threat to the financial or solvency position of insurance and reinsurance undertakings within the group, and involve, on the one hand, an insurance or reinsurance undertaking, an insurance holding company which has its head office in the Union or mixed financial holding company which has their head office in the Union, and, on the other hand, an undertaking belonging to the group which has its head office outside the Union; where the group supervisor in the Union is not one of the supervisory authorities of the Member State in which a related insurance or reinsurance undertaking has its head office, the group supervisor in the Union shall inform those supervisory authorities of its findings with a view to enabling them to take the appropriate measures;

(f) requiring information on the solvency and financial position, the risk profile, and the risk tolerance limits of parent undertakings which have their head office outside the Union, including, where applicable, reports on those topics which are submitted to the administrative, management or supervisory body or the supervisory authorities of those third-country parent undertakings.';

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

‘1a. Member States shall also ensure that, where the parent undertaking of one or more insurance or reinsurance undertakings is a credit institution, an investment firm, a financial institution, a UCITS management company, an alternative investment fund manager, an institution for occupational retirement provision or a non-regulated undertaking which carries one or more of the activities referred to in Annex I to Directive 2013/36/EU where those activities constitute a significant part of its overall activity, the supervisory authorities responsible for the supervision of those insurance or reinsurance undertakings exercise general supervision over transactions between those insurance or reinsurance undertakings and the parent undertaking and its related undertakings.’;

(89) Article 301a is amended as follows:

(a) paragraph 2 is amended as follows:

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

‘The delegation of power referred to in Articles 29, 35b and 256b shall be conferred on the Commission for a period of four years from [OP please insert date = entry into force of this amending Directive].’;

(ii) the following subparagraph is added:

‘The delegation of power referred to in the first and second subparagraphs shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.’;

(b) paragraph 3 is replaced by the following:

‘3. The delegation of power referred to in Articles 17, 29, 31, 35, 35b, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 256b, 258, 260 and 308b may be revoked at any time by the European Parliament or by the Council.’;

(c) paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 17, 29, 31, 35, 35b, 37, 50, 56, 75, 86, 92, 97, 99, 109a, 111, 114, 127, 130, 135, 143, 172, 210, 211, 216, 217, 227, 234, 241, 244, 245, 247, 248, 256, 256b, 258, 260 or 308b shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.’;

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

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

(91) the following Article 304a is inserted:

‘Article 304a

Reviews as regards sustainability risk

1. EIOPA, after consulting the ESRB, shall assess, on the basis of available data and the findings of the Platform on Sustainable Finance referred to in Article 20 of Regulation (EU) 2020/852 of the European Parliament and of the Council* and the EBA in the context of its work under the mandate set out in Article 501c, point (c), of Regulation (EU) 575/2013 whether a dedicated prudential treatment of exposures related to assets or activities associated substantially with environmental or social objectives would be justified. In particular, EIOPA shall assess the potential effects of a dedicated prudential treatment of exposures related to assets and activities which are associated substantially with environmental and/or social objectives or which are associated substantially with harm to such objectives on the protection of policy holders and financial stability in the Union.

EIOPA shall submit a report on its findings to the Commission by 28 June 2023. Where appropriate, the report shall consider a possible prudential treatment of exposures related to assets and activities which are associated substantially with environmental or social objectives or which are associated substantially with harm to such objectives and be accompanied by an assessment of the impact of the proposed amendments on insurance and reinsurance undertakings.

2. EIOPA shall review at least every three years, with respect to natural catastrophe risk, the scope and the calibration of the standard parameters of the non-life catastrophe sub-module of the Solvency Capital Requirement referred to in Article 105(2) , third subparagraph, point (b). For the purpose of those reviews, EIOPA shall take into account the latest available relevant evidence on climate science and the relevance of risks in terms of the risks underwritten by insurance and reinsurance companies that use the standard formula for the calculation of the non-life catastrophe sub-module of the Solvency Capital Requirement.

The first review pursuant to the first subparagraph shall be completed by [OP please insert date = two years after entry into force of this Directive].

Where EIOPA finds, during a review pursuant to the first subparagraph, that, due to the scope or the calibration of the standard parameters of the non-life catastrophe risk sub-module, there is a significant discrepancy between the part of the Solvency Capital Requirement relating to natural catastrophes and the actual natural catastrophe risk that insurance and reinsurance undertakings face, EIOPA shall submit an opinion on natural catastrophe risk to the Commission.

An opinion on natural catastrophe risk submitted to the Commission pursuant to the third subparagraph shall consider the scope or the calibration of the standard

parameters of the non-life catastrophe sub-module of the Solvency Capital Requirement in order to remedy the discrepancy found and be accompanied by an assessment of the impact of the proposed amendments on insurance and reinsurance undertakings.

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[*] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (OJ L 198, 22.6.2020, p. 13).';

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

(93) Article 308a is deleted;

(94) Article 308b is amended as follows:

(a) paragraphs 5 to 8 are deleted;

(b) paragraph 12 is replaced by the following:

'12. Notwithstanding Article 100, Article 101(3) and Article 104, Member States shall ensure that the standard parameters to be used when calculating the market risk concentration and the spread risk sub-modules in accordance with the standard formula shall be the same in relation to exposures to Member States' central governments or central banks incurred before 1 January 2020 and denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their domestic currency;';

(c) in paragraph 17, the following subparagraphs are inserted after the first subparagraph:

'Where an insurance or reinsurance group, or any of its subsidiary insurance or reinsurance undertakings is applying the transitional measure on the risk-free interest rates referred to in Article 308c or the transitional measure on technical provisions referred to in Article 308d, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall publicly disclose, as part of its report on the group solvency and financial condition referred to in Article 256, and in addition to the disclosures referred to in Articles 308c(4), point (c), and Article 308d(5), point (c), the quantification of the impact on its financial position of assuming that the own funds stemming from the application of those transitional measures cannot effectively be made available to cover the Solvency Capital Requirement of the participating undertaking for which the group solvency is calculated.

Where an insurance or reinsurance group materially relies on the use of the transitional measures referred to in Articles 308c and 308d in such a manner that it misrepresents the actual solvency position of the group, even where the group Solvency Capital Requirement would be complied with without the use of those transitional measures, the group supervisor shall have the power to take appropriate measures, including the possibility to reduce the amount of

own funds stemming from the use of those transitional measures that may be deemed eligible to cover the group Solvency Capital Requirement.';

(95) Article 308c is amended as follows:

(a) the following paragraph 1a is inserted:

'1a. After [OP please insert date = date of application of this amending Directive], supervisory authorities shall only approve a transitional adjustment to the relevant risk-free interest rate term structure in the following cases:

(a) during a period of 18 months preceding the approval, the rules of this Directive applied for the first time to the insurance or reinsurance undertaking requesting the approval after being exempted from the scope of this Directive pursuant to Article 4;

(b) during a period of six months preceding the approval, the insurance or reinsurance undertaking requesting the approval received authorisation to accept a portfolio of contracts, pursuant to Article 39, where the transferring insurance or reinsurance undertaking applied the transitional adjustment to the relevant risk-free interest rate term structure with respect to that portfolio of contracts prior to the transfer.';

(b) in paragraph 4, point (c) is replaced by the following:

'(c) within the part of their report on their solvency and financial condition consisting of information addressed to other market participants referred to in Article 51(1b), publicly disclose all of the following:

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

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

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

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

(96) Article 308d is amended as follows:

(a) the following paragraph 1a is inserted:

'1a. After [OP please insert date = date of application of this amending Directive], supervisory authorities shall only approve a transitional deduction to technical provisions in the following cases:

(a) during a period of 18 months preceding the approval, the rules of this Directive applied for the first time to the insurance or reinsurance undertaking requesting the approval after being exempted from the scope of this Directive pursuant to Article 4;

(b) during a period of six months preceding the approval, the insurance or reinsurance undertaking requesting the approval accepted a portfolio of contracts, pursuant to Article 39, where the transferring insurance or reinsurance undertaking applied the transitional adjustment to the relevant risk-free interest rate term structure with respect to that portfolio of contracts prior to the transfer.';

(b) in paragraph 5, point (c) is replaced by the following:

'(c) within the part of their report on their solvency and financial condition consisting of information addressed to other market participants referred to in Article 51(1b), publicly disclose all of the following:

(i) the fact that they apply the transitional deduction to the technical provisions;

(ii) the quantification of the impact of not applying that transitional deduction on their financial position;

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

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

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

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

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

Article 2
Transposition

1. Member States shall adopt and publish, by [OP please insert date = 18 months after entry into force], the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from [OP please insert date = 18 months and one day after entry into force].

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

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

EUROPEAN
COMMISSION

Brussels, 22.9.2021
COM(2021) 581 final

ANNEX

ANNEX

to the

proposal for a Directive of the European Parliament and of the Council

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

{SEC(2021) 620 final} - {SWD(2021) 260 final} - {SWD(2021) 261 final}

ANNEX

Annex III is amended as follows:

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

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

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