Recitals of Amending directive to S II

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 and amending Directives 2002/87/EC and 2013/34/EU[1] (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[2],
Acting in accordance with the ordinary legislative procedure,

(1) Directive 2009/138/EC of the European Parliament and of the Council[3] 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. Likewise, the economic and social consequences of Russia's war of aggression against Ukraine are still unfolding. This has made the work on the Union's political priorities even more urgent, in particular ensuring that the economy works for people and attaining the objectives of the European Green Deal. The insurance and reinsurance sector can provide private sources of financing to European businesses and can make the economy more resilient by supplying protection against a wide range of risks. With this dual role, the sector has a great potential to contribute to the achievement of the Union's priorities.

(3) As underlined in the Commission's Communication of 24 September 2020 'A Capital Markets Union for people and businesses'[4], 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. As insurance and reinsurance undertakings have a wide variety of risk-management tools to avoid such forced selling, those criteria should recognise such variety and not require the legal or contractual ring-fencing of long-term investment assets in order for insurance and reinsurance undertakings to benefit from the more favourable standard parameter for equity investments. Finally, the insurance or reinsurance undertaking's management should commit to a minimum holding period of the equities through written policies and demonstrate its ability to maintain this portfolio over that holding period.

(3a) Adjustments that better take into account the long-term nature of the insurance business might lead to an increase in free available capital as a result of the reduction in the Solvency Capital

1 The title needs to be adapted to reflect changes to the Accounting Directive (2013/34/EU) and FiCOD (2002/87/EC).
2 OJ C […], […], p. […].
3 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.).
4 COM/2050/590 final.

Requirement. Where this is the case, insurance and reinsurance undertakings should consider not to direct freed-up capital towards shareholder distributions or management bonuses, but should strive to direct the freed-up capital towards productive investments in the real economy in order to support the economic recovery and the Union's broader policy objectives.

(3b) Insurers and reinsurers have the freedom to invest anywhere in the world, and are not limited to the Union. Investments in third countries may also be conducive to general development aid policies of the Union or Member States. Therefore, insurance and reinsurance undertakings should ensure that their investment policy reflects the objectives of the up-to-date EU list of non-cooperative jurisdictions for tax purposes and of Directive 2015/849 of the European Parliament and of the Council[5] in respect of high-risk third countries.

(4) In its Communication of 11 December 2019 on the European Green Deal[6], 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[7]. The Commission's ambition to ensure global leadership by the EU on the path towards 2050 was reiterated in the 2021 Strategic Foresight Report[8], 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[9], 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.

(5a) Numerous legislative acts have recently been proposed and adopted to improve resilience and contribution to sustainability, in particular in relation to sustainability reporting, including Regulation (EU) 2019/2088 of the European Parliament and of the Council[10], a directive amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, and a directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, which all affect the insurance and reinsurance sector.

(5b) The further integration of the single market for insurance is a key objective of this amending Directive. The integration of the EU single market for insurance increases competition and the availability of insurance products across Member States to the benefit of businesses and consumers. Insurance failures in the single market for insurance since the application of Solvency II emphasise the need for more consistency and convergence of supervision across the Union. The supervision of insurance and reinsurance undertakings operating under the freedom to provide services

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5 Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

6 COM(2019)640 final.

7 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).

8 COM(2021)750 final.

9 COM(2021)390.

10 Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).

and the freedom of establishment should be further improved without undermining the objective of further integrating the single market for insurance to ensure consistent consumer protection and safeguarding fair competition across the single market.

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

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

(8) Information on any applications for authorisation to take up business in a Member State and the outcomes of the assessment of such applications could provide essential information for the assessment of their application in other Member States. Therefore, the supervisory authority should be informed by the applicant insurance or reinsurance undertaking about previous rejections or withdrawals of authorisation in another Member State.

(9) Prior to the granting of authorisation to a an insurance or reinsurance undertaking that is a subsidiary of an undertaking located in another Member State, or that will be under the control of the same legal or physical person as another insurance or reinsurance undertaking located in another Member State, the supervisory authority of the Member State which grants the authorisation should consult the supervisory authorities of any Member States concerned. In view of increased insurance group activities in different Member States, it is necessary to enhance the convergent application of Union law and the exchange of information between the supervisory authorities, in particular before authorisations are granted. Therefore, where several supervisory authorities need to be consulted, any supervisory authority concerned should be allowed to request a joint assessment of an application for authorisation from the supervisory authority of the Member State where the authorisation process of a future insurance or reinsurance undertaking of the group is ongoing. The decision to grant the authorisation remains the competence of the supervisory authority of the home Member State in which the concerned undertaking seeks authorisation. However, the results of the joint assessment should be considered when taking that decision.

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

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

(11a) By way of derogation from the automatic benefit from proportionality measures, where supervisory authorities have serious concerns in relation to the risk profile of an individual small and non-complex undertaking, the supervisory authorities should have the power to request the undertaking concerned to refrain from using one or several proportionality measures. Such power may be used where they identify that the Solvency Capital Requirement is no longer complied with, or there is a risk of non-compliance, where the risk profile of an undertaking changes materially, or where the system of governance is ineffective.

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

(13) A proper implementation of the proportionality principle is crucial to avoiding excessive burden on insurance and reinsurance undertakings. For this reason, insurance and reinsurance undertakings should only report to their supervisory authorities when there is a change to the scope of the proportionality measures they apply.

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

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

(16) Recitals likely to be renumbered before publication in OJ.

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

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

(19) Reporting and disclosure deadlines should be clearly laid down in Directive 2009/138/EC. However, it should be recognised that exceptional circumstances 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 after having consulted EIOPA.

(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 could trigger or amplify risks for financial stability, insurance and reinsurance undertakings should incorporate macroprudential considerations and analysis in their underwriting, investment, and risk management activities. This could include taking into account the potential behaviour of other market participants, macroeconomic risks, such as credit cycle

downturns or reduced market liquidity, or excessive concentrations at market level in certain asset types, counterparties or sectors.

(22) Where requested by the supervisory authority, insurance and reinsurance undertakings should factor any relevant macroprudential information provided by the supervisory authorities in their own-risk and solvency assessment. In order to ensure a consistent application of such additional macroprudential measures, EIOPA should develop draft regulatory technical standards regarding that specify the criteria to be taken into account by supervisory authorities when identifying the undertaking to which the measure applies. The supervisory authorities should analyse the own-risk and solvency assessment supervisory reports of undertakings that are requested to take macroprudential considerations into account within their jurisdictions, aggregate them and provide input to undertakings on the elements that should be considered in their future own-risk and solvency assessments, particularly as regards macroprudential risks. Member States should ensure that, where they entrust an authority with a macroprudential mandate, the outcome and the findings of macroprudential assessments by the supervisory authorities are shared with that macroprudential authority.

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

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

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

(25a) Information exchange between supervisory authorities and tax authorities should not be prevented. Such exchanges should be in line with national law, and, where the information originates in another Member State, it should only be exchanged with the express agreement of the relevant authority from which the information originates.

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

(26a) Undertakings should develop and monitor the implementation of specific plans to address the specific ~~riks~~ risk arising from sustainability factors. Where a group is required to draw up such a plan at the level of the group, it should be ensured that the requirement to draw up plans at individual level are waived for insurance and reinsurance subsidiaries of the group if all relevant aspects of those subsidiaries are reflected in the group plan.

(27) Directive 2009/138/EC requires the disclosure, at least annually, of essential information through the solvency and financial condition report. That report is targeted to policyholders and beneficiaries on the one hand, and analysts and other market professionals 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 professionals, should contain detailed information on the business and on the system of governance, specific information on technical provisions and other liabilities, the solvency position as well as other data relevant for specialised analysts.

(28) It is possible for insurance and reinsurance undertakings to adjust the relevant risk-free interest rate term structure for the calculation of the best estimate in line with the spread movements of their assets after supervisory approval (‘matching adjustment’) or in line with the average spread movement of assets held by insurance and reinsurance undertakings in a given currency or country (‘volatility adjustment’). The part of the solvency and financial condition report addressed to policyholders should only contain the information that is expected to be relevant to the decision-making of an average policyholder. While insurance and reinsurance undertakings should publicly disclose the impact of not applying the matching adjustment, the volatility adjustment and the transitional measures on risk-free interest rates and on technical provisions on their financial positions, such disclosure should not be assumed to be relevant to the decision-making of an average policyholder. The impact of such measures should therefore be disclosed in the part of the solvency and financial condition report targeted to market professionals and not in the part targeted 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. Furthermore, Directive 2013/34/EU should be amended so that small and non-complex undertakings may limit their sustainability reporting according to the simplified SME sustainability reporting standards laid down in that Directive.

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

(31) As small and non-complex undertakings are not expected to be relevant for the financial stability of the Union, it is appropriate to include an exemption from the requirement of auditing the solvency and financial condition report for those undertakings. Similarly, because of the particular risk profile and specificity of captive insurance undertakings and captive reinsurance undertakings, it is appropriate not to impose on them the audit requirement. However, as some Member States have already implemented audit requirements on all undertakings and other parts of the solvency and financial condition report, they should have the possibility to apply auditing to all undertakings and other parts of the solvency and financial condition report.

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

(32a) EIOPA Guidelines on reporting for financial stability purposes already lay down criteria to identify insurance and reinsurance undertakings that are relevant for the financial stability of the financial systems in the Union.’

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

(33a) The cost of capital should be decreased compared to the level set at the time of adoption of the Directive 2009/138/EC and its delegated acts, while maintaining a sufficient level of prudence and protection of policyholders. In addition, the calculation of the risk margin should account for the time dependency of risks and reduce the amount of the risk margin in particular for long-term liabilities. This would reduce the sensitivity of the risk margin to interest rate changes. An exponential and time dependent element should be introduced to implement this adjustment.

(33b) Directive 2009/138/EC requires that the amount of eligible own funds necessary to support the insurance and reinsurance obligations be determined for the purpose of the risk margin calculation and that the Cost-of-Capital rate is equal to the additional rate, above the relevant risk-free interest rate, that an insurance or reinsurance undertaking would incur holding that amount of eligible own funds. Directive 2009/138/EC also requires that the Cost-of-Capital rate be reviewed periodically. For that purpose, the reviews should ensure that the Cost-of-Capital rate remains risk-based and does not exceed 5%.

(34) The determination of the relevant risk-free interest rate term structure should balance the use of information derived from relevant financial instruments with the ability of insurance and reinsurance undertakings to hedge interest rates derived from financial instruments. In particular, it can happen that smaller insurance and reinsurance undertakings do not have the capacities to hedge interest rate risk with instruments other than bonds, loans or similar assets with fixed cash-flows. The relevant risk-free interest rate term structure should therefore be extrapolated for maturities where the markets for bonds are no longer deep, liquid and transparent. However, the method for the extrapolation should make use of information derived from relevant financial instruments other than bonds, where such information is available from deep, liquid and transparent markets for maturities where the bond markets are no longer deep, liquid and transparent. To ensure certainty and harmonised application while also allowing for timely reaction to changes in market conditions, the Commission should adopt delegated acts to specify how the new extrapolation method should apply. In light of current market conditions, the starting point for the extrapolation for the euro at the date of entry into force of this amending Directive should remain at the same level as its level on 31 December 2023, namely at a maturity of 20 years.

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

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

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

(37) Directive 2009/138/EC provides for a country component in the volatility adjustment that aims to ensure that exaggerations of 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-corrected spread for the euro and

the risk-corrected spread for the country. In order to avoid cliff-edge effects, the calculation should avoid discontinuities with respect to the input parameters.

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

(39) In order to ensure that the same treatment is applied to all insurance and reinsurance undertakings calculating the volatility adjustment, or to take account of market developments, the Commission should be empowered to adopt delegated acts specifying the calculation of undertaking-specific elements of the volatility adjustment. For currencies other than the euro, the calculation of currency-specific elements of the volatility adjustment should take account of the possibility of cash-flow matching across pairs of pegged currencies of Member States, under the condition that it reliably reduces the currency risk.

(40) For the purposes of calculating their own funds under Regulation (EU) No 575/2013 of the European Parliament and of the Council[11], institutions which belong to financial conglomerates that are subject to Directive 2002/87/EC of the European Parliament and of the Council[12] 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.

(42a) Deleted.

(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

[11] 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).

[12] 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).

does not result in an increase in correlation between the risks within that portfolio and those within the rest of the undertaking. Therefore, insurance and reinsurance undertakings which use the matching adjustment should be allowed to calculate their Solvency Capital Requirement based on the assumption of full diversification between the assets and liabilities of the portfolio and the rest of the undertaking, unless the portfolios of assets covering a corresponding best estimate of insurance or reinsurance obligations form a ring-fenced fund.

(43a) The need to properly reflect extremely low and negative interest rates in the insurance supervision has arisen due to what has been witnessed in recent years on the markets. This should be achieved via a recalibration of the interest rate risk sub-module to reflect the existence of a negative yield environment. At the same time, the methodology to be used should not result in unrealistically large decreases in the liquid part of the curve and that could be avoided by foreseeing an explicit floor to represent a lower bound of negative interest rates. In line with interest rates dynamics, the Commission should aim at introducing a floor that is term dependent rather than flat, to the extent that the available market data allows for a robust risk-based calibration of such term-dependency.

(43b) The Commission has bundled all empowerments provided for under Directive 2009/138/EC in Commission Delegated Regulation (EU) 2015/35[13]. That approach has worked well for the implementation of that Directive and made ensuring compliance with that delegated regulation easier. Therefore, Delegated Regulation (EU) 2015/35 should be kept in force and all necessary amendments under existing empowerments as well as the implementation of new empowerments under this Directive should be effected exclusively as amending acts to Delegated Regulation (EU) 2015/35. Where such amendments are to be bundled in the future into one or more amending delegated acts, the Commission, in accordance with paragraph 31 of the Interinstitutional Agreement of 13 April 2016 on Better Law-Making, in the course of the consultations in the preparation of such delegated acts, also indicates which empowerments are considered to be substantively linked, for which the Commission is expected to provide objective justifications based on the substantive link between two or more empowerments.

(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. Supervisory authorities would benefit from access also to estimates determined under the standard formula capital requirements in order to make comparisons across undertakings and to make comparisons for a given undertaking over time. All insurance and reinsurance undertakings using a full or partial internal model should therefore report to their supervisors an estimate of the Solvency Capital Requirement determined in accordance with the standard formula. Such an estimate should appropriately reflect the methods and underlying assumptions of the standard formula facilitating a proper supervisory assessment. In order to avoid excessive burden for undertakings when determining the estimate they would be allowed to make use of information derived from the relevant simplifications in the standard formula laid down in Directive 2009/138/EC and its delegated acts. The underlying assumptions where such a simplified approach is used to determine the estimate of the Solvency Capital Requirement should be clearly explained to the satisfaction of supervisory authorities."

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

13 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).

where supervisory authorities allow insurance and reinsurance undertakings to take into account the effect of credit spread movements on the volatility adjustment in their internal model, at a level below which benefits on the Solvency Capital Requirement in excess of a mitigation of exaggerated bond spreads are expected to occur.

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

(47) Considering the nature, scale and complexity of the risks, 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) 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.

(55a) In exceptional circumstances, insurance undertakings can be subject to the risk of significant liquidity constraints. Therefore, supervisory authorities should have the power to temporarily suspend redemption rights on life insurance policies of undertakings concerned by significant liquidity risks for a short period of time and only as a last resort measure. This exceptional measure should be used with a view to preserve the collective policyholder protection, namely the protection of all policyholders including those who may be indirectly affected by the liquidity stress.

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

(57) Under Directive 2009/138/EC, as amended by Directive (EU) 2019/2177 of the European Parliament and of the Council[14], 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.

(57a) Cooperation and information sharing 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 affecting consumer rights and to enhance the protection of policyholders across the Union. This enhanced cooperation is particularly important where there are significant cross-

[14] 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).

border activities, and should increase transparency and the regular mandatory exchange of information between supervisory authorities concerned. Such exchange should be sufficiently informative and include all relevant 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 and the financial condition of the undertaking. To ensure smooth access to and efficient exchange of available supervisory data, reports on the supervisory review process, and other relevant information in relation to undertakings carrying out significant cross-border activities, taking into account the need to limit administrative burden, digital information-sharing tools should be used. Therefore, such information could be channelled through the existing digital collaboration tools put in place by EIOPA .

(57b) Where the supervisory authority of a host Member State has serious concerns regarding the solvency position of an insurance or reinsurance undertaking which carries out significant cross-border activities in its territory, 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 non-compliance with the Solvency Capital Requirement or the Minimum Capital Requirement. The supervisory authority of the home Member State should coordinate the joint on-site inspection and should invite all relevant supervisory authorities as well as EIOPA. Supervisory authorities should agree on the objectives of the on-site inspection before it is carried out. By the end of the inspection, they should also form a shared view on the necessary supervisory measures to be taken. The home supervisory authority should inform all supervisory authorities concerned about the follow-up to the on-site inspection. 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.

(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 authority of the home Member State, should also have the power to directly request information to insurance or reinsurance undertakings, where the supervisory authority of the home Member State fails to provide the information in a timely manner. This possibility to request information directly should not prevent voluntary transmission of information from insurance and reinsurance undertakings to the supervisory authorities of the host Member States.

(59) Deleted.

(60) In order to be identified as an insurance holding company, a parent company should in particular have, as its main business, the acquisition and holding of participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings. Currently, supervisory authorities have different interpretations as to the meaning of “exclusively or mainly” in that context. Therefore, the definition of an insurance holding company should be amended and clarified, taking into account similar amendments brought to the definition of a financial holding company referred to in Article 4, paragraph 1, point (20) of Regulation (EU) No 575/2013 for the banking sector. In particular, in order for an undertaking to be classified as an insurance holding company, its main business should be related to acquiring and holding insurance or reinsurance undertakings, providing ancillary services to related insurance or reinsurance undertakings, or carrying out other unregulated financial activities. Supervisory authorities should have the power to conclude that this criterion is fulfilled irrespective of the undertaking’s own stated corporate purpose or object.

(60a) In some cases, within a group subject to group supervision in accordance with Article 213(2), points (a), (b) or (c) of Directive 2009/138/EC, participations in insurance and reinsurance subsidiary undertakings that are located in a third country are held through an intermediate unregulated holding company. Even if this intermediate holding company does not have any insurance or reinsurance subsidiary whose head office is located in the Union, it is important that it can be treated similarly to an insurance holding company or a mixed financial holding company and be included in the group solvency calculations. Therefore, a definition of holding companies of third-country insurance and reinsurance undertakings should be introduced in order to allow groups to take into account related third-country undertakings when calculating the group Solvency Capital Requirement.

(61) In some cases, several insurance and reinsurance undertakings form a de facto group and behave as such, although they do not meet the definition of a group as set out in Article 212 of Directive 2009/138/EC. Therefore, Title III of that Directive does not apply to such insurance and reinsurance undertakings. In such cases, in particular for horizontal groups with no capital links between different undertakings, the group supervisors should have the power to identify the existence of a group. Objective criteria should also be provided to make such an identification. In the absence of changes in the groups' specificities, it is expected that groups which are already subject to group supervision continue being subject to such supervision.

(62) Insurance and reinsurance groups are free to decide on the specific internal arrangements, distribution of tasks and organisational structure within the group as they see fit to ensure compliance with Directive 2009/138/EC. However, in a few cases, such arrangements and organisational structures can jeopardise effective group supervision. Therefore, group supervisors should have the power - in exceptional circumstances and after consulting EIOPA and the other supervisory authorities concerned - to require changes to those arrangements or organisational structures. Group supervisors should duly justify their decision and explain why the existing arrangements or structures obstruct and jeopardise effective group supervision.

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

(63a) Decisions not to include an undertaking in the scope of group supervision may be based on various provisions laid down in Directive 2009/138/EC. Amendments to Article 214, paragraph 2, of that Directive aiming to specify the concept of ‘negligible interest’ should therefore not affect the existing possible basis for making decisions of exclusions from group supervision pursuant to point c of that article, because the Member state has transposed Article 214 in such a way that it allows for the exclusion of the ultimate parent undertaking where the latter has all of the following characteristics: it remains subject to supervision of the supervisory authority pursuant to the law of that Member State, holds no authorization to take up the business of insurance or reinsurance, does not provide the insurance or reinsurance subsidiaries in the group with ancillary services, has by-laws expressly precluding the undertaking from performing central coordination of its insurance or reinsurance subsidiaries in accordance with the law of the Member State strictly limiting the scope of activities of the undertaking, and there is an intermediate entity established in the territory of a Member State actively managing the insurance or reinsurance subsidiaries in the group.

(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. 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 and reinsurance undertakings are treated in the same manner as insurance holding companies for the purpose of group solvency calculation.

(66) Directive 2009/138/EC, and Commission Delegated Regulation (EU) 2015/35[15] provide four methods of inclusion in the group solvency calculation of undertakings belonging to other financial sectors, including methods 1 and 2 set out in Annex I to Directive 2002/87/EC. This leads to inconsistent supervisory approaches and an uneven playing field, and generates undue complexity. Therefore, rules should be simplified so that undertakings belonging to other financial sectors always contribute to the group solvency by using the relevant sectoral rules regarding the calculation of own funds and capital requirements. Those own funds and capital requirements should simply be aggregated to the own funds and capital requirements of the insurance and reinsurance part of the group.

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

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

(69) The scope of the undertakings which should be taken into account when calculating the floor for the group Solvency Capital Requirement should be consistent with the scope of undertakings contributing to the eligible own funds that are available to cover the consolidated group Solvency Capital Requirement. Therefore, when calculating the floor, third-country insurance and reinsurance undertakings included through method 1 should be taken into account.

(70) The formula for calculating the minimum consolidated group Solvency Capital Requirement may lead to situations where that minimum is close, or even equal, to the consolidated group Solvency Capital Requirement. Where in such cases, a group that does not comply with the minimum consolidated group Solvency Capital Requirement but still complies with its Solvency Capital Requirement at group level calculated on the basis of consolidated data, supervisory authorities should only use the powers which are available where the group Solvency Capital Requirement is not complied with.

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

(72) There is no legal provision specifying how to calculate group solvency when a combination of Method 1 and Method 2 is used. This leads to inconsistent practices and uncertainties, in particular in relation to the way of calculating the contribution to the group Solvency Capital Requirement of insurance and reinsurance undertakings included through Method 2. Therefore, it should be clarified how group solvency is to be calculated when a combination of methods is used. To that end, no material risk stemming from such undertakings should be ignored in the calculation of the group solvency. However, in order to avoid material increases in capital requirements as

[15] 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).

well as to preserve level-playing field for insurance or reinsurance groups at global level, it should be clarified that, for the purpose of calculating the consolidated group Solvency Capital Requirement, no equity risk capital charge is to be applied to such holdings. For the same reason, currency risk capital charge should only be applied to the value of those holdings that is in excess of the Solvency Capital Requirements of those related undertakings. Participating insurance or reinsurance undertakings should be allowed to take into account diversification between that currency risk and other risks underlying the calculation of the consolidated group Solvency Capital Requirement.

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

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

(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[16] introduced by Directive (EU) 2019/878 of the European Parliament and of the Council[17] 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.

(76) For the purposes of policy holder protection, all insurance groups operating in the Union, regardless of the location of the head office of their ultimate parent undertaking, should be treated equally in the application of group supervision under Title III of Directive 2009/138/EC. Where insurance and reinsurance undertakings are part of a group whose parent undertaking has its head office in a third country that is not deemed equivalent or temporarily equivalent in accordance with Article 260 of that Directive, exercising group supervision is more challenging. Group supervisors may decide to apply so-called ‘other methods’ in accordance with Article 262 of that Directive to such groups. However, those methods are not clearly defined and the objectives that those other methods should achieve are uncertain. If not addressed, this issue could lead to unwanted effects on the level-playing field between groups whose ultimate parent undertaking is located in the Union and groups whose ultimate parent undertaking is located in a non-equivalent third country. Therefore, the purpose of the other methods should be further specified, including a minimum set of measures that group supervisors should consider. In particular, those methods should warrant the same level of protection for all policyholders of insurance or reinsurance undertakings which have their head office in the Union, irrespective of the location of the head office of the ultimate parent undertaking of the group to which such insurance or reinsurance undertakings belong.

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16 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).

17 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).

(77) Commission Delegated Regulation (EU) 2019/981[18] 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 (EU) 2015/35. In order to ensure that there is no persistent discrepancy between the standard parameters for natural catastrophe risk and the actual exposure of insurance and reinsurance companies to such risks, EIOPA should review regularly the scope of the natural catastrophe risk module and the calibrations of its standard parameters. For that purpose, EIOPA should take into account the latest available evidence from climate science and, where discrepancies are found, it should submit an opinion to the Commission accordingly.

(80) The requirements set out in Article 308b(12) of Directive 2009/138/EC should be amended to ensure consistency with the banking framework and a level playing field in the treatment of exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State. For this purpose, a grandfathering regime for such exposures should be introduced to exempt the relevant exposures from spread and market concentration risk capital charges, provided that the exposures were incurred before 1 January 2023.

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

(82) Directive 2009/138/EC provides for transitional measures for the risk-free interest rates and on

[18] 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).

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

(82a) Deleted.

(82b) In order to take account of market developments and supplement certain detailed technical aspects of this Directive, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the criteria for identifying small and non-complex undertakings and groups, the treatment of risk posed by crypto assets in the market risk sub-module, clarifications concerning long-term investments, the criteria for limited supervisory reporting for captive insurance and reinsurance undertakings, the prudent deterministic valuation of the best estimate, the application of the simplified approach for the purpose of calculating group solvency, the information to be included in the group regular supervisory report, and extending reporting deadlines in exceptional circumstances. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(82c) To ensure the harmonised application of this Directive, EIOPA should develop draft regulatory technical standards to further specify the factors to be considered by supervisory authorities for the purpose of identifying the relationship between different undertakings that could form part of a group. The Commission should supplement this Directive by adopting the regulatory technical standards developed by EIOPA by means of delegated acts pursuant to Article 290 TFEU and in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010. The Commission should also be empowered to adopt implementing technical standards developed by EIOPA regarding some specific methodological elements pertaining to the prudent deterministic valuation of the best estimate for life obligations by means of implementing acts pursuant to Article 291 TFEU and in accordance with Article 15 of Regulation (EU) No 1094/2010.

(82d) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

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

(83a) The calibrations used for the delegated acts and implementing acts adopted by the Commission are often based on data that is heavily influenced by the inclusion of data from the United Kingdom market. Therefore, all calibrations that are input for the calculations of the Solvency Capital Requirement and the Minimum Capital Requirement should be reviewed to determine whether they are unduly dependent on UK data and, where applicable, UK data should be eliminated from the relevant data sets, unless no other data is available.

(83b) It should be ensured that the prudential treatment of investments in securitisation, including simple, transparent and standardised securitisation, appropriately reflects the actual risks, and that capital requirements associated with such investments be risk-oriented. To this end, the

Commission should assess the appropriateness of existing calibrations for investments in securitisations that are set out in the delegated acts adopted pursuant to Directive 2009/138/EC, taking into account available market data, and their consistency with capital requirements that are applicable to investments in other fixed-income securities. Based on such assessment, and where appropriate, the Commission should consider amending the delegated act setting capital requirements applicable to investments in securitisation. Such amendments, which should be risk-based and evidence-based, could consist of introducing a more granular set of risk factors depending on the ranking of the securitisation tranches, or of differentiating different types of non-simple, transparent and standardised securitisation depending on their risks.

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