



**2017/0231(COD)**

11.9.2018

# **AMENDMENTS**

## **2 - 38**

**Draft report**  
**Burkhard Balz, Pervenche Berès**  
(PE625.359v01-00)

on the proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)

Proposal for a directive  
(COM(2017)0537 – C8-0318/2017 – 2017/0231(COD))



**Amendment 2**  
**Pervenche Berès, Jonás Fernández**

**Proposal for a directive**  
**Recital 6**

*Text proposed by the Commission*

(6) In order to provide policy holders and beneficiaries with an equivalent level of protection, such internal models should be subject to prior supervisory approval on the basis of harmonised processes and standards.

*Amendment*

(6) In order to provide policy holders and beneficiaries with an equivalent level of protection, such internal models should be subject to prior supervisory approval on the basis of harmonised processes and standards, ***and to ongoing supervision, including by EIOPA.***

Or. en

**Amendment 3**  
**Pervenche Berès**

**Proposal for a directive**  
**Recital 7**

*Text proposed by the Commission*

(7) In order to ensure a high degree of convergence in the area of supervision and approval of internal models, EIOPA ***should be able to issue Opinions on issues relating to such internal models.***

*Amendment*

(7) In order to ensure a high degree of convergence in the area of supervision and approval of internal models, EIOPA ***should assess and, where necessary, review the decisions made by the supervisory authorities.***

Or. en

**Amendment 4**  
**Pervenche Berès, Sven Giegold**

**Proposal for a directive**  
**Article 1 – paragraph 1 – point 2 a (new)**  
Directive 2014/65/EU  
Article 39 – paragraph 3a (new)

**(2 a) In Article 39, the following paragraph 3a is added:**

**“3a. This Article does not apply to third country firms with respect to the operation of a trading venue that would qualify as an MTF or OTF if established in the Union”**

Or. en

*Justification*

*Supervision of third-country trading venues*

**Amendment 5**

**Pervenche Berès, Sven Giegold**

**Proposal for a directive**

**Article 1 – paragraph 1 – point 2 b (new)**

Directive 2014/65/EU

Article 57 – paragraph 4 – subparagraph 1

*Present text*

4. A competent authority shall set limits for each contract in commodity derivatives traded on trading venues based on the methodology for calculation determined by ESMA in accordance with paragraph 3. That position limit shall include economically equivalent OTC contracts.

*Amendment*

**(2 b) In paragraph 4 of Article 57, the first subparagraph is amended as follows:**

**“4. A competent authority shall set limits for each contract in commodity derivatives traded on trading venues based on the methodology for calculation determined by ESMA in accordance with paragraph 3. That position limit shall include economically equivalent OTC contracts. *Contracts traded on third-country trading venues recognised under Article 49a of Regulation (EU) No 600/2014 or benefitting from grandfathering in accordance with Article 49s of Regulation (EU) No 600/2014 do not qualify as OTC contracts.*”**

Or. en

*Supervision of third-country trading venues*

**Amendment 6**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 1 a (new)**

Directive (EU) 2015/849

Subsection II – Article 50-a (new)

*Text proposed by the Commission*

*Amendment*

*Article 1 a*

*Amendment to Directive (EU) 2015/849*

*In subsection II, the following Article is added :*

*“Article 50-a*

*Settlement of disagreements between  
competent authorities of different  
Member States*

*1. Where a competent authority of a Member State considers that, in a particular matter, cooperation with competent authorities of another Member State referred to in Article 50a, 51, 52 or 53 of this Directive does not comply with the relevant conditions set out in those provisions, it may refer the matter to EBA and request its assistance in accordance with Article 19 of Regulation (EU) No 1093/2010.*

*2. Where EBA has been requested to assist pursuant to paragraph 1 of this Article, it shall take a decision under Article 19(3) of Regulation (EU) No 1093/2010 without undue delay. EBA may also assist the competent authorities in reaching an agreement on its own initiative in accordance with the second subparagraph of Article 19(1) of that Regulation. In either case, the competent authorities involved shall defer their*

*decisions pending resolution under Article 19 of that Regulation.*

Or. en

*Justification*

*Proposed by EBA staff: A provision for binding mediation on AML matters allows to strengthen the role of the ESAs in the AMLD 2015/849.*

**Amendment 7**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 1 b (new)**

Directive (EU) 2016/97

Article 1 – paragraph 5

*Present text*

5. Member States shall ensure that competent authorities monitor the market, including the market for ancillary insurance products which are marketed, distributed or sold in, or from, their Member State. EIOPA may facilitate and coordinate such monitoring.

*Amendment*

***Article 1 b***

***Amendment to Directive (EU) 2016/97***

***In Article 1, paragraph 5 is replaced by the following:***

"5. Member States shall ensure that competent authorities monitor the market, including the market for ancillary insurance products which are marketed, distributed or sold in, or from, their Member State. EIOPA may facilitate and coordinate such monitoring.

***EIOPA may conduct an inquiry into a particular type of financial institution or type of product or type of conduct, including approaching financial institutions in the role of a potential consumer, using recording devices, telephonic or other communications.***

***EIOPA may use the information it obtains from such an inquiry in support of all its tasks related to consumer protection, financial activities and financial innovation, including review and evaluation as provided for in this***

**article. It shall publish this information on an annual basis and pass its findings on to relevant competent authorities on a named basis. "**

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1533819434401&uri=CELEX:32016L0097>)

*Justification*

*Adding covert test purchases, so-called "mystery shopping", to the scope would strengthen EIOPA's work for consumer protection and would allow EIOPA to assess the factual application of EU consumer protection rules by market participants.*

**Amendment 8**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 1 c (new)**

Directive (EU) 2016/97

Article 12 – paragraphs 2 and 3

*Present text*

2. The authorities referred to in paragraph 1 of this Article shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be insurance or reinsurance undertakings or associations whose members directly or indirectly include insurance or reinsurance undertakings, or insurance or reinsurance intermediaries, without prejudice to the possibility of cooperation between competent authorities and other bodies where that is expressly provided for in

*Amendment*

**Article 1 c**

***Amendment to Directive (EU) 2016/97***

***In Article 12, paragraphs 2 and 3 are replaced by the following:***

“2. The authorities referred to in paragraph 1 of this Article shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be insurance or reinsurance undertakings or associations whose members directly or indirectly include insurance or reinsurance undertakings, or insurance or reinsurance intermediaries, without prejudice to the possibility of cooperation between competent authorities and other bodies where that is expressly provided for in

Article 3(1).

3. The competent authorities shall possess all the powers necessary for the performance of their duties under this Directive. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.

Article 3(1).

The competent authorities shall possess all the powers necessary for the performance of their duties under this Directive.

*Without prejudice to Article 31(6), these powers shall include, at least, the powers to:*

*(a) have access to any document or other data in any form which the competent authority considers could be relevant for the performance of its duties and receive or take a copy of it;*

*(b) require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining information;*

*(c) carry out on-site inspections or investigations;*

*(d) require the freezing or the sequestration of assets, or both;*

*(e) refer matters for criminal prosecution;*

*(f) allow auditors or experts to carry out verifications or investigations;*

*(g) require the temporary or permanent cessation of any practice or conduct that the competent authority considers to be contrary to the provisions adopted in the implementation of this Directive and prevent repetition of that practice or conduct;*

*(h) adopt any type of measure to ensure that financial institutions continue to comply with legal requirements;*

*(i) issue public notices;*

*(j) suspend the marketing or sale of insurance-based investment products where the conditions of Article 16 of*



*Regulation (EU) No 1286/2014 are met;*

*(k) suspend the marketing or sale of insurance products where the insurance distributor has not developed or applied an effective product approval process or otherwise failed to comply with Article 25 of Directive (EU) 2016/97;*

*(l) require the removal of a natural person from the management board of a financial institution.*

*By [...], Member States shall notify the laws, regulations and administrative provisions transposing paragraph 3 to the Commission and EIOPA. They shall notify the Commission and EIOPA without undue delay of any subsequent amendment thereto. Member States shall ensure that mechanisms are in place to ensure that compensation may be paid or other remedial action be taken in accordance with national law for any financial loss or damage suffered as a result of an infringement of this Directive.*

3. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively."

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1533819434401&uri=CELEX:32016L0097>)*

#### *Justification*

*Proposed by EIOPA staff: In order to further facilitate EIOPA's role in the area of supervisory convergence and enhance consumer protection, it is important to enhance convergence of powers of conduct of business supervision at the disposal of national competent authorities.*

#### **Amendment 9**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 1 d (new)**  
Directive (EU) 2016/97  
Article 13 – paragraph 1

*Text proposed by the Commission*

*Amendment*

**Article 1 d**

**Amendment to Directive (EU) 2016/97**

***In paragraph 1 of Article 13, the following is added:***

***“The competent authorities shall also cooperate with EIOPA for the purposes of this Directive, in accordance with Regulation (EU) No 1094/2010. In that respect, the competent authorities shall, without undue delay, provide EIOPA with all information necessary to carry out its duties under this Directive and in accordance with Article 35 of Regulation (EU) No 1094/2010. In particular, the competent authorities shall inform EIOPA of material adverse developments and breaches of this Directive which may have the potential to have a negative impact on the orderly functioning or the integrity of the internal market.***

***Without prejudice to other forms of collaboration, EIOPA may set up coordination platforms with the participation of the competent authorities of the home and host Member States concerned in view of discussing and coordinating common matters relating to the activity of the insurance and reinsurance distributor, which pursues business under the right of establishment or the freedom to provide services.***

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1533820786508&uri=CELEX:32016L0097>)*

## Justification

*Proposed by EIOPA staff: Currently, there is no provision in IDD (equivalent to Article 87 of MiFID II) explicitly providing for cooperation between NCAs and EIOPA, potentially undermining consumer protection. In addition, there is no requirement for an ex-ante notification by competent authorities to EIOPA on cross-border activities which may cause supervisory concern and pose a risk to the integrity of the internal market.*

### **Amendment 10** **Pervenche Berès**

#### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point -1 (new)**

Directive 2009/138/EC

Article 13 – paragraph 1 – points 30, 31, 32 and 40a (new)

#### *Present text*

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

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

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

#### *Amendment*

*(-1) Article 13 is amended as follows:*

*“(a) points (30), (31) and (32) are replaced by the following:*

(30) ‘underwriting risk’ means the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and provisioning assumptions, ***including assumptions of environmental, social and governance impact on the liabilities;***

(31) ‘market risk’ means the risk of loss or of adverse change in the financial situation resulting, directly or indirectly, from fluctuations in the level and in the volatility of market prices of assets, liabilities and financial instruments, ***including fluctuations as a consequence of environmental, social and governance impact;***

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

concentrations;

*consequence of environmental, social and governance impact;*

*(b) the following point (40a) is added:*

*(40a) “environmental, social and governance factors” means factors as referred to in the United Nations supported Principles for Responsible Investment.*

Or. en

## **Amendment 11**

**Andrea Cozzolino, Luigi Morgano, Simona Bonafè**

### **Proposal for a directive**

**Article 2 – paragraph 1 – point -1 (new)**

Directive 2009/138/EC

Article 26 – paragraph. 1 – point ca (new)

*Text proposed by the Commission*

*Amendment*

*(-1) In paragraph 1 of Article 26, the following point (ca) is added:*

*“(ca) an undertaking whose business plan entails that material part of its activities will be done on the basis of freedom to provide services or freedom of establishment in that Member State. The same information shall be provided to EIOPA which may decide to set up and coordinate collaboration platforms to foster the exchange of information, an enhanced collaboration among the competent authorities and to reach a common view on the granting of the authorization. In case the concerned competent authorities fails to reach a common view in the collaboration platform within a time limit established by EIOPA, EIOPA may issue recommendations to the competent authorities concerned, including recommendation to refuse the authorisation. Where the competent authorities of the Member State concerned do not follow the*

*recommendation of EIOPA within 15 working days, they shall state the reasons including the steps they have taken or intend to take in order to address the concerns of the other competent authorities involved. EIOPA shall assess those steps and decide whether they are sufficient and appropriate. In case they are not deemed appropriate, EIOPA makes its recommendation public together with those reasons and proposed steps.”*

Or. en

**Amendment 12**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point -1 a (new)**  
Directive 2009/138/EC  
Article 27 – paragraph 1

*Present text*

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

*Amendment*

***(-1 a) In Article 27, paragraph 1 is amended as follows:***

"Member States shall ensure that the supervisory authorities are provided with the necessary means, and have the relevant expertise, capacity, and mandate to achieve the main objective of supervision, namely the protection of policy holders and beneficiaries ***in a sustainable way.***"

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20180709&from=EN>)*

**Amendment 13**  
**Sven Giegold**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 2 – paragraph 1 – point -1 (new)**

*Present text*

2. The supervisory authorities shall have the power to take any necessary measures, including where appropriate, those of an administrative or financial nature, with regard to insurance or reinsurance undertakings, and the members of their administrative, management or supervisory body.

*Amendment*

**(-1) In Article 34, paragraph 2 is amended in the following way:**

"2. The supervisory authorities ***shall be operationally independent and*** shall have the power to take any necessary measures, including where appropriate, those of an administrative or financial nature, with regard to insurance or reinsurance undertakings, and the members of their administrative, management or supervisory body."

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1533821891591&uri=CELEX:32009L0138>)*

*Justification*

*Proposed by EIOPA staff*

**Amendment 14**

**Andrea Cozzolino, Luigi Morgano, Simona Bonafè**

**Proposal for a directive**

**Article 2 – paragraph 1 – point -1 a (new)**

Directive 2009/138/EC

Article 34a (new)

*Text proposed by the Commission*

*Amendment*

**(-1 a) Article 34a is inserted:**

**“Article 34a**

***Exchange of information in the on-going supervision between the competent authorities of the home Member State and the competent authority of the host Member State for reason of policyholder’s protection***

***1. The supervisory authorities of the home Member State shall notify EIOPA and the competent authorities of the host Member State without delay where they identify any deteriorating financial condition or other emerging risks potentially affecting the protection of policyholders resulting by the activity of an undertaking under their supervision. These notifications to EIOPA shall be sufficiently detailed to allow for a proper assessment by EIOPA.***

***2. EIOPA may set up and coordinate collaboration platforms to foster the exchange of information, an enhanced collaboration among the competent authorities involved and to reach a common view on the action to be taken on cases referred to in paragraph 1.***

***3. In case the concerned competent authorities fail to reach a common view in the collaboration platform within a time limit established by EIOPA, EIOPA may issue recommendations to the competent authorities concerned, including a recommendation to withdraw the authorisation. Where the competent authorities concerned do not follow the recommendations of EIOPA within 15 working days, they shall state the reasons including the steps they have taken or intend to take in order to address the concerns of the other competent authorities involved. EIOPA shall assess those steps and decide whether they are sufficient and appropriate. In case they are not deemed appropriate, EIOPA makes its recommendation public together with those reasons and proposed steps.***

***4. Whether EIOPA ascertains, on the basis of the information received as the result of the regulatory reporting obligations for undertakings active in more than one Member State, that an undertaking carries out its activity entirely or principally in another Member State, it shall inform the concerned authorities and may set up collaboration platforms as***

*referred to in paragraph 2.”*

Or. en

**Amendment 15**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point -1 b (new)**  
Directive 2009/138/EC  
Article 36 – paragraph 4

*Present text*

*Amendment*

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

***(-1 b) In Article 36, paragraph 4 is replaced by the following:***

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

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20180709&from=EN>)*

**Amendment 16**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point -1 c (new)**  
Directive 2009/138/EC  
Article 41 – paragraphs 1 and 5

*Present text*

*Amendment*

***(-1 c) Article 41 is amended as follows:***

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



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

That system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. *It shall include compliance with the requirements laid down in Articles 42 to 49.*

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

5. The supervisory authorities shall have appropriate means, methods and powers for verifying the system of governance of the insurance and reinsurance undertakings and for evaluating emerging risks identified by those undertakings which may affect their financial soundness.

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

That system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. *The system of governance shall include consideration of environmental, social and governance factors especially related to investment assets in investment decisions. The supervisory authorities shall assess the ability of the undertakings to withstand those possible events or future changes in economic conditions.*

*(b) paragraph 5 is replaced by the following:*

5. The supervisory authorities shall have appropriate means, methods and powers for verifying the system of governance of the insurance and reinsurance undertakings and for evaluating emerging risks, *including from ESG factors*, identified by those undertakings which may affect their financial soundness."

Or. en

**Amendment 17**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point -1 d (new)**  
Directive 2009/138/EC  
Article 44 – paragraph 2 – subparagraphs 2 and 3

*Present text*

*Amendment*

*(-1 d) In Article 44, paragraph 2 is*

*amended as follows:*

*“(a) in subparagraph 2 the following point (fa) is added:*

*(fa) ESG risks relating to the investment portfolio and the management thereof, if not included in the areas listed in (a)-(f).*

*(b) subparagraph 3 is replaced by the following:*

The written policy on risk management referred to in Article 41(3) shall comprise policies relating to points (a) to (f) of the second subparagraph of this paragraph.

The written policy on risk management referred to in Article 41(3) shall comprise policies relating to points (a) to (fa) of the second subparagraph of this paragraph.”

Or. en(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20180709&from=EN>)

## **Amendment 18** **Pervenche Berès**

### **Proposal for a directive**

#### **Article 2 – paragraph 1 – point -1 e (new)**

Directive 2009/138/EC

Article 45 – paragraph 1 – subparagraph 2 – point (a)

#### *Present text*

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

#### *Amendment*

*(-1 e) In Article 45(1), point (a) of subparagraph 2 is replaced by the following:*

*“(a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking, **including a qualitative assessment of new or emerging risks, including risks related to climate change, use of resources and the environment, social risks and risks related to the depreciation of assets due to regulatory change (stranded assets);**”*

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20180709&from=EN>)

**Amendment 19**  
**Pervenche Berès**

**Proposal for a directive**

**Article 2 – paragraph 1 – point -1 f (new)**

Directive 2009/138/EC

Article 51 – paragraph 1 – subparagraph 2 – point (c)

*Present text*

(c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;

*Amendment*

***(-1 f) In Article 51(1), point (c) of subparagraph 2 is replaced by the following:***

***"(c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity that shall contain, at least, how the investment policy takes environmental, social and governance factors into account; "***

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20180709&from=EN>)*

**Amendment 20**  
**Pervenche Berès, Jonás Fernández**

**Proposal for a directive**

**Article 2 – paragraph 1 – point -1 g (new)**

Directive 2009/138/EC

Chapter IV – Section 5 – Article 71a (new)

*Text proposed by the Commission*

*Amendment*

***(-1 g) The following Article 71a is inserted:***

***"Article 71a***

***Coordination of cross-border cooperation***

***Without prejudice to other forms of cooperation, EIOPA may set up collaboration platforms involving the supervisory authorities of the home and host Member States concerned in view of***

*discussing and coordinating common matters relating to activities of insurance undertakings which pursue business under the right of establishment or the freedom to provide services. "*

Or. en

**Amendment 21**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 2 – paragraph 1 – point -1 a (new)**

Directive 2009/138/EC

Article 71a (new)

*Text proposed by the Commission*

*Amendment*

*(-1a) The following Article 71a is inserted:*

*“Article 71a*

*Coordination of cross-border cooperation*

*Without prejudice to other forms of collaboration, EIOPA may set up coordination platforms with the participation of the supervisory authorities of the home and host Member States concerned in view of discussing and coordinating common matters relating to the activity of an insurance undertaking, which pursues business under the right of establishment or the freedom to provide services.”*

Or. en

*Justification*

*Proposed by EIOPA staff*

**Amendment 22**

**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 1**  
Directive 2009/138/EC  
Article 112 – paragraph 4 – subparagraph 4

*Text proposed by the Commission*

EIOPA may *issue an Opinion to* the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 *within 4 months of receipt by the supervisory authority of the complete application.*

*Amendment*

EIOPA may *review a decision taken by* the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010.

Or. en

**Amendment 23**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 1**  
Directive 2009/138/EC  
Article 112 – paragraph 4 – subparagraph 5

*Text proposed by the Commission*

*Where such an Opinion is issued, the supervisory authority shall take its decision as referred to in the first subparagraph in conformity with that Opinion, or provide reasons in writing to EIOPA and to the applicant where the decision was not taken in conformity with that Opinion.;*

*Amendment*

*deleted*

Or. en

**Amendment 24**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1 a) In Article 132, the following paragraph 1a is inserted:***

***“1a. Within the prudent person rule, Member States shall allow insurance and reinsurance undertakings to take into account the potential long-term impact of investment decisions on environmental, social, and governance factors.”***

Or. en

**Amendment 25**

**Sven Giegold**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 2 – paragraph 1 – point 1 b (new)**

Directive 2009/138/EC

Article 136

*Present text*

*Amendment*

Article 136

Identification and notification of deteriorating financial conditions ***by the insurance and reinsurance undertaking***

Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the supervisory authorities when such deterioration occurs.

***(1 b) Article 136 is replaced by the following:***

"Article 136

Identification and notification of deteriorating financial conditions

***1.*** Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the supervisory authorities when such deterioration occurs.

***2. Supervisory authorities shall immediately notify EIOPA following a notification under paragraph 1 where the deteriorating financial conditions have a cross-border effect, including where there is any likelihood of policyholder***

*detriment. "*

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20180709&from=EN>)

*Justification*

*Proposed by EIOPA staff*

**Amendment 26**  
**Pervenche Berès, Jonás Fernández**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 1 b (new)**  
Directive 2009/138/EC  
Article 136

*Present text*

*Amendment*

**(1 b) Article 136 is replaced by the following:**

Article 136

"Article 136

Identification and notification of deteriorating financial conditions ***by the insurance and reinsurance undertaking***

Identification and notification of deteriorating financial conditions

Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the supervisory authorities when such deterioration occurs.

**1.** Insurance and reinsurance undertakings shall have procedures in place to identify deteriorating financial conditions and shall immediately notify the supervisory authorities when such deterioration occurs.

**2. Supervisory authorities shall immediately notify EIOPA following a notification under paragraph 1 in cases where the deteriorating financial conditions have a cross-border effect, notably where the interests of policyholders are at stake. "**

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20180709&from=EN>)

**Amendment 27**  
**Pervenche Berès**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 1 c (new)**

Directive 2009/138/EC

Article 185 – paragraph 3 – new points (ma) and (mb)

*Text proposed by the Commission*

*Amendment*

*(1 c) In paragraph 3 of Article 185, the following points (ma) and (mb) are added:*

*“(ma) information on whether and how environmental, climate, social and corporate governance factors are considered in the investment approach, and where further information is available;*

*(mb) fiduciary duty requirements. In addition, specific information shall be supplied in order to provide a proper understanding of the risks underlying the contract that are assumed by the policy holder.”*

Or. en

**Amendment 28**  
**Pervenche Berès**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 2 – point b**

Directive 2009/138/EC

Article 231 – paragraph 2b – subparagraph 1

*Text proposed by the Commission*

*Amendment*

Where EIOPA considers that *an* application as referred to in the first paragraph presents particular issues with respect to consistency in internal model application approvals across the Union, EIOPA may *issue an Opinion to* the supervisory authorities concerned in

Where *the supervisory authorities concerned grant an approval but* EIOPA considers that *the* application as referred to in the first paragraph presents particular issues with respect to consistency in internal model application approvals across the Union, EIOPA may *review the*



accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 within **4 months of receipt by the group supervisor of the complete application.**

**approval decision made by** the supervisory authorities concerned in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010 within **6 months.**

Or. en

**Amendment 29**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 2 – point b**  
Directive 2009/138/EC  
Article 231 – paragraph 2b – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***Where such an Opinion is issued, the supervisory authorities shall take their joint decision as referred to in the second paragraph in conformity with that Opinion, or provide reasons in writing to EIOPA and the applicant where the joint decision was not taken in conformity with that Opinion.;***

***deleted***

Or. en

**Amendment 30**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 3**  
Directive 2009/138/EC  
Article 231a – title

*Text proposed by the Commission*

*Amendment*

Article 231a

Article 231a

***Supervisory approval regarding*** internal models

***Approval and supervision of*** internal models

Or. en

**Amendment 31**  
**Pervenche Berès**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 3**

Directive 2009/138/EC

Article 231a – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

***EIOPA may, at its own initiative or at the request of supervisory authorities or insurance or reinsurance undertakings, issue an Opinion to the supervisory authorities in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010, on internal models and approvals of internal model applications as set out in Articles 112 to 127, Article 230, Article 231 and Article 233, with a view to foster supervisory convergence.***

*Amendment*

***With a view to foster supervisory convergence, EIOPA shall assess and, where necessary, review the decisions made by the supervisory authorities concerned in the area of supervision and approval of internal models in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010.***

Or. en

**Amendment 32**  
**Othmar Karas**

**Proposal for a directive**

**Article 2 – paragraph 1 – point 3**

Directive 2009/138/EC

Article 231a – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

EIOPA may, at its own initiative or at the request of supervisory authorities or insurance or reinsurance undertakings, issue an Opinion to the supervisory authorities in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010, on ***internal models and approvals of internal model applications*** as set out in Articles 112 to 127, Article 230, Article 231 and Article 233, with a view to foster supervisory convergence.

*Amendment*

EIOPA may, at its own initiative or at the request of supervisory authorities or insurance or reinsurance undertakings, issue an Opinion to the supervisory authorities in accordance with Article 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010, on approvals of internal model applications as set out in Articles 112 to 127, Article 230, Article 231 and Article 233, with a view to foster supervisory convergence.

*Justification*

*This amendment aims to avoid any ambiguity in the sense that an opinion initiated by EIOPA under Article 29(1)(a) might require competent authorities to change an already previously adopted internal model decision.*

**Amendment 33**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 3**  
Directive 2009/138/EC  
Article 231a – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***Where EIOPA issues an Opinion as referred to in the first subparagraph, the supervisory authorities concerned shall take their decision or joint decision, as applicable in conformity with that Opinion, or provide reasons in writing to EIOPA and the applicant where the decision or joint decision is not taken in conformity with that Opinion.***

***deleted***

**Amendment 34**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 3**  
Directive 2009/138/EC  
Article 231b – paragraph 1 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

EIOPA shall, on an annual basis, report to the European Parliament, the Council and the Commission on general issues supervisory authorities have dealt with in the process of approving internal models or

EIOPA shall, on an annual basis, report to the European Parliament, the Council and the Commission on general issues supervisory authorities have dealt with in the process of approving internal models or

changes thereto pursuant to Article 112 to 127, 230, 231 and 233.

changes thereto pursuant to Article 112 to 127, 230, 231, **231a** and 233.

Or. en

**Amendment 35**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 3**  
Directive 2009/138/EC  
Article 231b – paragraph 2

*Text proposed by the Commission*

2. EIOPA shall submit to the Commission, by 1 January 2020 and after conducting a public consultation, an Opinion on the application of Articles 112 to 127, Article 230, Article 231 and Article 233 by supervisory authorities, including delegated acts and implementing technical standards adopted pursuant thereto. That Opinion shall also assess any divergences in internal models within the Union.

*Amendment*

2. EIOPA shall submit to the Commission, by 1 January 2020 and after conducting a public consultation, an Opinion on the application of Articles 112 to 127, Article 230, Article 231, **Article 231a** and Article 233 by supervisory authorities, including delegated acts and implementing technical standards adopted pursuant thereto. That Opinion shall also assess any divergences in internal models within the Union.

Or. en

**Amendment 36**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 3**  
Directive 2009/138/EC  
Article 231b – paragraph 3

*Text proposed by the Commission*

3. Based on the opinion submitted by EIOPA in accordance with paragraph 2, the Commission shall submit a report to the European Parliament and the Council on the application of Articles 112 to 127, Article 230, Article 231 and Article 233 by

*Amendment*

3. Based on the opinion submitted by EIOPA in accordance with paragraph 2, the Commission shall submit a report to the European Parliament and the Council on the application of Articles 112 to 127, Article 230, Article 231, **Article 231a** and

supervisory authorities, including delegated acts and implementing technical standards adopted pursuant thereto, by 1 January 2021.;

Article 233 by supervisory authorities, including delegated acts and implementing technical standards adopted pursuant thereto, by 1 January 2021.;

Or. en

**Amendment 37**  
**Pervenche Berès**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 4 a (new)**  
Directive 2009/138/EC  
Article 244 – paragraph 2 – subparagraph 1

*Present text*

Member States shall require insurance and reinsurance undertakings or insurance holding companies or mixed financial holding companies to report on a regular basis and at least annually to the group supervisor any significant risk concentration at the level of the group, unless Article 215(2) applies.

*Amendment*

**(4 a) In paragraph 2 of Article 244, subparagraph 1 is replaced by the following:**

"Member States shall require insurance and reinsurance undertakings or insurance holding companies or mixed financial holding companies to report on a regular basis and at least annually to the group supervisor any significant risk concentration at the level of the group, **including those related to ESG factors**, unless Article 215(2) applies."

Or. en

*(<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02009L0138-20180709&from=EN>)*

**Amendment 38**  
**Burkhard Balz**

**Proposal for a directive**  
**Article 2 – paragraph 1 – point 5 a (new)**  
Directive 2009/138/EU  
Article 308b – paragraph 16

*Present text*

Member States may allow the ultimate parent insurance or reinsurance undertaking, **during a period until 31 March 2022**, to apply for the approval of an internal group model applicable to a part of a group where both the undertaking and the ultimate parent undertaking are located in the same Member State and if this part forms a distinct part having a significantly different risk profile from the rest of the group.

*Amendment*

**(5 a) In Article 308b, paragraph 16 is amended as follows:**

"Member States may allow the ultimate parent insurance or reinsurance undertaking to apply for the approval of an internal group model applicable to a part of a group where both the undertaking and the ultimate parent undertaking are located in the same Member State and if this part forms a distinct part having a significantly different risk profile from the rest of the group. "

Or. en

(<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02010R1093-20160112>)