



# **CODE OF PRIVATE INSURANCE**

*(LEGISLATIVE DECREE n. 209 of 7 September 2005)*

*Only the Italian version is authentic*

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Warning: in all the articles the designations "Minister of Enterprises and Made in Italy" and "Ministry of Enterprises and Made in Italy" replace, for all purposes and wherever present, the designations "Minister of Economic Development" and "Ministry of Economic Development" pursuant to Article 2 (4) of Decree Law no. 173 of 11 November 2022, converted by Law 16 December 2022

31 January 2024

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**LEGISLATIVE DECREE n. 209 of 7 September 2005**  
***Code of Private Insurance***<sup>1</sup>.

**THE PRESIDENT OF THE REPUBLIC**

Having regard to articles 76 and 87 of the Constitution;

Having regard to article 117 (2) of the Constitution, as amended by the constitutional law n. 3 of 18 October 2001, on the principles of unity, continuity and comprehensiveness of the legal order;

Having regard to articles 14 and 16 of law n. 400 of 23 August 1988;

Having regard to article 20 of law n. 59 of 15 March 1997, as replaced by article 1 of law n. 229 of 29 July 2003, on urgent measures to codify, reorganise and improve the quality of the regulatory framework – simplifying law for 2001;

Having regard to law n. 229 of 29 July 2003, on urgent measures to codify, reorganise and improve the quality of the regulatory framework – simplifying law for 2001, and in particular article 4, delegating the Government to reorganise the provisions on private insurance, as amended by article 2 (7) of law n. 186 of 27 July 2004, converting into law, after amendment, the decree-law n. 136 of 28 May 2004;

Having regard to law n. 241 of 7 August 1990, laying down new rules on administrative procedure and the right of access to administrative documents;

Having regard to legislative decree n. 196 of 30 June 2003, introducing the Personal data protection code;

Having regard to royal decree n. 63 of 4 January 1925, on the regulation implementing royal decree-law n. 966 of 29 April 1923, concerning the pursuit of private insurance;

Having regard to the consolidated law on the pursuit of private insurance, referred to in presidential decree n. 449 of 13 February 1959;

Having regard to law n. 990 of 24 December 1969, relating to compulsory insurance against civil liability in respect of the use of motor vehicles and craft;

Having regard to decree-law n. 857 of 23 December 1976, converted, after amendment, by law n. 39 of 26 February 1977, modifying the provisions on compulsory insurance against civil liability in respect of the use of motor vehicles and craft;

Having regard to decree-law n. 576 of 26 September 1978, converted, after amendment, by law n. 738 of 24 November 1978, facilitating the transfer of portfolio and staff of insurance undertakings placed under administrative compulsory winding up;

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<sup>1</sup> Published in the Official Journal n. 239 of 13 October 2005 and amended by decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007, by legislative decree n. 198 of 6 November 2007, by legislative decree n. 56 of 29 February 2008, by decree-law n. 97 of 3 June 2008, converted into law n. 129 of 2 August 2008, by decree-law n. 207 of 30 December 2008, converted into law n. 14 of 27 February 2009, by decree-law n. 78 of 1 July 2009, converted into law n. 102 of 3 August 2009, by decree-law n. 194 of 30 December 2009, converted into law n. 25 of 26 February 2010, by legislative decree n. 21 of 27 January 2010, by legislative decree n. 39 of 27 January 2010, by legislative decree n. 130 of 30 July 2012, by legislative decree n. 53 of 4 March 2014, by legislative decree n. 74 of 12 May 2015 and by legislative decree n. 68 of 21 May 2018.

Having regard to law n. 48 of 7 February 1979, on the setting up and functioning of the National Register of insurance agents;

Having regard to law n. 576 of 12 August 1982, on the reform of insurance supervision;

Having regard to law n. 792 of 28 November 1984, on the setting up and functioning of the National Register of insurance brokers;

Having regard to law n. 742 of 22 October 1986, laying down new rules on the pursuit of private life assurance;

Having regard to law n. 772 of 11 November 1986 on Community coinsurance;

Having regard to law n. 242 of 7 August 1990, laying down provisions on compulsory insurance against civil liability in respect of the use on the territory of the Italian Republic of motor vehicles and craft registered in foreign countries;

Having regard to law n. 20 of 9 January 1991, supplementing and modifying law n. 576 of 12 August 1982, and introducing provisions on supervision over participations held in or by insurance undertakings or institutions;

Having regard to legislative decree n. 393 of 26 November 1991, implementing directive 84/641/EEC, directive 87/343/EEC and directive 87/344/EEC on tourist assistance, on credit insurance and suretyship insurance and on legal expenses insurance, in accordance with articles 25, 26 and 27 of law n. 428 of 29 December 1990;

Having regard to legislative decree n. 49 of 15 January 1992, implementing directive 88/357/EEC on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC;

Having regard to law n. 166 of 17 February 1992, on the setting up and functioning of the national list of loss adjusters for the assessment and estimate of damage to motor vehicles and craft falling within the scope of law n. 990 of 24 December 1969, resulting from their use, theft and fire;

Having regard to presidential decree of 19 April 1993, published in the Italian Official Journal n. 153 of 2 July 1993, introducing minimum amounts of cover for compulsory insurance against civil liability in respect of the use of motor vehicles and craft;

Having regard to presidential decree n. 385 of 18 April 1994, on the regulation simplifying administrative procedures on private insurance and insurance of public interest falling within the competence of the Minister of Industry, Commerce and Handicrafts;

Having regard to decree-law n. 691 of 19 December 1994, converted, after amendment, by law n. 35 of 16 February 1995, on urgent measures for the reconstruction and recovery of economic development in the areas affected by exceptionally adverse climatic conditions and by flooding in the first ten days of November 1994;

Having regard to legislative decree n. 174 of 17 March 1995, implementing directive 92/96/EEC relating to direct life assurance and amending directive 72/267/EEC and directive 90/619/EEC;

Having regard to legislative decree n. 175 of 17 March 1995, implementing Council directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending directive 73/239/EEC and directive 88/357/EEC;

Having regard to legislative decree n. 173 of 26 May 1997, implementing directive 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings;

Having regard to legislative decree n. 373 of 13 October 1998, on the rationalisation of the rules relating to Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (the Supervisory Authority for Private Insurance Undertakings and Insurance Undertakings of Public Interest), in accordance with articles 11 (1 b), and 14 of law n. 59 of 15 March 1997;

Having regard to legislative decree n. 343 of 4 August 1999, implementing directive 95/26/EC on the reinforcement of prudential supervision in the insurance sector;

Having regard to decree-law n. 70 of 28 March 2000, converted, after amendment, by law n. 137 of 26 May 2000;

Having regard to law n. 57 of 5 March 2001, laying down provisions on the opening and regulation of markets;

Having regard to legislative decree n. 239 of 17 April 2001, implementing directive 98/78/EC on the supplementary supervision of insurance undertakings in an insurance group;

Having regard to law n. 273 of 12 December 2002, on measures to promote private initiative and competition;

Having regard to legislative decree n. 93 of 9 April 2003, implementing directive 2001/17/EC on the reorganisation and winding-up of insurance undertakings;

Having regard to legislative decree n. 190 of 30 June 2003, implementing directive 2000/26/EC relating to insurance against civil liability in respect of the use of motor vehicles and amending directives 73/239/EEC and 88/357/EEC;

Having regard to legislative decree n. 307 of 3 November 2003, implementing directive 2002/12/EC and directive 2002/13/EC as regards the solvency margin requirements respectively for life assurance undertakings and for non-life insurance undertakings;

Having regard to legislative decree n. 38 of 28 February 2005, on the exercise of the options envisaged in article 5 of the Regulation (EC) No 1606/2002 on international accounting standards;

Having regard to legislative decree n. 142 of 30 May 2005, implementing 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, as well as on prior consultation on insurance matters;

Having regard to decree-law n.95 of 6 July 2012, converted, after amendment, by law n. 135 of 7 August 2012, establishing IVASS, Istituto per la vigilanza sulle assicurazioni, as the successor to all the powers, tasks and competences of IVASS<sup>2</sup>.

Having regard to directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation;

Having regard to the preliminary resolution of the Council of Ministers, adopted in the meeting of 16 July 2004;

Having sought the opinion of the Unified Conference on 25 November 2004;

Having heard the opinion of the Council of State, expressed by the advisory section on legal acts in its meeting of 14 February 2005;

Having sought the opinion of the competent Commissions of the Chamber of Deputies and of the Senate of the Italian Republic;

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<sup>2</sup> Citation inserted by article 3 (1) of legislative decree n. 53 of 4 March 2014.



Having regard to the comments of the Antitrust Authority of 1 June 2005;

Having regard to the resolution of the Council of Ministers, adopted in the meeting of 2 September 2005;

Upon the proposal of the Minister of Economic Development and of the Minister for Community Policies, in agreement with the Minister for Public Administration, the Minister of Economy and Finance and the Minister of Justice;

## ISSUES

the following legislative decree:

### TITLE I GENERAL PROVISIONS

#### CHAPTER I GENERAL DEFINITIONS AND CLASSIFICATIONS

##### Art. 1 (Definitions)

1. For the purposes of this code of private insurance the following terms shall be defined as follows:

- a) non-life insurance: the insurance referred to in article 2 (3);
- b) life assurance: the assurance and operations referred to in article 2 (1);
- c) insurance business: the taking up and management of risks by an insurance undertaking;
- d) reinsurance business<sup>3</sup>:
  - 1) the taking up and management of the risks ceded by an insurance undertaking, also from a third State, or retroceded by a reinsurance undertaking;
  - 2) the provision of cover by a reinsurance undertaking to a pension fund that falls within the scope of Directive (EU) 2016/2341, set up in a EU Member State and authorised by the competent Authority of the home Member State;
- e) business pursued under the freedom to provide services or risk accepted under the freedom to provide services: the business pursued by an undertaking from an establishment situated in the territory of a member State by accepting commitments with policyholders having their domicile or – if legal persons – their head office in another member State or the risk that an undertaking accepts from an establishment situated in the territory of a member State other than that where the risk is situated;
- f) business pursued under the right of establishment or risk accepted under the right of establishment: the business pursued by an undertaking from an establishment situated in the territory of a member State by accepting commitments with policyholders having their domicile or – if legal persons – their head office in the same State or the risk that an undertaking accepts from an establishment situated in the territory of member State where the risk is situated;

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<sup>3</sup> Letter replaced by article 1 (1, a) of legislative decree no. 56 of 29 February 2008 and subsequently amended by article 1 (1, a) of legislative decree n. 74 of 12 May 2015, as last replaced by article 2 (1) of legislative decree no. 147 of 13 December 2018.

g) supervisory authority: the national authority charged with supervising over undertakings and intermediaries and other insurance market participants;

g-bis) ESFS: the European System of Financial Supervision, consisting of the following parts:

1) EIOPA<sup>4</sup>: European Insurance and Occupational Pensions Authority, established by Regulation (EU) No 1094/2010;

2) EBA<sup>5</sup>: European Banking Authority, established by Regulation (EU) No 1093/2010;

3) ESMA<sup>6</sup>: European Securities and Markets Authority, established by Regulation (EU) No 1095/2010;

4) Joint Committee: the Joint Committee of the European Supervisory Authorities, envisaged by article 54 of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, Regulation (EU) No 1095/2010;

5) ESRB: European Systemic Risk Board, established by Regulation (EU) No 1092/2010;

6) Supervisory authorities of the Member States: the competent or supervisory authorities of the Member States as specified in the Union acts referred to in article 1 (2) of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010<sup>7</sup>;

g-ter) group supervisor: the group supervisor as established in accordance with article 207-sexies<sup>8</sup>;

h) green card: an international certificate of insurance issued on behalf of a national bureau in accordance with Recommendation No 5 adopted on 25 January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe;

i) road code: legislative decree n. 285 of 30 April 1992 and subsequent modifications;

l) personal data protection code: legislative decree n. 196 of 30 June 2003;

l-bis) college of supervisors: means a permanent but flexible structure for cooperating, coordinating and assisting in the decision-making process within the scope of the group supervision<sup>9</sup>;

l-bis.1) remuneration: any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities<sup>10</sup>;

l-ter) risk concentration: all risk exposures implying a loss potential which is large enough to threaten the solvency or the financial position of insurance and reinsurance undertakings<sup>11</sup>;

m) CONSAP: Concessionaire for Public Insurance Services Ltd;

m-bis) authorised central counterparty: a central counterparty that has been either authorised in accordance with article 14 of Regulation (EU) n. 648/2012 or recognised in accordance with article 25 of that Regulation<sup>12</sup>;

m-ter) advice: the provision of a personal recommendation to a customer, either upon their request or at the initiative of the distributor, in respect of one or more insurance contracts<sup>13</sup>;

n) insurance claim: any amount which is owed by an insurance undertaking to insured persons, policyholders, beneficiaries or to any injured party having direct right of action against the insurance undertaking and which arises from an insurance contract or from any operation

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<sup>4</sup> Letter amended by article 1 (1, b) of legislative decree n. 74 of 12 May 2015.

<sup>5</sup> Letter amended by article 1 (1, c) of legislative decree n. 74 of 12 May 2015.

<sup>6</sup> Letter amended by article 1 (1, d) of legislative decree n. 74 of 12 May 2015.

<sup>7</sup> Letter added by article 5 (1) of legislative decree n. 130 of 30 July 2012.

<sup>8</sup> Letter inserted by article 1 (1, e) of legislative decree n. 74 of 12 May 2015.

<sup>9</sup> Letter inserted by article 1 (1, f), legislative decree n. 74 of 12 May 2015.

<sup>10</sup> Letter inserted by article 1 (1, d) of legislative decree n. 68 of 21 May 2018.

<sup>11</sup> Letter inserted by article 1 (1, f), legislative decree n. 74 of 12 May 2015.

<sup>12</sup> Letter inserted by article 1 (1, g) of legislative decree n. 74 of 12 May 2015.

<sup>13</sup> Letter inserted by article 1 (1, a) of legislative decree n. 68 of 21 May 2018.

provided for in article 2(1) and (3), in direct insurance business, including amounts set aside for the aforementioned persons, when some elements of the debt are not yet known. The premiums owed by an insurance undertaking as a result of the non-conclusion or cancellation of these insurance contracts and operations in accordance with the law applicable to such contracts or operations before the opening of the winding-up proceedings shall also be considered insurance claims;

n. 1) insurance distributor: any insurance intermediary, ancillary insurance intermediary or insurance undertaking<sup>14</sup>;

n-bis) probability distribution forecast: a mathematical function that assigns to an exhaustive set of mutually exclusive future events a probability of realisation<sup>15</sup>;

n-ter) "ECAI" or "external credit assessment institution": a credit assessment institution which is registered or certified in compliance with Regulation (EC) n.1060/2009 of the European Parliament and of the Council or a central bank which issues credit ratings exempted from the application of such regulation<sup>16</sup>;

n-quater) diversification effects: the reduction in the risk exposure of insurance and reinsurance undertakings and groups related to the diversification of their business, resulting from the fact that the adverse outcome from one risk can be offset by a more favourable outcome from another risk, where those risks are not fully correlated<sup>17</sup>;

n-quinquies) outsourcing: an arrangement between an insurance or reinsurance undertaking and a service provider, even if the latter is not authorised to pursue insurance or reinsurance business, by which that service provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance undertaking itself<sup>18</sup>;

o) guarantee fund: a body set up by a member State which has at least the task of providing compensation, up to the limits of the insurance obligation, in the event of damage to property or personal injuries caused by an unidentified or an uninsured vehicle;

p) guarantee fund for hunting victims: the fund set up within CONSAP and envisaged by article 303;

q) guarantee fund for victims of road accidents: the fund set up within CONSAP and envisaged by article 285;

q-bis) function: within a system of governance, an internal capacity of the insurance or reinsurance undertaking to undertake practical tasks; a system of corporate governance includes the risk-management function, the compliance function, the internal audit function and the actuarial function<sup>19</sup>;

r) large risks: by large risks is meant those falling within the classes defined in article 2 (3), and listed below:

1) 4 (railway rolling stock), 5 (aircraft), 6 (ships - sea, lake and river and canal vessels), 7 (goods in transit), 11 (aircraft liability) and 12 (liability for ships - sea, lake and river and canal vessels) except for those envisaged under 3) below;

2) 14 (credit) and 15 (suretyship), if the insured person carries out a professional industrial, commercial or intellectual activity and the risk refers to such activity;

3) 3 (land vehicles, other than railway rolling stock), 8 (fire and natural forces), 9 (other damage to property), 10 (motor vehicle liability), 12 (liability for ships - sea, lake and river and canal vessels) as regards ships subject to compulsory insurance as per article 123, 13 (general liability) and 16 (financial loss), provided that the insured meets at least two of the following three requirements: 1) the total balance sheet assets exceed six million two hundred thousand euros; 2) the amount of the turnover exceeds twelve million eight hundred thousand euros; 3) the number

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<sup>14</sup> Letter inserted by article 1 (1, c) of legislative decree n. 68 of 21 May 2018.

<sup>15</sup> Letter inserted by article 1 (1, h) of legislative decree n. 74 of 12 May 2015.

<sup>16</sup> Letter inserted by article 1 (1, h) of legislative decree n. 74 of 12 May 2015.

<sup>17</sup> Letter inserted by article 1 (1, h) of legislative decree n. 74 of 12 May 2015.

<sup>18</sup> Letter inserted by article 1 (1, h) of legislative decree n. 74 of 12 May 2015.

<sup>19</sup> Letter inserted by article 1 (1, l) of legislative decree n. 74 of 12 May 2015.

of employees employed on average during the year exceeds two hundred fifty units. If the insured person is an undertaking belonging to a group subject to the requirement to draw up consolidated accounts, the above conditions apply to the group's consolidated accounts;

r-bis) group: a group

1) made up of a participating or parent company, its subsidiaries or other entities in which the participating or parent company or its subsidiaries hold a participation, as well as of companies linked by management on a unified basis as set out in art. 96; or

2) based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, that may also include mutual insurance undertakings or mutual-type associations, provided that:

2.1) one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and

2.2) the establishment and dissolution of such relationships for the purposes of title XV are subject to prior approval by the group supervisor; where the undertaking exercising the centralised coordination shall be considered as the parent or participating undertaking, and the other undertakings shall be considered as subsidiaries or related undertakings<sup>20</sup>;

s) undertaking: the authorised insurance or reinsurance undertaking;

t) insurance undertaking: the undertaking authorised according to the provisions laid down in Community directives on direct insurance;

u) insurance undertaking authorised in Italy or Italian insurance undertaking: the undertaking with head office in Italy and the Italian branch of an insurance undertaking with head office in a third State, authorized to pursue insurance business or operations according to article 2;

u-bis) captive insurance undertaking: an insurance undertaking controlled either by a financial undertaking other than an insurance or reinsurance undertaking or a group of insurance or reinsurance undertakings to which directive 2009/138/EC applies, or by a non-financial undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking or undertakings which control it or of an undertaking or undertakings of the group of which captive insurance undertaking is a member<sup>21</sup>;

v) EU insurance undertaking: the undertaking with head office and central administration in a member State of the European Union other than Italy or in a State belonging to the European Economic Area, authorised according to the provisions in EC directives on direct insurance;

z) non-EU insurance undertaking: the insurance undertaking with head office and central administration in a State not belonging to the European Union or to the European Economic Area, authorised to pursue insurance business or operations according to article 2;

aa) insurance holding company: a parent undertaking the sole or main object of which is to acquire controlling interests and to manage such holdings and turn them to profit, where those subsidiary undertakings are either exclusively or mainly insurance undertakings, reinsurance undertakings, non-EU insurance or reinsurance undertakings, one at least of such subsidiary undertakings being an insurance or reinsurance undertaking with head office in the territory of the Italian Republic, provided that it is not a mixed financial holding undertaking pursuant to art. 1,(1, bb-bis)<sup>22</sup>;

bb) mixed-activity insurance holding company: a parent undertaking other than an insurance undertaking, a non-EU insurance undertaking, a reinsurance undertaking, a non-EU reinsurance undertaking, an insurance holding company or a mixed financial holding undertaking pursuant to

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<sup>20</sup> Letter inserted by article 1 (1, m) of legislative decree n. 74 of 12 May 2015.

<sup>21</sup> Letter inserted by article 1 (1, n) of legislative decree n. 74 of 12 May 2015.

<sup>22</sup> Letter replaced by article 1 (1, b), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (2, a and b) of legislative decree n. 53 of 4 March 2014. See ISVAP regulation n. 18 of 12 March 2008, in particular article 4.

art. 1, (1, bb-bis), one at least of its subsidiary undertakings being an insurance undertaking or a reinsurance undertaking with head office in the territory of the Italian Republic<sup>23</sup>;

bb-bis) mixed financial holding undertaking: the undertaking as referred to in article 1 (1, v) of legislative decree n. 142 of 30 May 2005<sup>24</sup>;

cc) reinsurance undertaking: an undertaking exclusively authorised to the pursuit of reinsurance, other than an insurance undertaking or a non-EU insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, an insurance undertaking with head office in a third State or other reinsurance undertakings;

cc-bis) captive reinsurance undertaking: a reinsurance subsidiary of a financial undertaking other than an insurance undertaking or a reinsurance undertaking or a group of insurance or reinsurance undertakings to which directive 2009/138/EC applies, or of a non financial undertaking the purpose of which is to provide reinsurance cover exclusively to the risks of the undertaking or undertakings which control it or the group of which the captive reinsurance undertaking is a member<sup>25</sup>;

cc-ter) non-EU reinsurance undertaking: the undertaking with head office and central administration in a State not belonging to the European Union or to the European Economic Area, authorised to pursue reinsurance business<sup>26</sup>;

cc-quater) financial undertaking: an undertaking set up by one of the following subjects: a credit institution, a financial institution or an instrumental company as per article 4 n. 18 of regulation (EU) 575/2013<sup>27</sup>;

2) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of article 1 (1) (t) (aa) and (cc);

3) an investment firm within the meaning of article 4 (2) of Regulation n. 575 of the European Parliament and of the Council of 26 June 2013;

4) a mixed financial holding undertaking within the meaning of article 1 (1, bb-bis)<sup>28</sup>;

cc-quinquies) insurance intermediary: any natural or legal person, other than an insurance or reinsurance undertaking or their employees and other than an ancillary insurance intermediary, who, for remuneration, takes up or pursues the activity of insurance distribution<sup>29</sup>;

cc-sexies) reinsurance intermediary: any natural or legal person, other than an insurance or reinsurance undertaking or its employees, who, for remuneration, takes up or pursues the activity of reinsurance distribution<sup>30</sup>;

cc-septies) ancillary insurance intermediary: any natural or legal person, other than those referred to in article 109 (2) d), who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met<sup>31</sup>:

1) the principal professional activity of that natural or legal person is other than insurance distribution;

2) the natural or legal person only distributes certain insurance products that are complementary to a good or service;

3) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity;

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<sup>23</sup> Letter replaced by article 1 (1, c), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (2, c and d) of legislative decree n. 53 of 4 March 2014.

<sup>24</sup> Letter inserted by article 3 (2, e) of legislative decree n. 53 of 4 March 2014.

<sup>25</sup> Letter inserted by article 1 (1, d), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (1, o) of legislative decree n. 74 of 12 May 2015.

<sup>26</sup> Letter inserted by article 1 (1, d) of legislative decree n. 56 of 29 February 2008.

<sup>27</sup> Number replaced by article 1 (1, p) of legislative Decree n. 74 of 12 May 2015.

<sup>28</sup> Letter inserted by article 1 (1, d), legislative decree n. 56 of 29 February 2008, as last amended by article 3 (2, f, g and h) of legislative decree n. 53 of 4 March 2014.

<sup>29</sup> Letter inserted by article 1 (1, b) of legislative decree n. 68 of 21 May 2018.

<sup>30</sup> Letter inserted by article 1 (1, b) of legislative decree n. 68 of 21 May 2018.

<sup>31</sup> Letter inserted by article 1 (1, b) of legislative decree n. 68 of 21 May 2018.

dd) ISVAP or IVASS: Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo, which was replaced by IVASS, Istituto per la vigilanza sulle assicurazioni, pursuant to art. 13 of decree-law no. 95 of 6 July 2012, converted, after amendment, by law no. 135 of 7 August 2012<sup>32</sup>;

ee) bankruptcy law: royal decree n. 267 of 16 March 1942 and subsequent modifications;

ff) localization: the existence of assets, whether movable or immovable, within the territory of a given State. Claims against debtors shall be regarded as situated in the State where they are realizable;

gg) *(repealed)*<sup>33</sup>;

hh) *(repealed)*<sup>34</sup>;

ii) regulated market: a financial market authorized or recognized in accordance with part III, title I, of the consolidated law on financial mediation, as well as the markets in States belonging to the OECD which have been set up, organized and regulated by provisions adopted or approved by the national competent authorities and which satisfy requirements similar to those envisaged for the regulated markets falling within the scope of the consolidated law on financial mediation;

ii-bis) risk measure: a mathematical function which assigns a monetary amount to a given probability distribution forecast and increases monotonically with the level of risk exposure underlying that probability distribution forecast<sup>35</sup>;

ll) ship: any watercraft intended for navigation at sea, lake and river and canal vessels and propelled by mechanical means;

ll-bis) intra-group transaction: any transaction by which an insurance or reinsurance undertaking relies, either directly or indirectly, on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment<sup>36</sup>;

mm) Italian compensation body: the body set up within CONSAP and envisaged by article 296;

mm-bis) participation: the ownership, direct or by way of control, of 20% or more of the voting rights or capital of a company, including through subsidiaries, trust companies or third parties, or a percentage which makes it possible to exercise a significant influence over that company<sup>37</sup>;

mm-ter) qualifying holding: a direct or indirect holding in an insurance or reinsurance undertaking which represents 10% or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of that undertaking<sup>38</sup>;

nn) participations: the shares, capital parts and other financial instruments that confer administrative rights or in any case the rights provided for by the last paragraph of article 2351 of the civil code;

oo) *(repealed)*<sup>39</sup>

pp) Italian direct insurance portfolio: all the contracts concluded by Italian insurance undertakings, except for those concluded by their branches located in third States;

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<sup>32</sup> Letter replaced by article 3 (2, i) of legislative decree n. 53 of 4 March 2014.

<sup>33</sup> Letter repealed by article 1 (1, q) of legislative decree n. 74 of 12 May 2015. Letter gg) laid down: "*available solvency margin: the assets of the undertaking free of any foreseeable liabilities, less any intangible items*"

<sup>34</sup> Letter repealed by article 1 (1, r) of legislative decree n. 74 of 12 May 2015. Letter hh) laid down: "*required solvency margin: the minimum amount of net assets that the undertaking constantly possesses, according to the provisions in Community directives on direct insurance*".

<sup>35</sup> Letter inserted by article 1 (1, s) of legislative decree n. 74 of 12 May 2015.

<sup>36</sup> Letter inserted by article 1 (1, t) of legislative decree n. 74 of 12 May 2015.

<sup>37</sup> Letter inserted by article 1 (1, u) of legislative decree n. 74 of 12 May 2015.

<sup>38</sup> Letter inserted by article 1 (1, u) of legislative decree n. 74 of 12 May 2015.

<sup>39</sup> Letter repealed by article 4 (1, a) of legislative decree n. 21 of 27 January 2010. Letter oo) laid down: "*qualifying holdings: holdings amounting to a controlling interest in a firm and shareholdings identified by ISVAP, in accordance with the principles laid down in the regulation adopted by the Minister of Production Activities, with regard to the different cases covered, taking account of the voting rights and the other rights which make it possible to exercise an influence on the company*".

qq) Italian indirect insurance portfolio: contracts, regardless of where they are concluded, by Italian undertakings or establishments in Italy of undertakings with head office in another State, if the ceding undertaking itself is an Italian undertaking or an establishment in Italy of undertakings with head office in another State. The foreign portfolio also includes the contracts, regardless of where they are concluded, in case the ceding undertaking has its head office in another State<sup>40</sup>;

rr) international accounting standards: the international accounting standards and the relevant interpretations adopted according to the procedure set out in article 6 of Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002;

ss) insurance products: all the contracts issued by insurance undertakings in the pursuit of the activities falling within the life classes or non-life classes as defined in article 2;

ss-bis) insurance-based investment product: a product referred to in article 4 (1) 2), of Regulation (EU) n. 1286/2014<sup>41</sup>. This definition does not include:

1) non-life insurance products as listed in Annex I to Directive 2009/138/EC (Classes of non-life insurance);

2) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;

3) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;

4) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;

5) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;

tt) insurance class: a classification by a homogeneous set of risks or operations describing the activities that the undertaking may pursue subject to authorization;

uu) retrocession: cession of risks accepted by a reinsurer;

vv) branch: a branch, not having a legal personality, that is part of an insurance or reinsurance undertaking and that directly exercises all or part of the insurance or reinsurance business; with regard to mediation, branch means an agency or a branch which is located in the territory of a Member State other than the home Member State, including the mere organisation of an office managed by the own staff of the intermediary or by a person who is independent but has permanent authority to act for the intermediary<sup>42</sup>;

vv-bis) finite reinsurance: reinsurance under which the explicit maximum loss potential, expressed as the maximum economic risk transferred, arising both from a significant underwriting risk and timing risk transfer, exceeds the premium over the lifetime of the contract by a limited but significant amount, together with at least one of the following two features:

1) explicit and material consideration of the time value of money;

2) contractual provisions to moderate the balance of economic experience between the parties over time to achieve the target risk transfer<sup>43</sup> ;

vv-bis.1) credit risk: 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

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<sup>40</sup> The sentence "The contracts concluded by Italian undertakings through an establishment set up in another State are included into the foreign portfolio" has been deleted by article 1 (1, e), legislative decree n. 56 of 29 February 2008.

<sup>41</sup> Letter inserted by article 1 (1, h) of legislative decree n. 68 of 21 May 2018.

<sup>42</sup> The words: "With regard to mediation, branch means an agency or a branch which is located in the territory of a Member State other than the home Member State, including the mere organisation of an office managed by the own staff of the intermediary or by a person who is independent but has permanent authority to act for the intermediary" have been inserted by article 1 (1, i) of legislative decree n. 68 of 21 May 2018.

<sup>43</sup> Letter inserted by article 1 (1, f), legislative decree n. 56 of 29 February 2008.

insurance and reinsurance undertakings are exposed, in the form of counterparty default risk, or spread risk, or market risk concentration<sup>44</sup>;

vv-bis.2) liquidity risk: the risk that insurance and reinsurance undertakings are unable to realise investments and other assets in order to settle their financial commitments when they fall due<sup>45</sup>;

vv-bis.3) market risk: 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<sup>46</sup>;

vv-bis.4) underwriting risk: the risk of loss or of adverse change in the value of insurance liabilities, due to inadequate pricing and technical provisioning assumptions<sup>47</sup>;

vv-bis.5) operational risk: the risk of loss arising from inadequate or failed internal processes, personnel or systems, or from external events<sup>48</sup>;

vv-bis.6) guarantee schemes: systems for performing - in Italy or abroad - the functions of safeguarding the financial stability of undertakings, in particular for crisis management and resolution;

vv-bis.7) parent company: a company which exercises control pursuant to article 72, also through subsidiaries, trust companies or third parties;

vv-bis.8) subsidiary: a company which is controlled pursuant to article 72, also through subsidiaries, trust companies or third parties;

vv-bis.9) participating company: the company which holds a participation;

vv-bis.10) related company: the company in which a participation is held;

vv-ter) special purpose vehicle: any undertaking, whether incorporated or not, other than an insurance or reinsurance undertaking, which assumes risks from insurance or reinsurance undertakings and which fully funds its exposure to such risks through the proceeds of a debt issuance or some other financing mechanism where the repayment rights of the providers are subordinated to the reinsurance obligations of such a vehicle<sup>49</sup>;

vv-quater) durable medium: any instrument which<sup>50</sup>:

1) enables a policyholder to store information addressed personally to that policyholder in a way accessible for future reference and for a period of time adequate for the purposes of the information; and

2) allows the unchanged reproduction of the information stored;

zz) establishment: the head office or branch of an insurance or reinsurance undertaking;

aaa) State belonging to the European Economic Area: a State that is a contracting party to the agreement extending the regulations of the European Union on, among other things, the free movement of goods, services and capital to the States of the European Free Trade Association signed in Porto on 2 May 1992 and ratified by law n. 300 of 28 July 1993;

bbb) member State: a Member State of the European Union or a State belonging to the European Economic Area and, as such, treated on a par with the member State of the European Union;

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<sup>44</sup> Letter inserted by article 1 (1, v), legislative decree n. 74 of 12 May 2015.

<sup>45</sup> Letter inserted by article 1 (1, v), legislative decree n. 74 of 12 May 2015.

<sup>46</sup> Letter inserted by article 1 (1, v), legislative decree n. 74 of 12 May 2015.

<sup>47</sup> Letter inserted by article 1 (1, v), legislative decree n. 74 of 12 May 2015.

<sup>48</sup> Letter inserted by article 1 (1, v), legislative decree n. 74 of 12 May 2015.

<sup>49</sup> Letter inserted by article 1 (1, f), legislative decree n. 56 of 29 February 2008.

<sup>50</sup> Letter inserted by article 1 (1, l) of legislative decree n. 68 of 21 May 2018.



ccc) member State of the commitment: the State under letter bbb) where the policyholder has his/her domicile or – if the policyholder is a legal person – the State under letter bbb) where the legal person referred to in the contract has its head office;

ddd) member State of provision of services: the State under letter bbb) of the commitment or where the risk is situated, when the commitment or risk is accepted by an establishment situated in another State under letter bbb);

eee) member State of establishment: the State under letter bbb) where the establishment from which the undertaking carries on business is situated;

fff) member State where the risk is situated:

1) the State under letter bbb) in which the property is situated, where the insurance relates to buildings or to buildings and their contents, in so far as both are covered by the same insurance contract;

2) the State under letter bbb) of registration, where the insurance relates to vehicles of any type subject to registration, irrespective of whether it is a permanent or a temporary plate<sup>51</sup>;

3) the State under letter bbb) where the policyholder took out the policy in the case of policies of a duration of four months or less covering travel or holiday risks;

4) the State under letter bbb) where the policyholder has his/her habitual domicile or, if the policyholder is a legal person, the State where the latter's head office, to which the contract relates, is situated, in all cases not explicitly covered by points 1 to 3;

4-bis) where a vehicle is dispatched from one Member State to another, depending on the choice of the person responsible for third party liability cover, either the Member State of registration or, immediately upon acceptance of delivery by the purchaser, the Member State of destination, for a period of 30 days, even if the vehicle has not formally been registered in the Member State of destination<sup>52</sup>;

4-ter) the State under letter bbb) in which the accident occurred if it is a vehicle without a registration plate or bearing a registration plate which no longer corresponds to the vehicle<sup>53</sup>;

ggg) home member State: the member State of the European Union or the State belonging to the European Economic Area in which the head office of the insurance undertaking accepting the commitment or risk is situated or of the reinsurance undertaking<sup>54</sup>; with regard to mediation, where the intermediary is a natural person, home member State means the member State in which his or her residence is situated; where the intermediary is a legal person, the member State in which its registered office is situated or, if there is no registered office, the member State in which its head office is situated, where the latter is defined as the location from where the main business is managed<sup>55</sup>;

ggg-bis) host Member State: the Member State, other than the home Member State, in which an insurance or a reinsurance undertaking has a branch or provides services<sup>56</sup>; with regard to mediation, it means the Member State, other than the home Member State, in which the intermediary has a permanent presence or establishment or provides services<sup>57</sup>;

hhh) third State: a State which is not a member of the European Union or does not belong to the European Economic Area;

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<sup>51</sup> Number amended by article 1 (1, a) of legislative decree n. 198 of 06 November 2007.

<sup>52</sup> Number inserted by article 1 (1, b), legislative decree no. 198 of 6 November 2007 and replaced by article 2 (1, a, number 1) of legislative decree no. 184 of 22 November 2023. The previous version laid down: *“the State under letter bbb) of destination where a vehicle is dispatched from one member State to another immediately upon acceptance of delivery by the purchaser for a period of thirty days, even though the vehicle has not formally been registered in the member State of destination”*.

<sup>53</sup> Number inserted by article 1 (1, b) of legislative decree n. 198 of 6 November 2007.

<sup>54</sup> Letter amended by article 1 (1, g) of legislative decree n. 56 of 29 February 2008.

<sup>55</sup> The words: *“With regard to mediation, it means the Member State, other than the home Member State, in which the intermediary has a permanent presence or establishment or provides services”* have been inserted by article 1 (1, e) of legislative decree n. 68 of 21 May 2018.

<sup>56</sup> Letter inserted by article 1 (1, z), legislative decree n. 74 of 12 May 2015.

<sup>57</sup> The words: *“With regard to mediation, it means the Member State, other than the home Member State, in which the intermediary has a permanent presence or establishment or provides services”* have been inserted by article 1 (1, f) of legislative decree n. 68 of 21 May 2018.

- iii) close links: a relationship in which two or more natural or legal persons are linked by:
- 1) control as per article 72;
  - 2) a participation, regardless of whether it is held directly or through subsidiaries, trust companies or third parties, representing at least 10% of the capital or the voting rights, or a participation that, although not exceeding the above-mentioned limit, makes it possible to exercise a significant influence over the company (even if it is not a dominant influence);
  - 3) a link where the same persons are under the control of the same subject, or are anyhow managed on a unified basis pursuant to a contract or provisions of their memoranda or articles of association, or when the administrative bodies are mainly made up of the same persons, or when there are important and durable reinsurance links;
  - 4) a technical, organisational, financial, legal and family relation such as to have a relevant influence on the running of the company. IVASS, by its own regulation, can further extend the definition of close links<sup>58</sup>, in order to avoid situations that may hinder the effective exercise of its supervisory functions;
- iii.1) distance selling: any selling practice which, without requiring the simultaneous and physical presence of the distributor and the policyholder, may be used for the distance marketing of insurance and reinsurance contracts<sup>59</sup>;
- iii-bis) risk-mitigation techniques: the techniques which enable insurance and reinsurance undertakings to transfer part or all of their risks to another party<sup>60</sup>;
- lll) consolidated banking law: legislative decree n. 385 of 1 September 1993 and subsequent modifications;
- mmm) consolidated law on financial mediation: legislative decree n. 58 of 24 February 1998 and subsequent modifications;
- nnn) consolidated law on insurance against industrial injury and occupational diseases: legislative decree n. 38 of 23 February 2000 and subsequent modifications;
- ooo) Ufficio centrale italiano (the national bureau): the body which has been set up by insurance undertakings authorized to conduct the business of motor vehicle insurance against civil liability and has been licensed to perform the functions of national insurers' bureau in the territory of the Italian Republic and the other tasks envisaged by Community and Italian law;
- ppp) National insurers' bureau: the professional organization which is constituted in accordance with Recommendation No 5 adopted on 25 January 1949 by the Road Transport Sub-committee of the Inland Transport Committee of the United Nations Economic Commission for Europe and which groups together insurance undertakings which, in a State, are authorized to conduct the business of motor vehicle insurance against civil liability;
- qqq) recreational craft: the craft defined in article 1 (3) of legislative decree n. 171 of 18 July 2005 introducing the recreational marine code;
- rrr) vehicle: 1) any motor vehicle propelled exclusively by mechanical power on land but not running on rails with:
- 1.1) a maximum design speed of more than 25 km/h;
- or
- 1.2) a maximum net weight of more than 25 kg and a maximum design speed of more than 14 km/h;
  - 2) any trailer to be used with a vehicle referred to in point 1), whether coupled or uncoupled;

<sup>58</sup> At the moment the subject-matter is regulated by ISVAP order n. 1617 G. of 21 July 2000.

<sup>59</sup> Letter inserted by article 1 (1, g) of legislative decree n. 68 of 21 May 2018.

<sup>60</sup> Letter inserted by article 1 (1, aa), legislative decree n. 74 of 12 May 2015.

3) light electric vehicles as defined in a specific decree of the Minister of Enterprises and Made in Italy and of the Ministry of Infrastructure and Transport, in consultation with the Ministry of the Interior, to be adopted within ninety days of the entry into force of this provision.<sup>61</sup>

1. bis. Without prejudice to 1) and 2) of letter rrr) of paragraph 1, wheelchair vehicles exclusively intended for use by persons with physical disabilities are not considered to be vehicles referred to in this Code.<sup>62</sup>

## Art. 2 (Classes of insurance)

1. The classes of assurance for life assurance business are the following:

- I. assurance on the length of human life;
- II. marriage assurance, birth assurance;
- III. assurance referred to in classes I and II, whose main benefits are directly linked to the value of units of a UCITS (undertakings for collective investment in transferable securities) or the value of the assets in an internal fund or else to an index or other reference values;
- IV. health insurance and insurance against the risk of dependency that are covered by permanent health insurance contracts not subject to cancellation, against the risk of serious disability resulting from accident or sickness or longevity;
- V. capital redemption operations;
- VI. management of group pension funds that effect payments on death or survival or in the event of discontinuance or curtailment of activity.

2. An undertaking that has obtained the authorization to pursue life assurance classes under I, II or III of paragraph 1, or that under class V of paragraph 1 if it has obtained the authorization to pursue also another life class exposing it to a demographic risk, can - in addition to these classes - underwrite contracts covering personal injury including incapacity for employment, death resulting from an accident, and disability resulting from an accident or sickness. The undertaking that has been authorized to pursue the operations under class VI of paragraph 1, in addition to the relevant contracts may provide benefits in the event of disability and premature death according to the provisions regulating supplementary pension schemes.

3. The classes of risks for non-life insurance business are the following:

1. Accident (including industrial injury and occupational diseases); fixed pecuniary benefits; benefits in the nature of indemnity; combinations of the two; injury to passengers;
2. Sickness: fixed pecuniary benefits; benefits in the nature of indemnity; combinations of the two;
3. Land vehicles (other than railway rolling stock): all damage to or loss of: land motor vehicles; land vehicles other than motor vehicles;
4. Railway rolling stock: all damage to or loss of railway rolling stock;
5. Aircraft: all damage to or loss of aircraft;
6. Ships (sea, lake and river and canal vessels): all damage to or loss of: river and canal vessels; lake vessels; sea vessels;
7. Goods in transit (including merchandise, baggage, and all other goods): all damage to or loss of goods in transit or baggage, irrespective of the form of transport;
8. Fire and natural forces: all damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to: fire; explosion; storm; natural forces other than storm, nuclear energy; land subsidence;
9. Other damage to property: all damage to or loss of property (other than property included in classes 3, 4, 5, 6 and 7) due to hail or frost, and any event such as theft, other than those mentioned under 8;

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<sup>61</sup> Letter replaced by article 2 (1, a), number 2) of legislative decree no. 184 of 22 November 2023. The previous version laid down: "vehicle shall mean: any motor vehicle intended for travel on land and propelled by mechanical power, but not running on rails, and any trailer, whether or not coupled with a tractor"

<sup>62</sup> Paragraph inserted by article 2 (1), b) of legislative decree no. 184 of 22 November 2023.

10. Motor vehicle liability: all liability arising out of the use of motor vehicles operating on the land (including carrier's liability);
11. Aircraft liability: all liability arising out of the use of aircraft (including carrier's liability);
12. Liability for ships (sea, lake and river and canal vessels): all liability arising out of the use of ships, vessels or boats on the sea, lakes, rivers or canals (including carrier's liability);
13. General liability: all liability other than those forms mentioned under numbers 10, 11 and 12;
14. Credit: insolvency (general); export credit; instalment credit; mortgages; agricultural credit;
15. Suretyship: suretyship (direct); suretyship (indirect);
16. Miscellaneous financial loss: employment risks; insufficiency of income (general); bad weather; loss of benefits; continuing general expenses; unforeseen trading expenses; loss of market value; loss of rent or revenue; indirect trading losses other than those mentioned above; other non-trading financial loss; other forms of financial loss;
17. Legal expenses: legal expenses;
18. Assistance: assistance to persons who get into difficulties.

4. In non-life classes the authorization that simultaneously covers more than one class shall be named:

- a) classes numbers 1 and 2, "Accident and Health Insurance";
- b) classes numbers 1, injury to passengers, 3, 7 and 10, "Motor Insurance";
- c) classes numbers 1, injury to passengers, 4, 6, 7 and 12, "Marine and Transport Insurance";
- d) classes numbers 1, injury to passengers, 5, 7 and 11, "Aviation Insurance";
- e) classes numbers 8 and 9, "Insurance against Fire and other damage to property";
- f) classes numbers 10, 11, 12 and 13, "Liability Insurance";
- g) classes numbers 14 and 15, "Credit and Suretyship Insurance";
- h) all classes, "All non-life classes".

5. In non-life business, an undertaking obtaining an authorization for a principal risk belonging to one class or a group of classes may insure risks included in another class without any further authorization for them if they:

- a) are connected with the principal risk;
- b) concern the object which is covered against the principal risk;
- c) are covered by the contract insuring the principal risk. The risks included in classes 14, 15 and 17 referred to in paragraph 3 may not be regarded as risks ancillary to other classes; nonetheless, where the conditions laid down in a), b) and c) are fulfilled, the risks included in class 17 may be regarded as ancillary risks of class 18 where the main risk relates solely to the assistance provided for persons who fall into difficulties while travelling, while away from home or while away from their permanent residence or concern disputes arising out of, or in connection with, the use of sea-going vessels.

6. IVASS, by its own regulation<sup>63</sup>, shall adopt the implementing instructions on the classes of risks within each insurance class in compliance with the principle of equivalence of authorization in the EU territory.

## **Chapter II**

### **SUPERVISION OVER INSURANCE AND REINSURANCE BUSINESS**

#### Art. 3 (Purpose of supervision)

1. The main purpose of supervision is ensuring suitable protection of insured persons and other persons entitled to insurance benefits. To this objective IVASS pursues the sound and prudent

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<sup>63</sup> ISVAP Regulation n. 29 of 16 March 2009.

management of insurance and reinsurance undertakings as well as, together with CONSOB (the National Commission for Listed Companies and the Stock Exchange), each one in exercise of its respective competencies, their transparency and fairness to customers. Another purpose of supervision, which is subject to the previous one, is the stability of the system and of financial markets<sup>64</sup>.

Art. 3-bis  
(General principles of supervision)

1. Supervision shall be based on a prospective and risk-based approach; it shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.
2. Supervision of insurance and reinsurance undertakings shall comprise an appropriate combination of off-site activities and on-site inspections.
3. The requirements laid down in this code shall be applied in a manner which is proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking.
4. IVASS, in the performance of its functions, shall take account of the convergence of supervisory instruments and practices of the European Union.
5. For the purposes of para. 4 IVASS shall take part in the activities of EIOPA and comply with its guidelines and recommendations, providing a proper explanation in case of non-compliance<sup>65</sup>.

Art. 4  
(Minister of Economic Development)

1. The Minister of Economic Development shall take the measures envisaged by this code within the sphere of insurance policy lines set by the Government.

Art. 5  
(Supervisory Authority)

1. IVASS shall carry out functions of supervision over the insurance sector by exercising its powers of an enabling, prescriptive, investigative, protective and repressive nature, as set forth in the provisions of this code.

1-bis. In the exercise of its supervisory functions IVASS shall form part of the ESFS and participate in the activities it performs, taking into account the convergence in the supervisory instruments and practices within the EU<sup>66</sup>.

1-ter. Subject to the provisions of article 3 (1) IVASS, in the exercise of its duties, shall consider the potential impact of its decisions on the stability of the financial systems in the European Union, in particular in emergency situations, taking into account the information available at the relevant

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<sup>64</sup> Article replaced by article 1 (2) of legislative decree n. 74 of 12 May 2015. The previous version laid down: “*The purpose of supervision is the sound and prudent management of insurance and reinsurance undertakings and transparency and fairness in the behaviour of undertakings, intermediaries and the other insurance market participants with regard to stability, efficiency, competitiveness and the smooth operation of the insurance system, to the protection of policyholders and of those entitled to insurance benefits as well as to consumer information and protection*”.

<sup>65</sup> Article inserted by article 1 (3) of legislative decree n. 74 of 12 May 2015.

<sup>66</sup> Paragraph added by article 5 (2, a) of legislative decree n. 130 of 30 July 2012.

time, by also using appropriate exchanges of information with EIOPA, the Joint Committee, the ESRB and the supervisory authorities of the other member States. In times of exceptional movements in the financial markets, IVASS shall take into account the potential pro-cyclical effects of its actions<sup>67</sup>.

2. IVASS shall adopt any regulation necessary for the sound and prudent management of undertakings or for the transparency and fairness in the behaviour of supervised entities, and to this end shall disclose all appropriate recommendations or interpretations.

3. IVASS shall perform the activities necessary to promote an appropriate degree of consumer protection and to develop the knowledge of the insurance market, including statistical and economic surveys and the gathering of input for the formulation of insurance policy lines.

4. *(repealed)*<sup>68</sup>

5. IVASS organisation is regulated by law n. 576 of 12 August 1982 and subsequent modifications, and by art.13 of decree-law n. 95 of 6 July 2012, converted, after amendment, by law n.135 of 7 August 2012, in compliance with the principles of organisational, financial and accounting autonomy which are necessary for the impartial exercise of the functions of supervision over the insurance sector<sup>69</sup>.

5-bis. IVASS, within the scope of its autonomy, shall ensure that the principles of reduction in costs referred to in Chapter I Title I of decree-law n. 78 of 31 May 2010 converted, after amendment, by law n. 122 of 30 July 2010<sup>70</sup>, are respected.

#### Art. 6 (Supervised entities)

1. IVASS carries out supervisory functions over:

a) undertakings, however named and established, that exercise on the Italian territory insurance or reinsurance activity in any class and in any form, or capital redemption operations and management of group pension funds that effect payments on death or survival or in the event of discontinuance or curtailment of activity;

b) insurance groups and financial conglomerates, which include insurance and reinsurance undertakings, in compliance with the specific rules applicable to them;

c) subjects, entities and organisations which in any form perform functions partly included in the operational cycle of insurance or reinsurance undertakings, limited to insurance and reinsurance profiles, without prejudice to the powers with regard to insurance and reinsurance undertakings for their outsourced activities<sup>71</sup>;

d) insurance and reinsurance intermediaries and any other insurance market participant<sup>72</sup>.

#### Art. 7

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<sup>67</sup> Paragraph added by article 5 (2, a), legislative decree n. 130 of 30 July 2012, as last amended by article 1 (4, a) of legislative decree n. 74 of 12 May 2015.

<sup>68</sup> Paragraph repealed by article 5 (2, b) of legislative decree n. 130 of 30 July 2012. Paragraph 4 laid down: "*ISVAP shall promote collaboration with the other member States' authorities with a view to making supervision over insurance and reinsurance business complete, effective and homogeneous, in line with the procedures established by Community law*"

<sup>69</sup> Paragraph replaced by article 1 (4, b) of legislative decree n. 74 of 12 May 2015.

<sup>70</sup> Paragraph inserted by article 1 (4, c) of legislative decree n. 74 of 12 May 2015.

<sup>71</sup> Letter amended by article 1 (5, a) of legislative decree n. 74 of 12 May 2015.

<sup>72</sup> Letter amended by article 1 (5, b) of legislative decree n. 74 of 12 May 2015.

(Complaints)<sup>73</sup>

1. Natural and legal persons as well as consumer organisations having a legitimate interest in protecting consumers, may file complaints with IVASS about non-observance of the rules contained in this code by insurance and reinsurance undertakings and intermediaries, in accordance with the procedure envisaged by way of regulation<sup>74</sup>.

Art. 8

(Relations with the European Union law and integration of the ESFS)<sup>75</sup>

1. The Ministry of Economic Development and IVASS shall exercise their powers in line with the provisions of the European Union, comply with the regulations and decisions of the European Union and ensure that the recommendations regarding the subject-matters regulated by this code are implemented.<sup>76</sup>

Art. 9

(Regulations and other measures)

1. Ministerial regulations shall be adopted in accordance with article 17 (3) of law n. 400 of 23 August 1988.

2. The regulations adopted by IVASS pursuant to this code shall be issued in compliance with the procedure envisaged by article 191 (4 and 5)<sup>77</sup>.

3. IVASS shall establish by way of regulation<sup>78</sup>, the terms and procedures for the adoption of the deeds and measures falling within its province. In particular, IVASS shall regulate the procedures pertaining to the detection of infringements and the application of sanctions, in compliance with the principles of possibility to issue a denunciation, of full knowledge of the acts of investigation, of cross-examination, of recording as well as of distinction between investigation and decision-making functions<sup>79</sup>. The principles regarding identification and functions of the person responsible for the procedure, participation in the procedure and access to the administrative documents envisaged by law n. 241 of 7 August 1990 shall apply as far as they are compatible. The cases of need and emergency or the reasons of confidentiality for which the principles laid down in this paragraph shall be laid down by IVASS.

4. IVASS may apply the provisions of this code about its granting of authorisation by also granting authorisations pertaining to certain categories of deeds or subjects. The authorisations generally issued by IVASS shall be made public in accordance with the arrangements envisaged for regulations.

5. Ministerial regulations, regulations and general recommendations adopted by IVASS shall be published in the Gazzetta Ufficiale (the Italian Official Journal). These deeds and any other relevant measure pertaining to supervised entities shall be published by IVASS in its Bulletin within one month of their adoption and shall also be made immediately available on its website.

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<sup>73</sup> Article replaced by article 1 (6) of legislative decree n. 74 of 12 May 2015. The previous version laid down: “*Natural and legal persons as well as consumer organisations having a legitimate interest in protecting consumers, may file complaints with ISVAP about non-observance of the rules contained in this code by insurance and reinsurance undertakings and insurance intermediaries and loss-adjusters, in accordance with the procedure envisaged by way of regulation adopted by ISVAP in compliance with the principles of fair proceedings*”.

<sup>74</sup> ISVAP Regulation n. 24 of 19 May 2008.

<sup>75</sup> Heading replaced by article 5 (3, a) of legislative Decree n. 130 of 30 July 2012.

<sup>76</sup> Paragraph amended by article 5 (3, b) of legislative decree n. 130 of 30 July 2012.

<sup>77</sup> Paragraph amended by article 1 (7) of legislative decree n. 74 of 12 May 2015.

<sup>78</sup> ISVAP Regulation n. 2 of 9 May 2006 and ISVAP Regulation n. 19 of 15 March 2016.

<sup>79</sup> ISVAP Regulation n. 1 of 15 March 2006.

6. By 31 January each year all regulations and general measures issued in accordance with this code shall be published by the Ministry of Economic Development in one single – also electronic – collection in case during the previous year new regulations and general measures have been issued or the existing ones have been amended.

**Art. 9-bis**  
(Transparency and accountability in the supervisory activity)<sup>80</sup>

1. IVASS shall conduct its tasks in a transparent and accountable manner. In pursuing such principles and with respect for the protection of confidential information it shall publish on the web site and periodically update the following information:

- a) the text of the laws, regulations and administrative provisions, of the recommendations and general guidelines in the field of insurance and reinsurance, and any other relevant general measure pertaining to supervised entities;
- b) the general criteria and methods of supervision, including the tools in the prudential control process as set out in art. 47-quinquies;
- c) aggregate statistical data on key aspects regarding the application of prudential regulations;
- d) the arrangements for the exercise of the options envisaged by directive 2009/138/EC;
- e) the objectives of the supervision and the main functions and activities performed by IVASS.

2. The disclosure referred to under paragraph 1 shall be made so as to allow for comparison between the supervisory methods adopted by the supervisory authorities of the Member States, also in a common format defined at Community level.

**Chapter III**

**PROFESSIONAL SECRECY AND COLLABORATION WITH OTHER AUTHORITIES AND OTHER ENTITIES<sup>81</sup>**

**Art. 10**  
(Professional secrecy)<sup>82</sup>

1. All news, information and data available to IVASS on account of its supervisory activity shall be strictly confidential, also with respect to the offices of the public administration. This does not prejudice the cases provided for by the law for investigations of criminal offences.

2. In the performance of their supervisory functions IVASS' employees are public officials and shall be required to report all irregularities found, including those considered indictable offences, exclusively to the president of IVASS.

3. IVASS employees, consultants and experts shall be bound by the obligation of professional secrecy, even after the employment relationship or the engagement have ended. All the news, information and data received by such persons whilst performing their duties cannot be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual insurance and reinsurance undertakings cannot be identified<sup>83</sup>.

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<sup>80</sup> Article inserted by article 1 (8) of legislative decree n. 74 of 12 May 2015.

<sup>81</sup> Chapter inserted by article 1 (201) of legislative decree n. 74 of 12 May 2015.

<sup>82</sup> Heading amended by article 1 (9, a) of legislative decree n. 74 of 12 May 2015.

<sup>83</sup> Paragraph replaced by article 1 (9, b) of legislative decree n. 74 of 12 May 2015.



4. The provision under paragraph 3 shall not prevent IVASS from collaborating – also through the exchange of information – with the Bank of Italy, CONSOB, the Antitrust Authority and COVIP (the Supervisory Commission for Pension Funds) and each of said institutions shall collaborate with IVASS in order to facilitate the exercise of their respective functions. They may not refuse a request from each other on the grounds of confidentiality<sup>84</sup>.

5. Nor may ISVAP use the grounds of confidentiality to refuse to provide information to the Minister of Economic Development and to the two branches of Parliament acquiring data, news and information according to the competence and procedures set forth in their respective regulations.

6. The offices of the public administration and the public bodies shall provide data, news and documents and any further collaboration requested by IVASS in compliance with the laws governing their respective organisations.

7. In accordance with the terms and conditions envisaged by the provisions of the European Union IVASS shall collaborate, also by exchanging information, with EIOPA and the other European supervisory authorities, the Joint Committee, the ESRB, the institutions of European Union and the supervisory authorities of the individual Member States, in order to facilitate the exercise of their respective functions. In respect of such entities IVASS shall comply with the reporting obligations established by the provisions of the European Union. The information received by IVASS originating from supervisory Authorities of other EU member States can be forwarded to other Italian authorities and third parties only with the prior consent of the authority which furnished it solely for the purposes for which that authority gave its agreement<sup>85</sup>.

7-bis. In the cases and under the conditions envisaged by the provisions of the European Union IVASS can conclude with EIOPA and the supervisory authorities of the other member States agreements which can provide even for the delegation of tasks; it can also have recourse to EIOPA for the settlement of disputes with the supervisory authorities of the other Member States in cross-border situations<sup>86</sup>.

8. Within the cooperation agreements and subject to reciprocity and equivalent obligation of confidentiality IVASS may exchange information with the competent non-EU authorities.

9. IVASS may exchange information with administrative or judicial authorities or other bodies involved in the winding up or bankruptcy proceedings – in Italy or abroad – of the supervised entities. When dealing with third States' authorities information shall be exchanged as laid down in paragraph 7<sup>87</sup>.

Art. 10-bis  
(Use of confidential information)<sup>88</sup>

1. IVASS may use the information subject to the obligation of professional secrecy as per article 10 only in the course of their supervisory duties and for the following purposes:

a) verification that the conditions for access to and carrying on the insurance and reinsurance activity are met, with special regard to compliance with the rules relating to technical provisions, the Solvency Capital Requirement, the Minimum Capital Requirement and the system of corporate governance;

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<sup>84</sup> Paragraph replaced by article 1 (9, c) of legislative decree n. 74 of 12 May 2015.

<sup>85</sup> Paragraph amended by article 5 (4, a) of legislative Decree n. 130 of 30 July 2012 and subsequently amended by article 1 (9, a) of legislative Decree n. 74 of 12 May 2015.

<sup>86</sup> Paragraph added by article 5 (4, b) of legislative decree n. 130 of 30 July 2012.

<sup>87</sup> Paragraph amended by article 1 (9, e) of legislative decree n. 74 of 12 May 2015.

<sup>88</sup> Article inserted by article 1 (10) of legislative decree n. 74 of 12 May 2015.

b) application of sanctions;

c) defence in courts proceedings and in administrative appeals against decisions of IVASS measures

#### Article 10-ter

(Exchange of information with other Authorities of the European Union)<sup>89</sup>

1. In accordance with the terms and conditions envisaged by the provisions of the European Union IVASS shall collaborate, also by exchanging information, with:

a) the central banks of the European System of Central Banks (ESCB), including the European Central Bank (ECB) and other bodies with a similar function in their capacity as monetary authorities, when this information is relevant to the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;

b) where appropriate, other national public authorities responsible for overseeing payment systems.

2. In an emergency situation, including an emergency situation as referred to in article 18 of Regulation (EU) n. 1094/2010, IVASS shall communicate, without delay, information to the central banks of the ESCB, including the ECB, where that information is relevant to their statutory tasks including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and securities settlement systems and safeguarding the stability of the financial system, and to the ESRB, where such information is relevant to its tasks.

3. The information received by IVASS according to paragraphs 1 and 2 shall be subject to the provisions on professional secrecy laid down in this Chapter.

#### Chapter III-bis<sup>90</sup>

##### INTERNAL SYSTEMS FOR THE REPORTING OF BREACHES AND REPORTING PROCEDURE

#### Article 10-quater

(Internal systems for the reporting of breaches)

1. Insurance or reinsurance undertakings and the ultimate parent undertakings referred to under article 210 (2), insurance and reinsurance intermediaries, including ancillary insurance intermediaries, shall adopt specific procedures for the internal reporting, by their own staff, of acts or facts which may represent a breach of the provisions regulating the distribution and insurance activities carried out<sup>91</sup>.

2. The procedures referred to in paragraph 1 shall at least guarantee:

a) the confidentiality of the personal data of both the person who reports the breach and the person who is allegedly responsible for the breach, without prejudice to the provisions regulating investigations or proceedings commenced by administrative bodies or judicial authorities in relation to the reported facts;

b) appropriate protection for the staff<sup>92</sup> of the persons referred to in paragraph 1 and, where possible, for other persons, who report infringements committed within those entities at least against retaliation, discrimination or other types of unfair treatment;

c) a specific independent and autonomous channel for reporting.

<sup>89</sup> Article inserted by article 1 (10) of legislative decree n. 74 of 12 May 2015.

<sup>90</sup> Chapter inserted by article 1 (2) of legislative decree n. 68 of 21 May 2018.

<sup>91</sup> Paragraph amended by article 1 (1, a) of legislative decree n. 187 of 30 December 2020.

<sup>92</sup> Letter amended by article 1 (1, b) of legislative decree n. 187 of 30 December 2020.

3. Except for the cases of responsibility correlated to the hypothesis of libel and slander, or in these cases pursuant to article 2043 of the civil code, the reporting of a breach in the context of the proceedings referred to in paragraph 1 shall not constitute a breach of the obligations under the employment relationship.

4. The provision in article 7 (2), of legislative decree no. 196 of 30 June 2003, shall not apply to the age of the person who reports the breach, which may be disclosed only with his/her consent when such information is essential for the defence of the accused. Insurance and reinsurance undertakings, insurance and reinsurance intermediaries, including ancillary insurance intermediaries, shall comply with the provisions implementing this article issued by IVASS.

Article 10-quinquies  
(Procedure for the reporting of breaches)

1. IVASS shall:

- a) receive reports by the staff<sup>93</sup> of the persons referred to in article *10-quater*, paragraph 1, concerning breaches of the provisions envisaged in this code as well as of directly applicable EU rules;
- b) lay down the conditions, limits and procedures for the receipt of reports;
- c) use the information contained in the reports, where relevant, only in the performance of its supervisory functions.

2. The acts relating to the reports referred to in paragraph 1 shall be excluded from the access envisaged in articles 22 et seq. of law no. 241 of 7 August 1990, and subsequent modifications.

**TITLE II**  
**THE TAKING-UP OF THE BUSINESS OF INSURANCE**

**Chapter I**  
**GENERAL PROVISIONS**

Art. 11  
(Insurance business)

1. The pursuit of life and non-life insurance business as classified under article 2 shall be reserved to insurance undertakings.

2. The insurance undertaking shall limit its objects to the pursuit of the sole life assurance or the sole non-life insurance classes and of the relevant reinsurance.

3. By way of derogation from paragraph 2, the simultaneous pursuit of both life assurance and the sole accident and sickness insurance classes under article 2 (3) shall be allowed. The undertaking shall manage both activities separately, in accordance with the provisions set out by IVASS by way of regulation<sup>94</sup>.

4. The insurance undertaking may also carry out the operations related or instrumental to the pursuit of insurance or reinsurance business. The activities relating to the setting up and management of supplementary private healthcare and pensions shall be also allowed within the limits and subject to the conditions laid down by the law.

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<sup>93</sup> Letter amended by article 1 (2) of legislative decree n. 187 of 30 December 2020.

<sup>94</sup> ISVAP Regulation n. 17 of 11 March 2008.

Art. 12  
(Prohibited operations)

1. Tontines or associations of subscribers set up with a view to jointly capitalising their contributions and subsequently distributing the assets thus accumulated among the survivors or among the beneficiaries of the deceased, insurance having the object of transferring the risk of payment of administrative penalties and those regarding the payment of ransom money in case of kidnapping shall be prohibited. In the event of a breach of that prohibition the contract shall be void and article 167 (2) shall apply.

2. The setting up on the territory of the Italian Republic of companies which have as their exclusive object the pursuit of insurance business abroad shall be prohibited.

**Chapter II**  
**UNDERTAKINGS WITH HEAD OFFICE IN THE TERRITORY OF THE ITALIAN REPUBLIC**

Art. 13  
(Authorisation)

1. Under the conditions envisaged in article 14 IVASS shall authorize, by order to be published in its bulletin, the undertaking proposing to pursue life assurance business or non-life insurance business or pursue simultaneously both life assurance and accident and sickness insurance in accordance with article 2 (3).

2. Authorization shall be granted for one or more life or non-life classes. It shall cover all the activities falling within those classes, unless the undertaking requests that it be limited only to some of these activities.

3. Authorization shall be valid within the territory of the Italian Republic, of the other member States - in compliance with the provisions relating to the conditions for the taking up of insurance business under the right of establishment or the freedom to provide services - as well as of the third States, in compliance with the legislation of these States.

Art. 14  
(Requirements and procedure)

1. IVASS shall grant authorization as per article 13 when the following conditions are met:

a) the undertaking has adopted the form of: società per azioni (company limited by shares), società cooperativa (cooperative company) or società di mutua assicurazione (mutual undertaking) whose units are represented by shares, set up respectively in accordance with articles 2325, 2511 and 2546 of the civil code, or the form of European company according to Regulation (EC) n. 2157/2001 on the statute for a European company and the form of a European Cooperative Society (ECS) in accordance with regulation (EC) n. 1435/2003<sup>95</sup>;

b) the applicant undertaking has its general direction and administrative offices in the territory of the Italian Republic;

c) the undertaking holds the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement provided for in article 47(1)(d), equal to no less than:

1) EUR 2,500,000 for non-life insurance undertakings, including captive insurance undertakings, save in the case where all or some of the risks included in one of the

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<sup>95</sup> Paragraph amended by article 1 (11, a) of legislative decree n. 74 of 12 May 2015.

classes 10 to 15 listed in article 2 (3) are covered, in which case it shall be raised to EUR 3,700,000;

2) EUR 3,700,000 for life insurance undertakings, including captive insurance undertakings;

3) EUR 6,200,000, i.e. the sum of the amounts set out in points 1) and 2) for the undertakings carrying on life assurance and non-life insurance simultaneously referred to under art. 13 (1)<sup>96</sup>;

c-bis) the undertaking shows evidence that it will be in a position to hold eligible own funds to cover the Solvency Capital Requirement, as provided for in article 45-bis, going forward<sup>97</sup>;

c-ter) the undertaking shows evidence that it will be in a position to hold eligible own funds to cover the Minimum Capital Requirement, as provided for in article 47-bis, going forward<sup>98</sup>;

d) a scheme of operations in compliance with the indications given under article 14-bis (1 and 2) is submitted together with the memorandum and articles of association<sup>99</sup>;

the holders of qualifying holdings meet the good repute requirements established in article 77 and there are sufficient grounds for granting the authorization envisaged in article 68<sup>100</sup>;

e-bis) the undertaking shows evidence that it will be in a position to comply with the system of governance laid down in Title III, Chapter I<sup>101</sup>;

f) the persons charged with the administration, management and control functions and those who perform the basic functions within the undertaking meet the professional, good repute and independence requirements indicated in article 76;

g) there are no close links between the undertaking or other group entities and other natural or legal persons, which may prevent the effective exercise of supervisory functions;

h) the undertaking communicates the name and address of the claims representative appointed in each of the other member States, if the risks to be covered fall within classes 10 and 12 of article 2 (3), other than carrier's liability.

1-bis. An insurance undertaking proposing to obtain authorisation to the simultaneous pursuit of life assurance and accident and sickness insurance referred to under article 2 (3) shall also demonstrate that:

a) possesses the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement for life insurance undertakings and the absolute floor of the Minimum Capital Requirement for non-life insurance undertakings, as referred to in article 1(c) of this article;

b) undertakes to cover the Notional Minimum Capital Requirements referred to in article 348 (2-ter), going forward<sup>102</sup>.

2. IVASS shall deny authorization when from a check of the conditions indicated in paragraph 1 the sound and prudent management does not seem guaranteed, and no account may be taken of the structure and trend of the markets concerned. Any decision to refuse the authorization shall be accompanied by precise and adequate grounds for doing so and notified to the undertaking in question within ninety days of submission of the application for authorisation along with the documents required.

3. The procedure for entering the undertaking in the registrar of companies cannot be started in the absence of the authorization envisaged in article 13.

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<sup>96</sup> Letter replaced by article 1 (11, b) of legislative decree n. 74 of 12 May 2015.

<sup>97</sup> Letter inserted by article 1 (11, c) of legislative decree n. 74 of 12 May 2015.

<sup>98</sup> Letter inserted by article 1 (11, c) of legislative decree n. 74 of 12 May 2015.

<sup>99</sup> Letter replaced by article 1 (11, d) of legislative decree n. 74 of 12 May 2015.

<sup>100</sup> Letter amended by article 4 (1, b) of legislative Decree n. 21 of 27 January 2010 and subsequently amended by article 1 (11, e) of legislative Decree n. 74 of 12 May 2015.

<sup>101</sup> Letter inserted by article 1 (1, f), legislative decree n. 74 of 12 May 2015.

<sup>102</sup> Paragraph inserted by article 1 (11, g) of legislative decree n. 74 of 12 May 2015.

4. IVASS, after ascertaining the registration in the registrar of companies, shall enter the insurance undertakings authorized in Italy in a special section of the registrar and promptly inform the undertaking concerned. Undertakings shall indicate their registration in the registrar in their acts and correspondence.

5. IVASS shall establish, by regulation<sup>103</sup>, the procedure for authorization, including the update of the amounts envisaged for granting the authorisation, and the forms of publicity of the registrar<sup>104</sup>.

5-bis. IVASS shall communicate to EIOPA any authorisation granted for the publication in the list kept by it, with the following details:

- a) the insurance classes and risks for which the undertaking is authorised;
- b) the license - if any - to pursue insurance business in the other member States under the right of establishment or the freedom to provide services<sup>105</sup>.

Art. 14-bis  
(Scheme of operations)<sup>106</sup>

1. The scheme of operations referred to in Article 14 (1, d) shall include information supported by adequate evidence of the following:

- a) the nature of the risks and commitments which the undertaking proposes to cover;
- b) if the undertaking proposes to take up reinsurance risks, the kind of reinsurance arrangements it proposes to make with ceding undertakings;
- c) the guiding principles as to reinsurance and to retrocession;
- d) the basic own-fund items constituting the absolute floor of the Minimum Capital Requirement;
- e) estimates of the costs of setting up the administrative services and the organisation for securing business; the financial resources intended to meet those costs and, if the risks to be covered are classified in class 18 of article 2 (3), the resources at the disposal of the insurance undertaking for the provision of the assistance promised.

2. The scheme of operations shall contain, apart from the provisions of paragraph 1, for the first three financial years:

- a) the budget forecasts;
- b) estimates of the future Solvency Capital Requirement, as provided for in Title III Chapter IV-bis, Section I, on the basis of the budget forecasts referred to in point (a), as well as the calculation method used to derive those estimates;
- c) estimates of the future Minimum Capital Requirement, as provided for in Title III Chapter IV-bis, Section IV, on the basis of the budget forecasts referred to in point (a), as well as the calculation method used to derive those estimates;
- d) estimates of the financial resources intended to cover technical provisions, the Minimum Capital Requirement provided for in Title III, Chapter III and Chapter IV-bis, Section IV, and the Solvency Capital Requirement provided for in Title III, Chapter IV-bis, Section I;
- e) in addition to this, as to non-life insurance:
  - 1) estimates of management expenses other than installation costs, in particular current general expenses and commissions;
  - 2) estimates of premiums or contributions and claims;
- f) in regard to life insurance, also a plan setting out detailed estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessations.

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<sup>103</sup> ISVAP regulation n. 10 of 2 January 2008, in particular Title II, Chapter I.

<sup>104</sup> Paragraph amended by article 1 (11, i) of legislative decree n. 74 of 12 May 2015.

<sup>105</sup> Paragraph inserted by article 1 (11, l) of legislative decree n. 74 of 12 May 2015.

<sup>106</sup> Article inserted by article 1 (12) of legislative decree n. 74 of 12 May 2015.

2-bis. Where the scheme of operations indicates that a relevant part of the undertaking's activities will be based on the freedom of establishment or the freedom to provide services in another Member State, and that those activities are likely to be of relevance with respect to the host Member State's market, IVASS shall notify EIOPA and the supervisory authority of the relevant host Member State thereof, with an adequate level of detail.<sup>107</sup>

Art. 15

(Extension of activity to other classes)<sup>108</sup>

1. The undertaking already authorised to pursue one or more life or non-life insurance classes and wishing to extend the activity to other classes referred to in article 2 (1 or 3), must first be authorised by IVASS. Article 14 (2) shall apply.

2. To obtain extension of authorisation, the undertaking shall show proof that it possesses the eligible basic own funds for a minimum amount equal to at least that envisaged by article 14 (1, c), for the pursuit of the new classes, that it possesses assets representing technical provisions and that it complies with the provisions on the Solvency Capital Requirement provided for in article 45-bis and the Minimum Capital Requirement provided for in article 47-bis. Should the exercise of the new classes require a higher absolute floor of the Minimum Capital Requirement provided for in article 47-ter than the existing one the undertaking shall also be required to show proof that it possesses that absolute floor.

2-bis. To be granted an extension of authorization the undertaking shall also submit a new scheme of operations in compliance with article 14-bis.

2-ter. Without prejudice to paragraph 2, an undertaking pursuing life business, and seeking authorisation to extend its business to classes 1 or 2, or an undertaking which pursues classes 1 and 2 as referred to in article 2 (1 or 3) and seeking authorisation to extend its business to life risks, to obtain extension of authorisation the undertaking shall show proof that it possesses the necessary technical provisions and eligible own funds to cover the cumulative absolute floor of the Minimum Capital Requirement provided for in article 47-ter (1, d, 3) and shall undertake to cover the Notional Minimum Capital Requirements referred to in article 348 (2-ter), going forward.

3. The provisions of this article shall apply also when the undertaking, after obtaining a limited authorization pursuant to article 13 (2), wishes to extend its business to other activities or risks pertaining to the classes for which it has a limited authorization.

4. IVASS shall, by its own regulation, set out the procedure for the extension of authorization to other classes.

5. The undertaking may not extend its business before the order updating the register is adopted. The undertaking shall be immediately informed of that order.

6. The extension order shall be communicated to EIOPA in accordance with article 14 (5-bis).

Art. 16

(Business pursued by way of establishment in another member State)

1. The undertaking that proposes to establish a branch in another member State shall first notify IVASS.

2. When effecting the notification, the undertaking shall provide a scheme of operations setting out, inter alia, the risks and commitments which it is proposing to cover and the structural organisation of the branch.

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<sup>107</sup> Paragraph inserted by article 28 (1, a) of Law n. 238 of 23 December 2021.

<sup>108</sup> Article replaced by article 1 (13) of legislative decree n. 74 of 12 May 2015.

3. The undertaking shall also provide the documents attesting the appointment of an authorised agent, who must possess a brief expressly including also the powers to represent the undertaking in relations with all the authorities and courts of the member State of establishment, as well as to conclude and underwrite the contracts and the other documents relating to the business pursued in the territory of that State. The authorised agent must be resident at the address of the branch. If the brief is given to a legal person this must appoint in turn a natural person having a brief including the above powers.

4. The authorised agent or the person actually running the branch (if other than the authorised agent) must meet the good repute and professional qualifications requirements during all the duration of his/her appointment, according to the provisions of article 76. The loss of the above requirements shall entail disqualification pursuant to article 76 (2), and the obligation for the undertaking to replace the authorised agent or the person actually running the branch (if other than the authorised agent).

#### Art. 17

##### (Conditions for the taking up of business by way of establishment)

1. Within sixty days of receiving the application pursuant to article 16 and unless it identifies the impediments envisaged in paragraph 2, IVASS shall send the notification to the supervisory authority of the member State where the undertaking intends to open a branch, together with a certificate attesting that the undertaking covers the Solvency Capital Requirement and the Minimum Capital Requirement, calculated as per article 45-bis and 47-ter<sup>109</sup>, for its entire business.

2. IVASS shall reject the application if it has reason to doubt the adequacy of the system of corporate governance or the soundness of the undertaking's financial position, taking into account the business plan, or when the authorised agent does not meet the requirements of good repute and professional qualifications or experience referred to under article 76<sup>110</sup>.

3. IVASS shall immediately inform the undertaking of the notification sent pursuant to paragraph 1 or of the reasons of its refusal pursuant to paragraph 2.

4. The undertaking may not set up its branch and start business before it receives the communication from the supervisory authority of the member State where it intends to open the branch or, if no communication is received, within sixty days from the time when such authority received from IVASS the notification under article 16. IVASS shall immediately send the undertaking any other communication received from the supervisory authorities of the host member State and arrived within the same period, concerning the provisions protecting the general good which the branch must observe<sup>111</sup>.

5. If the undertaking intends to change any of the particulars of the communication made as per article 16, it must inform IVASS and the supervisory authority of the host member State at least thirty days before putting the contents of the communication into practice. IVASS, within sixty days of receiving the information, shall assess its impact on the maintenance of the conditions justifying the sending of the notification under paragraph 3 and, where necessary, shall inform the competent authority of the member State concerned. IVASS shall immediately send the undertaking any communication received from the supervisory authority of the host member State within the same period<sup>112</sup>.

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<sup>109</sup> Paragraph amended by article 1 (14, a) of legislative decree n. 74 of 12 May 2015.

<sup>110</sup> Paragraph amended by article 1 (14, b) of legislative decree n. 74 of 12 May 2015.

<sup>111</sup> Paragraph amended by article 1 (14, c) of legislative decree n. 74 of 12 May 2015.

<sup>112</sup> Paragraph amended by article 1 (14, d) of legislative decree n. 74 of 12 May 2015.



Art. 18

(Business pursued by way of freedom of services in another member State)

1. The undertaking that intends to carry on business for the first time in another member State under the freedom to provide services shall first inform IVASS.
2. When effecting the notification, the undertaking shall provide a scheme of operations setting out the establishments from which it proposes to provide services, the member States in which it proposes to pursue business, the nature of the risks and commitments which it proposes to cover and the other information indicated by IVASS.

Art. 19

(Procedure for the taking up of business by way of freedom of services)

1. IVASS, within thirty days of receiving the notification pursuant to article 18, shall send the necessary information established by IVASS regulation to the supervisory authority of the member State where the undertaking intends to pursue business by way of free provision of services, and at the same time shall advise the undertaking concerned that the file has been sent<sup>113</sup>.
2. IVASS shall reject the application if it has reason to doubt the adequacy of the system of corporate governance or the soundness of the undertaking's financial position, also taking into account the business plan. In that case IVASS shall adopt an order specifying the reasons for doing so, which will be sent to the undertaking concerned within the deadline set in paragraph 1<sup>114</sup>.
3. The undertaking may begin its activity as soon as it has been notified by IVASS that the information under paragraph 1 has been sent.
4. If the undertaking intends to change any of the particulars in the notification made, it must follow the procedure specified in article 17 (5).

Art. 20

(Health insurance as an alternative to social security)

1. If the undertaking intends to accept health insurance risks situated in other member States, where contracts covering these risks serve as a partial or complete alternative to health cover provided by the statutory social security system and must be operated on a technical basis similar to that of life insurance according to the provisions of Community law, it shall ask IVASS the sickness tables and the other relevant statistical data published and transmitted by the supervisory authorities of the States concerned. IVASS shall immediately transmit this information to the applicant undertaking.

Art. 21

(Business pursued from branches situated in other member States)

1. The undertaking that intends to carry on business under the freedom to provide services in the territory of the Italian Republic from a branch situated in another member State shall first inform IVASS.

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<sup>113</sup> Paragraph amended by article 1 (15, a) of legislative decree n. 74 of 12 May 2015.

<sup>114</sup> Paragraph amended by article 1 (15, b) of legislative decree n. 74 of 12 May 2015.

2. The undertaking may begin its activity as soon as it has been notified by IVASS that the notification under paragraph 1 has been received. The undertaking shall first inform IVASS of any change to the particulars in the notification made.

3. The pursuit of business as per paragraph 1 shall be subject to the provisions applicable to undertakings with head office in Italy, as well as to articles 23 (1-bis) and 26<sup>115</sup>.

Art. 22  
(Business pursued in a third State)

1. The undertaking that proposes to establish a branch in a third State shall first notify IVASS.

2. IVASS shall prevent the undertaking from establishing a branch if it has reason to believe that the undertaking's financial position is not sufficiently sound or that the branch's administrative structure is inadequate, taking into account the scheme of operations.

3. The provisions under paragraphs 1 and 2 apply also to undertakings proposing to pursue business under the freedom to provide services in a third State.

**CHAPTER III**  
**UNDERTAKINGS WITH HEAD OFFICE IN ANOTHER MEMBER STATE**

Art. 23  
(Business under the right of establishment)

1. The taking up of life or non-life business under the right of establishment in the territory of the Italian Republic, by an undertaking with head office in another member State, is subject to the notification to IVASS, by the supervisory authority of that State, of the information and conditions required under Community provisions. If the undertaking intends to cover risks relating to compulsory insurance against civil liability in respect of the use of motor vehicles and ships, the notification shall include a declaration that it has become a member of the Italian national bureau (Ufficio centrale italiano) and of the national guarantee fund (Fondo di garanzia per le vittime della strada).

1-bis. Any permanent presence on the Italian territory, including the organisation of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking, shall be considered as pursuit of insurance business by way of establishment as per paragraph 1, even in the absence of branches or agencies<sup>116</sup>.

2. The authorised agent of the branch must possess a brief expressly including also the powers to represent the undertaking in relations with all the authorities and courts of the Italian Republic, as well as to conclude and underwrite the contracts and the other documents relating to the business pursued in the Italian territory. The authorised agent must be resident at the address of the branch. If the brief is given to a legal person this must have its head office in the territory of the Italian Republic and appoint in turn a natural person resident in Italy and having a brief which includes the above powers.

3. IVASS, within thirty days of receiving the notification, shall inform the supervisory authority of the home member State of the general good provisions which the undertaking must observe when pursuing business.

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<sup>115</sup> Paragraph amended by article 1 (16) of legislative decree n. 74 of 12 May 2015.

<sup>116</sup> Paragraph inserted by article 1 (17, a) of legislative decree n. 74 of 12 May 2015.

4. The undertaking referred to under paragraph 1 may set up its branch and start business in the territory of the Italian Republic as soon as it receives the notification by IVASS from the home supervisory authority or, if no notification is received, upon expiry of the deadline set under paragraph 3<sup>117</sup>.

5. If the undertaking referred to under paragraph 1 intends to change any of the particulars communicated, it shall inform IVASS at least thirty days before making the change. IVASS shall assess the impact of the information received on the maintenance of the conditions justifying the sending of the notification under paragraph 4 and, where necessary, shall inform the competent authority of the member State concerned<sup>118</sup>.

#### Art. 24

##### (Business under the freedom of services)

1. The taking up of life or non-life business under the freedom to provide services in the territory of the Italian Republic, by an undertaking with head office in another member State, is subject to the notification to IVASS, by the supervisory authority of that State, of the information and conditions required under Community provisions. If the undertaking intends to cover risks relating to compulsory insurance against civil liability in respect of the use of motor vehicles and ships, the notification shall include the indication of the name and address of the claims representative and a declaration that it has become a member of the Italian national bureau (Ufficio centrale italiano) and of the national guarantee fund (Fondo di garanzia per le vittime della strada).

2. The undertaking referred to under paragraph 1 may begin its activity as soon as IVASS acknowledges receipt of the notification by the home supervisory authority pursuant to paragraph 1<sup>119</sup>.

3. The undertaking referred to under paragraph 1 shall inform IVASS, through the supervisory authority of the home member State, of any change it intends to make to the notification for the taking up of business under the freedom of services in the territory of the Italian Republic<sup>120</sup>.

4. *(repealed)*<sup>121</sup>

#### Art. 25

##### (Claims representative)

1. If the Community insurance undertaking intends to pursue compulsory insurance against civil liability in respect of the use of motor vehicles and ships under the freedom of services in the territory of the Italian Republic, it shall appoint a representative responsible for handling and settling claims. Injured parties entitled to compensation may address their claims to that representative<sup>122</sup>.

2. The claims representative shall be resident in the territory of the Italian Republic<sup>123</sup>.

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<sup>117</sup> Paragraph amended by article 1 (17, b) of legislative decree n. 74 of 12 May 2015.

<sup>118</sup> Paragraph amended by article 1 (17, c) of legislative decree n. 74 of 12 May 2015.

<sup>119</sup> Paragraph amended by article 1 (18, a) of legislative decree n. 74 of 12 May 2015.

<sup>120</sup> Paragraph amended by article 1 (18, b) of legislative decree n. 74 of 12 May 2015.

<sup>121</sup> Paragraph deleted by article 1 (18, c) of legislative decree n. 74 of 12 May 2015. Paragraph 4 laid down: *“As regards the pursuit of business under the freedom to provide services in the territory of the Italian Republic, the undertaking may not use branches, agencies or any other permanent presence on the Italian territory, even if that presence consists merely of an office managed by the undertaking’s own staff or by a person who is independent but has permanent authority to act for the undertaking”.*

<sup>122</sup> Paragraph amended by article 1 (19) of legislative decree n. 74 of 12 May 2015.

<sup>123</sup> Paragraph amended by article 1 (2) of legislative decree n. 198 of 06 November 2007.

3. The representative must possess a brief expressly including the powers to represent the undertaking in relations with the courts and all the authorities competent for claims for damages, and to certify the existence and validity of the contracts concluded by the undertaking on a free provision of services basis.

4. The tasks of the claims representative may also be performed by the fiscal representative.

5. The name and address of such representative shall be shown in the insurance contract, sticker and certificate.

#### Art. 26

(List of EU undertakings operating in Italy)

1. IVASS shall publish, in the appendix to the register of Community insurance undertakings, the list of undertakings licensed to pursue life and non-life insurance in the territory of the Italian Republic by way of establishment or of free provision of services<sup>124</sup>.

#### Art. 27

(Compliance with general good provisions)

1. The Community insurance undertaking may not conclude contracts, nor use forms of advertising that are in conflict with the national rules on the general good, including the rules adopted for the protection of policyholders and those entitled to insurance benefits<sup>125</sup>.

### Chapter IV

#### UNDERTAKINGS WITH HEAD OFFICE IN A THIRD STATE

#### Art. 28

(Business under the right of establishment)

1. If an insurance undertaking from a third State intends to pursue life and non-life insurance in the territory of the Italian Republic, it shall first be authorised by IVASS order to be published in the Bulletin<sup>126</sup>.

2. Authorization shall be valid only within the national territory, without prejudice to the provisions on the conditions for the taking up of business abroad under the freedom of services.

3. If an undertaking carries on simultaneously life and non-life insurance in the home State, it may be authorised to pursue solely life classes or non-life classes, unless it seeks authorization for life assurance and accident and sickness insurance.

4. The undertaking under paragraph 1 must set up a branch – within the territory of the Italian Republic – and appoint an authorised agent resident in Italy and possessing the powers envisaged in article 23 (2), as well as the power to effect the transactions necessary to lodge and bind the security provided for in paragraph 5. If the agent is a legal person, the provision in article 23 (2), last sentence, shall apply. The authorised agent or the person actually running the branch (if other than the authorised agent) must meet the good repute and professional qualifications

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<sup>124</sup> Paragraph amended by article 1 (20) of legislative decree n. 74 of 12 May 2015.

<sup>125</sup> Paragraph amended by article 1 (21) of legislative decree n. 74 of 12 May 2015.

<sup>126</sup> Paragraph amended by article 1 (22, a) of legislative decree n. 74 of 12 May 2015.

requirements during all the duration of his/her appointment, according to the provisions of article 76.

5. IVASS shall, by its own regulation<sup>127</sup>, establish the other conditions required for issuing the initial authorization, including the duty to submit a scheme of operations, and to show proof that the undertaking possesses in the territory of the Italian Republic investments of an amount equal to at least one-half of the amounts referred to under article 14 (1, c), and that it has deposited an amount in cash or bonds equal to at least one-fourth of said minimum amount as security with Cassa depositi e prestiti or the Bank of Italy. Article 14 (2, 3 and 4) shall apply<sup>128</sup>.

6. The regulation envisaged in paragraph 5 shall also lay down the procedures and conditions for the extension of business to other classes, the simultaneous pursuit of life assurance and accident and sickness insurance and of refusal of authorisation. Article 15 shall apply<sup>129</sup>.

7. Authorization may not be granted when the home State does not respect the principle of equality of treatment or of reciprocity vis-à-vis undertakings with head office in the territory of the Italian Republic which have set up or propose to set up a branch in that State.

#### Art. 29

(Prohibition to carry on business under the freedom of services)

1. Undertakings from a third State may not, in the territory of the Italian Republic, carry on life or non-life business under the freedom of services<sup>130</sup>.

2. Paragraph 1 shall apply also to branches situated in third States and depending on undertakings whose head office is in another member State.

3. It is prohibited for subjects having their domicile or, if legal persons, their head office in the territory of the Italian Republic, to conclude contracts with undertakings pursuing business in violation of the provisions under paragraphs 1 and 2. Any form of mediation aimed to the conclusion of these contracts is also prohibited.

4. In the event of a breach of that prohibition the contract shall be void and article 167 (2) shall apply.

### **TITLE III PURSUIT OF INSURANCE BUSINESS**

#### **Chapter I GENERAL PROVISIONS**

#### **Section I RESPONSIBILITY OF THE BOARD OF DIRECTORS<sup>131</sup>**

#### Art. 29-bis

(Responsibility of the board of directors)<sup>132</sup>

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<sup>127</sup> ISVAP Regulation n. 10 of 02 January 2008, in particular Title III.

<sup>128</sup> Paragraph amended by article 1 (22, b) of legislative decree n. 74 of 12 May 2015.

<sup>129</sup> Paragraph amended by article 1 (22, c) of legislative decree n. 74 of 12 May 2015.

<sup>130</sup> Paragraph amended by article 1 (23) of legislative decree n. 74 of 12 May 2015.

<sup>131</sup> Section inserted by article 1 (24) of legislative decree n. 74 of 12 May 2015.

<sup>132</sup> Article inserted by article 1 (24) of legislative decree n. 74 of 12 May 2015.

1. The board of directors shall have the ultimate responsibility over compliance with laws, regulations and European rules which are directly applicable.

## **Section II** **CORPORATE GOVERNANCE SYSTEM<sup>133</sup>**

### Art. 30 (Undertaking's corporate governance system)<sup>134</sup>

1. Undertakings shall have in place an effective system of corporate governance, including remuneration and incentive systems<sup>135</sup>, which provides for sound and prudent management of the business. The system of governance shall be proportionate to the nature, scale and complexity of the business of the undertaking.

2. The system of governance<sup>136</sup> referred to in paragraph 1 shall include at least:

- a) an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities of the functions and bodies of the undertaking;
- b) an effective system for ensuring the transmission of information;
- c) compliance with the requirements envisaged under article 76 by those who are charged with administration, management and control functions and by those who carry out key functions;
- d) adequate mechanisms to ensure compliance with the provisions of this Chapter;
- e) the setting up of the internal audit function, compliance function, risk management function and actuarial function. These are key functions and consequently are considered to be important and critical functions.

3. The system of governance shall be subject to a periodic internal audit at least every year.

4. Undertakings shall take reasonable steps to ensure continuity and regularity in the activities performed, including the development of contingency plans. To that end, the undertaking shall employ appropriate and proportionate systems, resources and internal procedures.

5. Undertakings shall adopt written policies at least as regards the risk management system, the internal control system, the internal audit and, where relevant, outsourcing, as well as a policy ensuring the ongoing appropriateness of any information disclosed to the supervisor in compliance with article 47-quater and of the information contained in the solvency and financial condition report referred to in articles 47-septies, 47-octies and 47-novies and shall ensure that they are implemented.

6. The policies referred to under paragraph 5 shall obtain the prior approval of the board of directors. The board of directors shall review the policies at least once a year on the occasion of

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<sup>133</sup> Section inserted by article 1 (202) of legislative decree n. 74 of 12 May 2015.

<sup>134</sup> Article replaced by article 1 (25) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "Art. 30 (The undertaking's organisational requirements)

*1. The insurance undertaking authorised to pursue life insurance or non-life insurance business shall carry on business by means of an appropriate administrative and accounting organisation and an adequate internal control system.*

*2. The internal control system shall provide for adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all necessary measures are taken to ensure that the systems implemented are consistent, so that risks can be measured and monitored.*

*3. The undertaking carrying on assistance insurance shall meet the requirements of professional qualification of staff and the technical specifications of the equipment established by ISVAP's regulation.*

<sup>135</sup> Paragraph amended by article 6 (1) of legislative decree n. 49 of 10 May 2019.

<sup>136</sup> IVASS Regulation n. 38 of 03 July 2018.

the revision under paragraph 3 and, at any rate, shall make the necessary adjustments in case of significant changes in the system of governance.

7. IVASS shall, by way of regulation<sup>137</sup>, lay down more detailed provisions on the system of governance referred to under this Section.

Art. 30-bis  
(Risk-management system)<sup>138</sup>

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

2. That risk-management system shall be effective and well integrated into the organisational structure and in the decision-making processes of the undertaking, with proper consideration of the role of the persons charged with administration, management and control functions or other key functions within the undertaking.

3. The risk-management system shall cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in article 45-ter (5) as well as the risks which are not or not fully included in this calculation. For the purposes specified in paragraph 1, the system shall cover at least the following areas:

- a) underwriting and reserving;
- b) asset-liability management;
- c) investment, in particular derivative financial instruments and similar commitments;
- d) liquidity and concentration risk management;
- e) operational risk management;
- f) reinsurance and other risk-mitigation techniques.

4. The written policy on the risk-management system referred to in article 30 (5) shall comprise the policies relating to points (a) to (f) of paragraph 3.

5. Undertakings applying the matching adjustment referred to in article 36-quinquies or the volatility adjustment referred to in article 36-septies, shall set up a liquidity plan projecting the incoming and outgoing cash flows in relation to the assets and liabilities subject to those adjustments.

6. As regards asset-liability management, undertakings shall regularly assess:

a) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the extrapolation of the relevant risk-free interest rate term structure referred to in article 36-quater;

b) where the matching adjustment referred to in article 36-quinquies is applied:

1) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the matching adjustment, including the calculation of the fundamental spread referred to in article 36-sexies (1)(b), and the possible effect of a forced sale of assets on their eligible own funds;

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<sup>137</sup> IVASS Regulation n. 32 of 9 November 2016, IVASS Regulation n. 34 of 7 February 2017 and Regulation n. 38 of 3 July 2018.

<sup>138</sup> Article inserted by article 1 (26) of legislative decree n. 74 of 12 May 2015.

- 2) the sensitivity of their technical provisions and eligible own funds to changes in the composition of the assigned portfolio of assets;
- 3) the impact of a reduction of the matching adjustment to zero;

b) where the volatility adjustment referred to in article 36-septies is applied:

- 1) the sensitivity of their technical provisions and eligible own funds to the assumptions underlying the calculation of the volatility adjustment and the possible effect of a forced sale of assets on their eligible own funds;
- 2) the impact of a reduction of the volatility adjustment to zero;

7. Undertakings shall submit the assessments referred to in points (a), (b) and (c) of paragraph 6, annually to IVASS as part of the information reported under article 47-quater. Where the reduction of the matching adjustment or the volatility adjustment to zero would result in non-compliance with the Solvency Capital Requirement, the undertaking shall also submit an analysis of the measures to be applied in such a situation to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to restore compliance with the Solvency Capital Requirement.

8. Where the volatility adjustment referred to in article 36-septies is applied, the written policy on risk management shall comprise a policy on the criteria for the application of the volatility adjustment.

9. As regards the investment risk, the undertaking shall comply with the provisions of articles 35-bis, 37-ter, 38 and 41.

10. Undertakings shall provide for a risk-management function which shall be structured in such a way as to facilitate the implementation of the risk-management system.

11. When an undertaking uses external credit rating assessments it may only use an ECAI referred to under article 1, (1, n-ter). However the undertaking shall not solely or mechanically rely on credit ratings when assessing the credit of an entity or a financial instrument.

12. In order to avoid overreliance on external credit assessment institutions when undertakings use external credit rating assessment in the calculation of technical provisions and the Solvency Capital Requirement, they shall assess the appropriateness of those external credit assessments as part of their risk management by using additional assessments wherever practicably possible in order to avoid any automatic dependence on external assessments.

13. IVASS may, by regulation referred to in article 30 (7), provide guidance on the procedures for assessing external credit assessments in compliance with paragraph 12.

14. When undertakings use a partial or full internal model approved in accordance with articles 46-bis and 46-ter the risk-management function shall cover the following additional tasks:

- a) to design and implement the internal model;
- b) to test and validate the internal model;
- c) to document the internal model and any subsequent changes made to it;
- d) to analyse the performance of the internal model and to produce summary reports on the analysis made;
- e) to inform the board of directors about the performance of the internal model, making proposals on the areas needing improvement, and up-dating that body on the measures adopted to remedy previously identified weaknesses.

Article 30-ter



(Own risk and solvency assessment)<sup>139</sup>

1. As part of the risk-management system referred to in art. 30-bis the undertaking shall conduct its own risk and solvency assessment. The own risk and solvency assessment shall be an integral part of the undertaking's business strategy and shall be taken into account on an ongoing basis by the undertaking in its strategic decisions.

2. The assessment under paragraph 1 shall at least cover:

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

b) the compliance, on a continuous basis, with the capital requirements, as laid down in Title III, Chapter IV-bis, and with the requirements regarding technical provisions, as laid down in Title III, Chapter II;

c) the significance with which the risk profile of the undertaking deviates from the assumptions underlying the Solvency Capital Requirement as laid down in Article 45-ter (3 and 4), calculated with the standard formula in accordance with Title III, Chapter IV-bis, Section II or with its partial or full internal model in accordance with Title III, Chapter IV-bis, Section III.

3. For the purposes of paragraph 2(a), the undertaking shall adopt processes which are proportionate to the nature, scale and complexity of the risks inherent in its business and which enable it to properly identify and assess the risks it faces in the short and long term and to which it is or could be exposed. The undertaking shall provide a justification for the methods used in that assessment.

4. Undertakings applying the matching adjustment referred to in article 36-quinquies, the volatility adjustment referred to in article 36-septies or the transitional measures referred to in articles 344-novies and 344-decies, shall assess compliance with the capital requirements referred to in paragraph 2(b) with and without taking into account those adjustments and transitional measures.

5. In the case referred to in paragraph 2(c), when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

6. Undertakings shall perform their own risk and solvency assessment at least annually and, at any rate, without any delay following any significant change in their risk profile.

7. Undertakings shall inform IVASS of the results of each own-risk and solvency assessment as part of the information reported under article 47-quater.

8. The own risk and solvency assessment shall not serve to calculate a capital requirement. The Solvency Capital Requirement shall be adjusted only in accordance with articles 47-sexies, 207-octies, 216-sexies (1) b), 216-septies, 217-quater.

Article 30-quater  
(Internal control system)<sup>140</sup>

1. Undertakings shall have in place an effective internal control system.

2. The internal control system shall at least include appropriate administrative and accounting procedures, an effective system for ensuring the transmission of information at all levels of the undertaking and a compliance function ensuring that the undertaking's activity complies with the regulations in force and with the in-house directives and internal procedures.

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<sup>139</sup> Article inserted by article 1 (26) of legislative decree n. 74 of 12 May 2015.

<sup>140</sup> Article inserted by article 1 (26) of legislative decree n. 74 of 12 May 2015.

3. The compliance function shall provide advice to the board of directors on compliance with the laws, regulations and directly applicable European rules; it shall also include an assessment of the possible impact of any changes in the law or judicial orientation on the operations of the undertaking concerned and the identification and assessment of the risk of non-compliance.

Article 30-quinquies  
(Internal audit function )<sup>141</sup>

1. Undertakings shall provide for an effective internal audit function and shall ensure that it is objective and independent from the operational functions.

2. The internal audit function shall include an evaluation of the adequacy and effectiveness of the internal control system and of the other components of the undertaking's system of governance referred to under this Chapter.

3. The internal audit function shall report to the board of directors any findings and recommendations with respect to the activity carried out and shall indicate the corrective actions to be taken in case of malfunctions and critical situations. The board of directors shall determine what actions are to be taken with respect to each of the internal audit recommendations and shall determine the measures aimed at addressing the weaknesses found by the internal audit function, and shall ensure that those actions are carried out.

Article 30-sexies  
(Actuarial function)<sup>142</sup>

1. Undertakings shall provide for an effective actuarial function. The actuarial function shall:

- a) coordinate the calculation of technical provisions;
- b) ensure the appropriateness of the methodologies and underlying models used as well as the assumptions underlying the calculation of technical provisions;
- c) assess the sufficiency and quality of the data used in the calculation of technical provisions;
- d) compare best estimates against experience;
- e) inform the board of directors of the reliability and adequacy of the calculation of technical provisions;
- f) oversee the calculation of technical provisions in the cases set out in article 36-duodecies;
- g) express an opinion on the overall underwriting policy;
- h) express an opinion on the adequacy of reinsurance arrangements;
- i) contribute to the effective implementation of the risk-management system referred to in article 30-bis, in particular with respect to the risk modelling underlying the calculation of the capital requirements set out in Title III, Chapter IV-bis and to the own-risk and solvency assessment referred to in article 30-ter.

2. The actuarial function shall be carried out by an actuary registered in the professional register envisaged by law n. 194 of 9 February 1942, or by persons who have:

- a) knowledge of actuarial and financial mathematics, commensurate with the nature, scale and complexity of the risks inherent in the business of the undertaking;
- b) proven professional experience in the areas which are relevant for the performance of their task.

Article 30-septies  
(Outsourcing)<sup>143</sup>

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<sup>141</sup> Article inserted by article 1 (26) of legislative decree n. 74 of 12 May 2015.

<sup>142</sup> Article inserted by article 1 (26) of legislative decree n. 74 of 12 May 2015.

<sup>143</sup> Article inserted by article 1 (26) of legislative decree n. 74 of 12 May 2015.

1. Undertakings outsourcing functions or any insurance or reinsurance activities shall remain fully responsible for discharging all of their obligations under laws, regulations and EU rules which are directly applicable.

2. Undertakings outsourcing critical or important operational functions or activities shall ensure that such functions or activities are not undertaken in such a way as to lead to any of the following:

- a) materially impairing the quality of the system of governance of the undertaking;
- b) unduly increasing the operational risk;
- c) impairing the ability of IVASS to monitor the compliance of the undertaking with its obligations;
- d) undermining the undertaking's ability to provide continuous and satisfactory service to policyholders, insureds and those entitled to insurance benefits.

3. Undertakings shall, in a timely manner, notify IVASS prior to the outsourcing of critical or important functions or activities as well as of any subsequent material developments with respect to those functions or activities.

4. IVASS shall, by its own regulation<sup>144</sup>, establish the terms and conditions for outsourcing the critical or important functions referred to in paragraphs 2 and 3.

5. Undertakings which outsource a function or an insurance or reinsurance activity shall take the necessary steps to ensure that the following conditions are satisfied:

- a) the service provider must cooperate with IVASS in connection with the outsourced function or activity;
- b) the undertakings, their auditors and IVASS must have effective access to data related to the outsourced functions or activities;
- c) IVASS have effective access to the business premises of the service provider and must be able to exercise those rights of access.

#### Art. 30-octies

(Organisational requirements of undertakings pursuing assistance)<sup>145</sup>

1. The undertaking carrying on assistance insurance shall meet the requirements of professional qualification of staff and the technical specifications of the equipment established by IVASS's regulation.

#### Article 30-novies

(Tools of the tariff risk management system)<sup>146</sup>

1. In application of article 30-bis (3) a), the undertaking shall assess, for each new premium rate, the insurable risks, the assumptions underlying premium calculation, the expected profitability and equilibrium in premium rates. Such assessments shall be the subject of a technical report to be kept with the undertaking.

2. For the purposes of paragraph 1 the undertaking shall apply the principle referred to under article 30-ter (3).

3. The technical report referred to under paragraph 1 shall be sent, upon request, to the auditing company, the control body and IVASS.

4. IVASS may, in compliance with the provisions of this Section, and by means of regulation, establish the contents of the report referred to under paragraph 1, taking also account of certain types of premium rates, and establish other reporting obligations.

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<sup>144</sup> IVASS Regulation n. 38 of 3 July 2018, in particular Part III, Title III, Chapter III.

<sup>145</sup> Article inserted by article 1 (26) of legislative decree n. 74 of 12 May 2015.

<sup>146</sup> Article inserted by article 1 (26) of legislative decree n. 74 of 12 May 2015.

#### Article 30-decies

(Product oversight and governance requirements applicable to insurance undertakings as well as intermediaries which manufacture insurance products for sale to customers)<sup>147</sup>

1. Without prejudice to the requirements referred to under Title IX and articles 185, 185-bis and 185-ter, insurance undertakings and intermediaries which manufacture any insurance product for sale to customers, shall define and implement a process for the approval of each insurance product and significant adaptations of an existing insurance product, before it is marketed or distributed to customers, in accordance with the provisions in this article and with directly applicable EU rules.
2. The approval process referred to in paragraph 1 shall be proportionate and appropriate to the nature of the insurance products and shall be subject to a regular review.
3. The subjects referred to in paragraph 1 shall send IVASS, at its request, the documentation relating to the product approval process.
4. The approval process referred to in paragraph 1 shall specify an identified target market for each product and the categories of customers to whom the product may not be distributed, ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market, and take reasonable steps to ensure that the insurance product is distributed to the identified target market.
5. The subjects referred to in paragraph 1 shall understand and regularly review the insurance products they offer or distribute, taking into account any event that could materially affect the potential risk to the identified target market. The review shall be aimed to assess whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.
6. The subjects referred to in paragraph 1 shall make available to insurance distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.
7. IVASS shall, after hearing Consob, adopt the provisions<sup>148</sup> implementing this article so as to ensure uniformity in the regulations applicable to the sale of insurance-based investment products regardless of the distribution channel and overall consistency and effectiveness of the system of supervision over insurance-based investment products, pursuant to and in accordance with the provisions of article 5 (1) b), no. 1, of law no. 163 of 25 October 2017.

#### Art. 31 (repealed)<sup>149</sup>

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<sup>147</sup> Article inserted by article 1 (3) of legislative decree n. 68 of 21 May 2018.

<sup>148</sup> IVASS Regulation n. 45 of 4 August 2020

<sup>149</sup> Article repealed by article 1 (27) of legislative decree n. 74 of 12 May 2015. Article 31 laid down: "Art. 31 (Actuary appointed by the life assurance undertaking)

1. *The life assurance undertaking shall appoint an actuary responsible for continuously carrying out the tasks set out in this code and in its implementing provisions, in particular those mentioned under articles 32 (3), 36 (2) and 93 (5).*

2. *The appointed actuary shall meet the good repute and professional qualifications requirements established by regulation adopted by the Minister of Economic Development upon ISVAP's proposal.*

3. *The undertaking shall ensure the conditions for enabling the actuary to perform his/her functions in absolute independence, while having free access to the relevant corporate information. The bodies charged with internal control shall avail themselves of the appointed actuary to collect data correctly, in particular those regarding the undertaking's costs and their foreseeable trend, which are used for the assessments in which the actuary is involved.*

## Art. 32

### (Determination of life assurance premium rates)

1. The premiums relating to the assurance and the operations indicated under article 2 (1) are calculated, for each new premium rate, on reasonable actuarial assumptions enabling the undertaking – by means of premiums and the relevant income – to meet the costs and obligations towards policyholders and, in particular, to set up the technical provisions necessary for each contract. To that end the undertaking's assets, liabilities and financial position can be taken into account; however resources not deriving from premiums paid and their yield may not be used on a systematic and permanent basis, so that the solvency in the long term is not jeopardised<sup>150</sup>.
2. Actuarial assumptions are calculated in compliance with the principles referred to in article 33<sup>151</sup>, as well as with the application rules of the actuarial principles recognised by IVASS regulation<sup>152</sup>.
3. (*repealed*)<sup>153</sup>
4. In case of systematic and permanent use of resources other than premiums and the relevant income IVASS may prohibit the further marketing of the assurance products which caused the imbalance.
5. The use of natural premium rates shall be allowed, provided that adequate information is furnished before and during the term of the contract and without prejudice to the prohibition to review the technical bases. In the event of a breach of that prohibition the contract shall be void and article 167 (2) shall apply.
6. The undertaking shall inform IVASS of the essential elements of the technical bases used for calculating premiums and technical provisions of each assurance rate.

## Art. 33

### (Guaranteed rate of interest in life assurance contracts)

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4. *The actuary shall immediately inform the undertaking and ISVAP of the loss of the above requirements or of the existence or emergence of situations of incompatibility involving loss of position.*

5. *In case of serious non-compliance with the rules of this code or its implementing provisions, as well as with the rules for the application of the actuarial principles recognized by ISVAP, the appointed actuary is revoked by the undertaking directly or at the request of ISVAP. ISVAP shall inform the actuaries' association of such revocation.*

6. *In case of termination of the actuary's appointment for any reason the undertaking shall appoint a new actuary within forty five days and inform ISVAP of the reasons for the replacement; it shall also furnish ISVAP and the new actuary - within the same term – with a detailed report to be drawn up by the outgoing actuary, containing his/her comments and observations for the last twenty four months. Where, in exceptional circumstances, the actuary is incapable of drawing up the report the undertaking shall do that".*

<sup>150</sup> Paragraph amended by article 1 (28, a) of legislative decree n. 74 of 12 May 2015.

<sup>151</sup> Paragraph amended by article 1 (28, b) of legislative decree n. 74 of 12 May 2015.

<sup>152</sup> ISVAP Regulation n. 21 of 28 March 2008, in particular Title II.

<sup>153</sup> Paragraph repealed by article 1 (28, c) of legislative decree n. 74 of 12 May 2015. Article 32 (3) laid down: "*The actuary is responsible for the assessment of the assumptions underlying premium calculation, which is the subject of a technical report to be kept with the undertaking. The accounts of the life assurance undertaking shall be sent to ISVAP along with a technical report in which the appointed actuary shall describe in detail the procedures followed and the assessments made, with reference to the technical bases adopted, for the calculation of technical provisions with specific evidence of any implicit assessments and the relevant reasons, shall certify the correctness of the procedures used, report about the checks made on the procedures for the calculation of technical provisions and the correct portfolio analysis and express his/her opinion about the sufficiency of all technical provisions, including any additional reserves shown in the accounts".*

1. (repealed)<sup>154</sup>

2. (repealed)<sup>155</sup>

3. The undertaking shall define the guaranteed rate of interest in life assurance contracts, in accordance with its own investment strategies and the risk management system referred to under article 30 (5) and 30-bis (3, a and 9) while adopting prudential criteria. The rate shall take account of the currency in which the contract is denominated and the corresponding assets<sup>156</sup>.

4. (repealed)<sup>157</sup>

5. (repealed)<sup>158</sup>

5-bis. For the purposes of article 5, and more specifically in the cases referred to under paragraph 1-ter of that article, IVASS may set limits to the technical bases used in the calculation of premiums rates and to the guaranteed rates of interest in life assurance contracts which are applicable for specified periods of time<sup>159</sup>.

6. (repealed)<sup>160</sup>

#### Art. 34 (repealed)<sup>161</sup>

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<sup>154</sup> Paragraph repealed by article 1 (29, a) of legislative decree n. 74 of 12 May 2015. Article 33 (1) laid down: “*ISVAP shall determine, by its own regulation, a maximum interest rate for all contracts providing a guaranteed interest rate which cannot be more than sixty percent of the average rate on bond issues by the State*”.

<sup>155</sup> Paragraph repealed by article 1 (29, b) of legislative decree n. 74 of 12 May 2015. Article 33 (2) laid down: “*ISVAP’s regulation may also indicate several maximum rates of interest, diversified according to the currency in which the contract is denominated, provided that they are not more than sixty percent of the average rate on bond issues by the State in whose currency the contract is denominated. In that case ISVAP shall first consult the supervisory authority of the member State concerned*”.

<sup>156</sup> Paragraph replaced by article 1 (29, c) of legislative decree n. 74 of 12 May 2015. The previous version laid down: “*When defining the interest rate within the limits set by paragraphs 1 and 2 the undertaking shall always abide by prudential principles*”.

<sup>157</sup> Paragraph repealed by article 1 (29, d) of legislative decree n. 74 of 12 May 2015. Article 33 (4) laid down: “*In its regulation ISVAP may – notwithstanding the maximum rates of paragraphs 1 and 2 – set different values of the maximum rate of interest for certain categories of contracts. It may also set specific limits for single premium contracts or immediate life annuity contracts with no surrender, for which liabilities are covered by the corresponding assets*”.

<sup>158</sup> Paragraph repealed by article 1 (29, e) of legislative decree n. 74 of 12 May 2015. Article 33 (5) laid down: “*Where ISVAP exercises the option under paragraph 4 the undertaking may choose a prudent rate of interest, taking account of the currency in which the contract is denominated and the corresponding assets. Under no circumstances may the rate of interest used be higher than the yield on the representative assets as calculated in accordance with the accounting standards in force, less an appropriate deduction*”.

<sup>159</sup> Paragraph inserted by article 1 (29, f) of legislative decree n. 74 of 12 May 2015.

<sup>160</sup> Paragraph repealed by article 1 (29, g) of legislative decree n. 74 of 12 May 2015. Article 33 (6) laid down: “*The maximum rates set through the regulation under paragraph 1 shall be communicated by ISVAP to the European Commission and to the other member States’ supervisors, upon request*”.

<sup>161</sup> Article repealed by article 1 (30) of legislative decree n. 74 of 12 May 2015. Article 34 laid down:

“Art. 34

*(Actuary appointed by the undertaking carrying on motor vehicle liability and liability for ships)*

1. *The insurance undertaking authorised to carry on compulsory insurance against civil liability in respect of the use of motor vehicles and ships shall appoint an actuary for the prior verification of premium rates and technical provisions pertaining to the insurance classes 10 and 12 under article 2 (3), also with a view to facilitating the exercise of the supervisory powers by ISVAP.*

2. *The appointed actuary shall meet the good repute and professional qualifications requirements established by regulation adopted by the Minister of Economic Development upon ISVAP’s proposal.*

3. *The appointed actuary is charged with verifying the technical bases, the statistical methods and the technical and financial assumptions used, as well as with evaluating the consistency of premium rates with the reference values adopted. The appointed actuary shall also check the correctness of the procedures and methods used by the undertaking for the calculation of technical provisions.*

#### Art. 35

(Calculation of premium rates in motor vehicle liability and liability for ships insurance)

1. When determining premium rates in motor vehicle liability and liability for ships insurance the undertaking shall calculate pure premiums and loadings separately and consistently with its technical bases, which shall be large enough and spanning at least five financial years. Where these bases are unavailable the undertaking may use market statistical data<sup>162</sup>.
2. As to the risks which, because of their characteristics, cannot be included in any of the rates established by the undertaking the latter may use – for an understanding of the statistical elements necessary for the calculation of the pure premium – the information available to one or more bodies set up among the undertakings pursuing compulsory motor liability insurance, which are required to furnish such elements.
3. The provisions under paragraph 2 shall also apply to risks which may be defined – for whatever subjective or objective reason – as peculiar or exceptional vis-à-vis those established by the undertaking.
4. The statistical elements used by the undertaking for calculating the pure premium for the risks under paragraphs 2 and 3 must be communicated to the bodies indicated under paragraph 2 promptly.

#### Art. 35-bis

(Tools of the risk management system regarding technical provisions)<sup>163</sup>

1. In application of article 30-bis (3, a) the undertaking shall annually draw up a report on the technical provisions set up at the closure of the financial year, in which representation is also given of the assessments, procedures and checks made as well as of the calculation assumptions employed.
2. For the purposes of paragraph 1 the undertaking shall apply the principle referred to under article 30-ter (3).
3. The report referred to under paragraph 1 shall be sent at least to the auditing company and the control body and, upon request, to IVASS.
4. The report referred to under paragraph 1 shall be lodged at the undertaking's office for at least five years from the date when it was drawn up.
5. IVASS may, in compliance with the provisions of this Section, and by means of regulation, establish the contents of the report referred to under paragraph 1, also in relation to individual lines of business and the reporting obligations of the document.

#### Article 35-ter

(Tools of the risk management system in civil liability in respect of the use of motor vehicles and craft)<sup>164</sup>

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4. *The appointed actuary's functions shall be set by the Minister of Production Activities through the regulation under paragraph 2, without prejudice to the provisions of article 37 (2). The provisions under article 31 (3, 4, 5 and 6) shall apply*".

<sup>162</sup> Paragraph amended by article 1 (31) of legislative decree n. 74 of 12 May 2015.

<sup>163</sup> Article inserted by article 1 (32) of legislative decree n. 74 of 12 May 2015.

<sup>164</sup> Article inserted by article 1 (32) of legislative decree n. 74 of 12 May 2015.

1. When pursuing the activities referred to under this Section undertakings shall make specific reference to the risks of civil liability in respect of the use of motor vehicles and craft, having particular regard to the premium and reserve risk.

2. IVASS may, by means of regulation, establish the tools of the risk management system referred to under paragraph 1 to be adopted by undertakings pursuing civil liability in respect of the use of motor vehicles and craft in the territory of the Republic.

**Chapter I-bis**  
**GENERAL PRINCIPLES FOR THE VALUATION OF ASSETS AND LIABILITIES FOR SOLVENCY**  
**SUPERVISION<sup>165</sup>**

Art. 35-quater  
(Valuation of assets and liabilities)<sup>166</sup>

1. In compliance with the provisions established by IVASS regulation<sup>167</sup>, undertakings shall value their assets and liabilities in accordance with the following rules:

- a) assets at the amount for which they could be exchanged between knowledgeable willing parties in an arm's length transaction;
- b) liabilities, at the amount for which they could be transferred, or settled, between knowledgeable willing parties in an arm's length transaction.

2. When valuing liabilities under paragraph 1(b), no adjustment shall be made by the undertaking to take account of its own credit standing.

**Chapter II**  
**CALCULATION OF TECHNICAL PROVISIONS<sup>168</sup>**

Art. 36  
(*repealed*)<sup>169</sup>

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<sup>165</sup> Chapter inserted by article 1 (33) of legislative decree n. 74 of 12 May 2015.

<sup>166</sup> Article inserted by article 1 (33) of legislative decree n. 74 of 12 May 2015.

<sup>167</sup> IVASS Regulation n. 34 of 7 February 2017.

<sup>168</sup> Heading replaced by article 1 (203) of legislative decree n. 74 of 12 May 2015.

<sup>169</sup> Article repealed by article 1 (34) of legislative decree n. 74 of 12 May 2015. Article 36 laid down:

“Art. 36

(*Life assurance provisions*)

1. *Undertakings pursuing life assurance shall establish, for the contracts in the Italian portfolio, sufficient technical provisions, including mathematical provisions, in respect of the commitments accepted and future expenses. Provisions shall be calculated, gross of reinsurance cessions, according to the actuarial principles and application rules set up by ISVAP regulation.*

2. *The assessment on the sufficiency of technical provisions belongs to the appointed actuary, who performs a controlling function on a permanent basis in order to enable the undertaking to take all necessary actions without delay. To this purpose the appointed actuary must immediately inform the administrative and control bodies of the undertaking whenever he or she recognises conditions that might, at that moment, raise doubts about the sufficiency of the technical provisions in light of the principles to be complied with when drawing up the technical report pursuant to article 32 (3). If the undertaking is unable to address the causes of the comment or if it does not agree with the comment, it shall immediately inform ISVAP.*

3. *Undertakings pursuing life assurance shall – at the end of each financial year - establish a special technical provision equal to the total amounts that would be necessary to honour the payment of accrued capital and annuities, of surrender values and claims outstanding.*

4. *The provision for bonuses and rebates shall comprise amounts intended for policyholders or contract beneficiaries by way of bonuses and rebates to the extent that such amounts have not been credited to policyholders or have not already been considered in the mathematical provisions.*



Art. 36-bis  
(General rules on technical provisions)<sup>170</sup>

1. Undertakings shall establish technical provisions which must be such that they can meet any insurance and reinsurance obligations towards policy holders, insureds, beneficiaries and those entitled to insurance benefits, in compliance with the provisions established by IVASS regulation<sup>171</sup>.
2. Undertakings shall hold technical provisions the value of which shall correspond to the current amount undertakings would have to pay if they were to transfer their insurance and reinsurance obligations immediately to another insurance or reinsurance undertaking.
3. For the calculation of technical provisions undertakings shall make use of the information provided by the financial markets and generally available data on underwriting risks and shall be consistent with market valuations.
4. Undertakings shall calculate technical provisions in a prudent, reliable and objective manner.
5. Undertakings shall calculate technical provisions in accordance with articles 36-ter to 36-undecies, with article 36-duodecies (1 and 2), and with the implementing measures adopted by the European Commission in compliance with the principles referred to under paragraphs 2, 3, and 4 and taking into account the principles set out in article 35-quater (1 and 2).

Article 36-ter  
(Calculation of technical provisions)<sup>172</sup>

1. Undertakings shall hold technical provisions the value of which shall be equal to the sum of a best estimate and a risk margin as set out in paragraphs 2 to 6.
2. The best estimate shall correspond to the expected present value of future cash-flows. This value shall correspond to the probability-weighted average of future cash-flows, taking account of the time value of money, using the relevant risk-free interest rate term structure.
3. Undertakings shall calculate the best estimate on the basis of up-to-date and credible information and realistic assumptions, using adequate, applicable and relevant actuarial and statistical methods.
4. In the calculation of the best estimate undertakings shall use the cash-flow projection which takes account of all the cash in- and out-flows required to settle the insurance and reinsurance obligations over the lifetime thereof.
5. Undertakings shall calculate the best estimate gross, without deduction of the amounts - to be calculated separately - recoverable from reinsurance contracts and special purpose vehicles, in accordance with article 36-undecies.

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*5. For the establishment of the technical provisions relating to supplementary insurance provided for in article 2 (2), the same rules governing technical provisions for non-life insurance shall apply.*

*6. Reinsurers' share of technical provisions shall comprise reinsurance amounts and shall be calculated according to contractual reinsurance arrangements, on the basis of the gross amounts of technical provisions.*

*7. Undertakings pursuing life assurance shall submit ISVAP a comparison between the technical bases, other than the interest rate, used in the calculation of technical provisions and the results of direct experience.*

<sup>170</sup> Article inserted by article 1 (35) of legislative decree no. 74 of 12 May 2015

<sup>171</sup> IVASS Regulation n. 18 of 15 March 2016.

<sup>172</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

6. Undertakings shall calculate the risk margin in such a way as to ensure that the value of the technical provisions is equivalent to the amount that undertakings would be expected to have in order to take over and meet the insurance and reinsurance obligations.

7. The undertaking shall value the best estimate and the risk margin separately.

8. Where future cash flows associated with insurance or reinsurance obligations can be replicated reliably using financial instruments for which a reliable market value is observable, the undertaking shall determine the value of technical provisions associated with those future cash flows on the basis of the market value of those financial instruments. In this case, the undertaking is not required to calculate the best estimate and the risk margin separately.

9. In the cases referred to in paragraph 7, undertakings shall calculate the risk margin by determining the cost of providing an amount of eligible own funds equal to the Solvency Capital Requirement necessary to support the insurance and reinsurance obligations over the lifetime thereof.

10. In the determination of the cost of providing the amount of eligible own funds referred to in paragraph 9 all undertakings shall use the same Cost-of-Capital rate. This rate shall be reviewed periodically.

11. The Cost-of-Capital rate used shall be equal to the additional rate, above the relevant risk-free interest rate, that an undertaking would incur holding an amount of eligible own funds, as set out in Chapter II bis of this Title and in the implementing measures adopted by the European Commission, equal to the Solvency Capital Requirement necessary to support insurance and reinsurance obligations over the lifetime of those obligations.

#### Article 36-quater

(Extrapolation of the relevant risk-free interest rate term structure)<sup>173</sup>

1. The relevant risk-free interest rate term structure referred to in article 36-ter (2), shall make use of, and be consistent with, information derived from relevant financial instruments.

2. When determining the term structure referred to in paragraph 1, the maturities of the relevant financial instruments shall also be taken into account.

3. For maturities where the markets for the relevant financial instruments or for bonds are deep, liquid and transparent, the structure referred to in paragraph 1 shall be determined taking account of the relevant financial instruments.

4. For maturities where the markets for the relevant financial instruments or for bonds are not deep, liquid and transparent as envisaged in paragraph 3, the relevant risk-free interest rate term structure shall be determined by extrapolation.

5. The extrapolated part of the relevant risk-free interest rate term structure shall be based on forward rates converging smoothly to an ultimate forward rate, as defined from one or a set of forward rates in relation to the longest maturities for which the relevant financial instrument and the bonds can be observed in a deep, liquid and transparent market in accordance with paragraph 3.

#### Article 36-quinquies

(Matching adjustment to the relevant risk-free interest rate term structure)<sup>174</sup>

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<sup>173</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

<sup>174</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

1. Undertakings may apply a matching adjustment to the relevant risk-free interest rate term structure to calculate the best estimate of a portfolio of life insurance or reinsurance obligations, including annuities stemming from non-life insurance or reinsurance contracts, in compliance with the provisions of article 36-octies.

2. The application of the matching adjustment referred to in paragraph 1 shall be subject to prior approval by IVASS where the following conditions are met:

- a) the undertaking has assigned a portfolio of assets, consisting of bonds and other assets with similar cash-flow characteristics, to cover the best estimate of the portfolio of insurance or reinsurance obligations and maintains that assignment over the lifetime of the obligations, except for the purpose of maintaining the replication of expected cash flows between assets and liabilities where the cash flows have materially changed;
- b) the portfolio of insurance or reinsurance obligations to which the matching adjustment is applied and the assigned portfolio of assets are identified, organised and managed separately from other activities of the undertaking. The assigned portfolio of assets cannot be used to cover losses arising from other activities of the undertaking;
- c) the expected cash flows of the assigned portfolio of assets replicate each of the expected cash flows of the portfolio of insurance or reinsurance obligations in the same currency; any mismatch does not give rise to risks which are material in relation to the risks inherent in the insurance or reinsurance business to which the matching adjustment is applied;
- d) the contracts underlying the portfolio of insurance or reinsurance obligations do not give rise to future premium payments;
- e) the only underwriting risks connected to the portfolio of insurance or reinsurance obligations are longevity risk, expense risk, revision risk and mortality risk;
- f) where the underwriting risk connected to the portfolio of insurance or reinsurance obligations includes mortality risk, the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5 % under a mortality risk stress that is calibrated in accordance with the provisions of article 45-ter (2 to 6);
- g) the contracts underlying the portfolio of insurance or reinsurance obligations include no options for the policy holder or only a surrender option where the surrender value does not exceed the value of the assets, valued in accordance with article 35-quater, covering the insurance or reinsurance obligations at the time the surrender option is exercised;
- h) the cash flows of the assigned portfolio of assets are fixed and cannot be changed by the issuers of the assets or any third parties;
- i) the insurance or reinsurance obligations of an insurance or reinsurance contract are not split into different parts when composing the portfolio of insurance or reinsurance obligations for the purpose of this paragraph.

3. Notwithstanding point (h) of paragraph 2, undertakings may use assets where the cash flows are fixed except for a dependence on inflation, provided that those assets replicate the cash flows of the portfolio of insurance or reinsurance obligations that depend on inflation.

4. In the event that issuers or third parties have the right to change the cash flows of an asset in such a manner that the investor receives sufficient compensation to allow it to obtain the same cash flows by re-investing in assets of an equivalent or better credit quality, the right to change the cash flows shall not disqualify the asset for admissibility to the assigned portfolio in accordance with point (h) of paragraph 2.

5. Undertakings that apply the matching adjustment to a portfolio of insurance or reinsurance obligations shall not revert back to an approach that does not include a matching adjustment.

6. Where an undertaking that applies the matching adjustment is no longer able to comply with the conditions set out in paragraphs 2 to 4, it shall immediately inform IVASS and take the necessary measures to restore compliance with those conditions.

7. Where the undertaking is not able to restore compliance as envisaged in paragraph 6 within two months of the date of non-compliance, it shall cease to apply the matching adjustment to any of its insurance or reinsurance obligations and shall not apply the matching adjustment for a period of a further 24 months.

8. The matching adjustment shall not be applied with respect to insurance or reinsurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a volatility adjustment under article 36-septies or a transitional measure on the risk-free interest rates under article 344-novies.

Article 36-sexies  
(Calculation of the matching adjustment)<sup>175</sup>

1. For each currency the matching adjustment referred to in article 36-quinquies shall be calculated in accordance with the following principles:

a) the matching adjustment must be equal to the difference of the following:

1) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value in accordance with article 35-quater of the portfolio of assigned assets;

2) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of insurance or reinsurance obligations where the time value of money is taken into account using the basic risk-free interest rate term structure;

b) the matching adjustment must not include the fundamental spread reflecting the risks retained by the undertaking;

c) notwithstanding point (a), the fundamental spread must be increased where necessary to ensure that the matching adjustment for assets with sub-investment grade credit quality does not exceed the matching adjustments for assets of investment grade credit quality and the same duration and asset class;

d) the use of external credit assessments in the calculation of the matching adjustment must be in accordance with the specific implementing measures adopted by the European Commission.

2. For the purposes of paragraph 1(b), the fundamental spread shall be:

a) equal to the sum of the following:

1) the credit spread corresponding to the probability of default of the assets;

2) the credit spread corresponding to the expected loss resulting from downgrading of the assets;

b) for exposures to Member States and central banks, no lower than 30 % of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets;

c) for assets other than exposures under point (b), no lower than 35 % of the long-term average of the spread over the risk-free interest rate of assets of the same duration, credit quality and asset class, as observed in financial markets.

3. The probability of default referred to in point 1)(a) of paragraph 2 shall be based on long-term default statistics that are relevant for each asset in relation to its duration, credit quality and asset class.

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<sup>175</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

4. Where no reliable credit spread can be derived from the default statistics referred to in paragraph 3, the fundamental spread shall be equal to the portion of the long-term average of the spread over the risk-free interest rate set out in points (b) and (c) of paragraph 2.

#### Article 36-septies

(Volatility adjustment of the relevant risk-free interest rate term structure)<sup>176</sup>

1. Undertakings may apply a volatility adjustment to the relevant risk-free interest rate term structure to calculate the best estimate referred to in article 36-ter, (2 to 5) in compliance with the provisions of article 36-octies.

2. For each relevant currency, the volatility adjustment to the relevant risk-free interest rate term structure, referred to in paragraph 1, shall be based on the spread between the interest rate that could be earned from assets included in a reference portfolio for that currency and the rates of the relevant basic risk-free interest rate term structure for that currency.

3. The reference portfolio for a currency shall be representative for the assets which are denominated in that currency and which undertakings use to cover the best estimate for insurance and reinsurance obligations denominated in that currency.

4. The amount of the volatility adjustment to risk-free interest rates shall correspond to 65 % of the risk-corrected currency spread.

5. The risk-corrected currency spread, referred to in paragraph 4, shall be calculated as the difference between the spread referred to in paragraph 2 and the portion of that spread that is attributable to a realistic assessment of expected losses or unexpected credit or other risk of the assets.

6. The volatility adjustment shall apply only to the risk-free interest rates of the term structure that are not derived by means of extrapolation in accordance with article 36-quater (3).

7. The extrapolation of the relevant risk-free interest rate term structure shall be based on those risk-free interest rates referred to in paragraph 6.

8. For each relevant country, the volatility adjustment to the risk-free interest rates referred to in paragraphs 4 to 7 to be applied to the currency of that country, before application of the 65 % factor, shall be increased by the difference between the risk-corrected country spread and twice the risk-corrected currency spread

9. With effect from the financial year 2019, subject to the provisions of article 36-octies, para.1, the increase referred to in paragraph 8 shall be applied whenever that difference is positive and the risk-corrected country spread is higher than 85 basis points<sup>177</sup>.

10. Undertakings shall apply the increased volatility adjustment to the calculation of the best estimate for insurance and reinsurance obligations of contracts sold in the market of that country.

11. The risk-corrected country spread is calculated in the same way as the risk-corrected currency spread for the currency of that country, but based on a reference portfolio that is representative for the assets which undertakings have invested in to cover the best estimate for insurance and reinsurance obligations of contracts sold in the market of that country and denominated in the currency of that country.

12. Undertakings shall not apply the volatility adjustment with respect to insurance obligations where the relevant risk-free interest rate term structure to calculate the best estimate for those obligations includes a matching adjustment under article 36-quinquies.

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<sup>176</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

<sup>177</sup> Paragraph replaced by article 52 of decree-law n. 18 of 17 March 2020, converted into law n. 27 of 24 April 2020.

13. By way of derogation from article 45-ter, the Solvency Capital Requirement shall not cover the risk of loss of basic own funds resulting from changes of the volatility adjustment.

Art. 36-octies  
(Technical information )<sup>178</sup>

1. Technical information produced by EIOPA in accordance with Community provisions, including:

a) a relevant risk-free interest rate term structure to calculate the best estimate referred to in article 36-ter (2), without any matching adjustment or volatility adjustment;

b) for each relevant duration, credit quality and asset class a fundamental spread for the calculation of the matching adjustment referred to in article 36-sexies (1)(b);

c) a volatility adjustment to the relevant risk-free interest rate term structure referred to in article 36-septies (1), for each relevant national insurance market;

where this information is adopted by the European Commission in accordance with Community provisions, it shall be used by undertakings in calculating the best estimate in accordance with article 36-ter, the matching adjustment in accordance with article 36-sexies, and the volatility adjustment in accordance with article 36-septies.

2. With respect to currencies and national markets where the adjustment referred to in paragraph 1(c) is not set out in the European Commission implementing acts in accordance with EU provisions, when calculating the best estimate no volatility adjustment shall be applied by undertakings to the relevant risk-free interest rate term structure.

Article 36-novies  
(Other elements to be taken into account in the calculation of technical provisions)<sup>179</sup>

1. In addition to article 36-ter, when calculating technical provisions, undertakings shall segment their insurance and reinsurance obligations into homogeneous risk groups, and as a minimum by lines of business, taking account of the following:

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

b) inflation, including expenses and claims inflation;

c) all payments to policyholders, insureds, beneficiaries and those entitled to insurance benefits, including future discretionary bonuses, which undertakings expect to make, whether or not those payments are contractually guaranteed, unless those payments fall under article 44-sexies.

Article 36-decies  
(Valuation of financial guarantees and contractual options included in insurance and reinsurance contracts)<sup>180</sup>

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

2. Any assumptions made by undertakings with respect to the likelihood that policyholders will exercise contractual options, including reductions, lapses and surrenders, of insurance and reinsurance contracts shall be realistic and based on current and credible information.

3. The assumptions referred to under paragraph 2 shall take account, either explicitly or implicitly, of the impact that future changes in financial and non-financial conditions may have on the exercise of those options referred to under paragraph 2.

Article 36-undecies  
(Recoverables from reinsurance contracts and special purpose vehicles)<sup>181</sup>

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<sup>178</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

<sup>179</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

<sup>180</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

<sup>181</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

1. The calculation by undertakings of amounts recoverable from reinsurance contracts and special purpose vehicles shall comply with articles 36-bis to 36-decies.
2. When calculating amounts referred to under paragraph 1, undertakings shall take account of the time difference between recoveries and direct payments.
3. To take account of expected losses due to default of the counterparty, undertakings shall adjust the result from the calculation referred to under paragraph 1 on the basis of an assessment of the probability of default of the counterparty and the average loss resulting therefrom (*loss given default*).

Article 36-duodecies  
(Data quality)<sup>182</sup>

1. Undertakings shall have internal processes and procedures in place to ensure the appropriateness, completeness and accuracy of the data used in the calculation of their technical provisions.
2. Where, in specific circumstances, undertakings have insufficient data of appropriate quality to apply a reliable actuarial method to a set or subset of their insurance and reinsurance obligations, or amounts recoverable from reinsurance contracts and special purpose vehicles, appropriate approximations, including case-by-case approaches, may be used in the calculation of the best estimate.
3. Undertakings shall have processes and procedures in place to ensure that best estimates, and the assumptions underlying the calculation of best estimates, are regularly compared against experience.
4. Where the comparison referred to under paragraph 3 identifies systematic deviation between experience and the best estimate calculations, the undertaking shall make appropriate adjustments to the actuarial methods being used and/or the assumptions being made.

Article 36-terdecies  
(Appropriateness of technical provisions)<sup>183</sup>

1. IVASS may require undertakings to demonstrate the appropriateness of the level of their technical provisions, as well as the applicability and relevance of the methods applied, and the adequacy of the underlying statistical data used.
2. To the extent that the calculation of technical provisions of undertakings does not comply with articles 36-bis to 36-duodecies, IVASS may require undertakings to increase the amount of technical provisions so that they correspond to the level determined pursuant to those articles.

Art. 37  
(*repealed*)<sup>184</sup>

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<sup>182</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

<sup>183</sup> Article inserted by article 1 (35) of legislative decree n. 74 of 12 May 2015.

<sup>184</sup> Article repealed by article 1 (36) of legislative decree n. 74 of 12 May 2015. Article 37 laid down:

“Art. 37

(*Technical provisions for non-life insurance*)

1. *Undertakings pursuing non-life insurance shall establish, for the contracts in the Italian portfolio, technical provisions that must at all times be such that an undertaking can meet any liabilities arising out of insurance contracts as far as can*

Art. 37-bis  
(Technical provisions for reinsurance)<sup>185</sup>

1. The insurance undertaking that carries on simultaneously insurance and reinsurance business shall establish reinsurance technical provisions at the end of each year, gross of retrocessions,

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*reasonably be foreseen. Provisions shall be calculated, gross of reinsurance cessions, according to the actuarial principles and application rules set up by ISVAP regulation.*

*2. If the undertaking covers risks relating to compulsory insurance against civil liability in respect of motor vehicles and ships the assessment on the sufficiency of technical provisions belongs to the appointed actuary, who performs a control function on a permanent basis in order to enable the undertaking to take all necessary actions without delay. To this purpose the appointed actuary must immediately inform the administrative and control bodies of the undertaking whenever he or she recognises conditions that might, at that moment, raise doubts about the sufficiency of the technical provisions in light of the principles to be complied with when drawing up the technical report. If the undertaking is unable to address the causes of the comment or if it does not agree with the comment, it shall immediately inform ISVAP.*

*3. Undertakings pursuing non-life insurance shall – at the end of each financial year - establish the premium provision, the provision for claims, the provision for claims incurred but not reported at the end of the year, equalisation provisions, the ageing reserve and the provisions for bonuses and rebates.*

*4. The premium provision shall comprise both the provision for unearned premiums and the provision for unexpired risks. If an undertaking covers risks relating to suretyship, hail and other natural forces as well as damage due to nuclear energy it shall establish a supplementary provision for unearned premiums for these classes, given the particular nature of such risks.*

*5. The provision for claims shall comprise the total amounts that, according to a prudent valuation based on objective elements, would be necessary to honour the payment of outstanding claims incurred in the current or previous years, as well as the relevant claims settlement costs. The assessment of the provision for claims shall be based on the ultimate cost, and shall take account of all future foreseeable liabilities on the basis of reliable historical and perspective data and anyhow of the undertaking's specific features.*

*6. The provision for claims incurred but not reported by the balance-sheet date shall be assessed taking account of the nature of the risks to which it refers in order to determine the relevant valuation methods.*

*7. Equalization provisions shall comprise any amounts set aside - in compliance with legal requirements - to equalize fluctuations in loss ratios in future years or to provide for special risks. The undertaking authorized to pursue credit insurance shall set up an equalization provision, for the purpose of offsetting any retained technical deficit arising in that class at each balance-sheet date. The undertaking authorized to pursue non-life insurance, except credit and suretyship, shall set up an equalization provision for risks arising from natural catastrophes for the purpose of offsetting the trend in claims ratio over time. The conditions and terms for setting up an equalisation provision for risks arising from natural catastrophes and for damage or loss due to nuclear energy are established by decree of the Minister of Economic Development, in agreement with the Minister of Economic and Financial Affairs, after hearing ISVAP.*

*8. In case of multi-year health insurance contracts or annual contracts which however envisage an obligation for the insurer to renew them at the expiry date, and where premiums have been calculated, for the whole life of the contract, according to the age of policyholders when the contract was concluded, the undertaking shall set up an ageing reserve aimed to make up for a risk increase due to the advancing age of policyholders. For these contracts the undertaking may exercise the right of withdrawal, further to a claim, only within the first two years from contract conclusion. In case of long-term care insurance contracts the undertaking shall set up a special provision according to adequate actuarial criteria which take account of the risk trend for the whole life of the contract.*

*9. The provision for bonuses and rebates shall comprise amounts intended for policyholders or contract beneficiaries by way of bonuses and rebates to the extent that such amounts have not been credited to policyholders.*

*10. The undertaking authorized to the simultaneous pursuit of life assurance and accident and sickness insurance shall comply with the specific applicable provisions.*

*11. Reinsurers' share of technical provisions shall comprise reinsurance amounts and shall be calculated according to contractual reinsurance arrangements, on the basis of the gross amounts of technical provisions. The premium provision relating to reinsurance amounts shall be calculated according to the methods referred to in paragraph 4, in line with the choice made by the undertaking for the calculation of the gross premium provision".*

<sup>185</sup> Article inserted by article 2, legislative decree n. 56 of 29 February 2008.



in respect of the commitments undertaken, in accordance with the provisions under this Title and with directly applicable EU rules<sup>186</sup>.

2. (repealed)<sup>187</sup>

## **Chapter II-bis GUIDELINES ON INVESTMENTS<sup>188</sup>**

### Article 37-ter (Prudent person principle)<sup>189</sup>

1. Undertakings shall invest all their assets, including those covering the Minimum Capital Requirement and the Solvency Capital Requirement, in accordance with the prudent person principle, as specified in paragraphs 2 to 6, as well as in IVASS regulation <sup>190</sup> adopted in compliance with EU provisions.

2. Undertakings shall invest all their assets:

- a) in assets and instruments whose risks the undertaking concerned can properly identify, measure, monitor, manage, control and report, and appropriately take into account in the assessment of its overall solvency needs in accordance with point (a) of paragraph 2 of Article 30-ter;
- b) in such a manner as to ensure the security, quality, liquidity and profitability of the portfolio as a whole;
- c) in assets the localisation of which shall be such as to ensure their availability.

3. Undertakings, however, shall invest all their assets in such a manner as to ensure that:

- a) investments in derivative financial instruments contribute to a reduction of risks or facilitate efficient portfolio management;
- b) investments in assets which are not admitted to trading on a regulated market shall in any event be kept to prudent levels;
- c) investments shall be properly diversified in such a way as to avoid excessive reliance on any particular asset, issuer or group of undertakings, or geographical area and excessive accumulation of risk in the portfolio as a whole;
- d) investments in assets issued by the same issuer, or by issuers belonging to the same group, shall not determine excessive risk concentration.

4. Undertakings may localise their assets also outside the territory of the Italian Republic or the Member States, provided that the principle under point (c) of paragraph 2 is complied with.

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<sup>186</sup> Paragraph replaced by article 1 (37, a) of legislative decree n. 74 of 12 May 2015. The previous version of paragraph 1) laid down: “*The insurance undertaking that carries on simultaneously insurance and reinsurance business shall establish reinsurance technical provisions at the end of each year, gross of retrocessions, in respect of the commitments undertaken, according to the rules set up by ISVAP regulation. Article 64 (2) shall apply*”.

<sup>187</sup> Paragraph repealed by article 1 (37, b) of legislative decree n. 74 of 12 May 2015. Paragraph 2 laid down: “*Until the issuing of the regulations referred to in article 42-bis (1) and 65 (3) undertakings shall establish reinsurance technical provisions at the end of each year, gross of retrocessions, in respect of the commitments undertaken. Technical provisions for reinsurance are generally entered in the financial statements according to the statements submitted by ceding undertakings. Undertakings shall assess the adequacy of reinsurance provisions so as to ensure that they are sufficient in respect of the commitments undertaken and make any necessary adjustment to the financial statements, taking also account of past experience*”.

<sup>188</sup> Chapter inserted by article 1 (38) of legislative decree n. 74 of 12 May 2015.

<sup>189</sup> Article inserted by article 1 (38) of legislative decree n. 74 of 12 May 2015.

<sup>190</sup> IVASS Regulation n. 24 of 06 June 2016.

5. When an undertaking has claims against reinsurers or retrocessionaries which have their head office in a third country whose solvency regime is not deemed to be equivalent under Community provisions, IVASS may require the ceding undertaking to localise assets of an amount equal to such claims within the territory of the Italian Republic.

6. IVASS, when it has not exercised the power referred to in paragraph 5, may require insurance or reinsurance undertakings which have their head office in a third country, whose solvency regime is not deemed to be equivalent under Community provisions, to provide collateral in the territory of the Italian Republic to secure their obligations towards an Italian undertaking.

### **Chapter III** **ASSETS REPRESENTING TECHNICAL PROVISIONS<sup>191</sup>**

#### Art. 38 (Representation of technical provisions<sup>192</sup>)

1. Technical provisions shall be covered by assets belonging to the undertaking<sup>193</sup>.

1-bis. The undertaking shall invest assets held to cover the technical provisions in a manner appropriate to the nature of the risks and commitments accepted and the duration of liabilities, and in the best interest of policyholders, beneficiaries and those entitled to insurance benefits, taking account of the strategic objectives disclosed by the undertaking<sup>194</sup>.

1-ter. In the case of a conflict of interest, the undertaking or the entity which manages its asset portfolio shall ensure that the investment is made in the best interest of policyholders, beneficiaries and those entitled to insurance benefits<sup>195</sup>.

2. The assets referred to under paragraph 1-bis can also include the loans granted to subjects other than natural persons and microenterprises, as defined by art. 2 (1) of the annex to the Recommendation 2003/361/EC of the European Commission<sup>196</sup>. In that case IVASS shall establish operating conditions and limits, taking the following criteria into account:

- a) the borrowers are identified by a bank or a financial intermediary registered in the register referred to in article 106 of legislative decree n. 385 of 1 September 1993 and subsequent modifications and integrations;
- b) the bank or financial intermediary referred to under a) retains a net economic interest in the operation, of no less than 5% of the loan granted, transferable to another bank or financial intermediary until the maturity date of the operation;
- c) the undertaking's internal control and risk management system is adequate and allows to fully understand the risks, in particular the credit risk, associated with that category of assets;

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<sup>191</sup> Heading replaced by article 1 (204) of legislative decree n. 74 of 12 May 2015.

<sup>192</sup> Heading replaced by article 1 (39, a) of legislative Decree n. 74 of 12 May 2015.

<sup>193</sup> Paragraph amended by article 3 (1, a), legislative decree n. 56 of 29 February 2008, as last replaced by article 1 (39, b) of legislative decree n. 74 of 12 May 2015.

The previous version laid down: "*The technical provisions for life and non-life insurance as well as the equalisation provisions referred to in article 37 (7) shall be covered by assets belonging to the undertaking. When choosing representative assets the undertaking shall take account of the type of risks and commitments accepted and of the need to secure the safety, yield and marketability of its investments, which it shall ensure are diversified and adequately spread*".

<sup>194</sup> Paragraph inserted by article 1 (39, c) of legislative decree n. 74 of 12 May 2015.

<sup>195</sup> Paragraph inserted by article 1 (39, c) of legislative decree n. 74 of 12 May 2015.

<sup>196</sup> Period supplemented by article 22 (4, a) of decree-law n. 91 of 24 June 2014, coordinated with conversion law n. 116 of 11 August 2014, as last replaced by article 1 (39, c), legislative decree n. 74 of 12 May 2015.

d) the undertaking has an adequate capitalisation level; by way of derogation from letters a) and b) the autonomous exercise of the identification of borrowers by the insurer shall be subject to IVASS' authorisation<sup>197</sup>.

2-bis. Insurance undertakings shall comply with the provisions of article 114 (2-bis) of the Consolidated Banking Law or with the relevant implementing rules issued by the Bank of Italy and IVASS<sup>198</sup>.

3. *(repealed)*<sup>199</sup>

4. *(repealed)*<sup>200</sup>

5. Where the representative assets include an investment in a subsidiary undertaking which manages all or part of the insurance undertaking's investments on its behalf, IVASS shall, when verifying the correct application of the rules and principles laid down in this article, take into account the assets held by the subsidiary undertaking.

6. *(repealed)*<sup>201</sup>

Art. 39  
*(repealed)*<sup>202</sup>

Art. 40  
*(repealed)*<sup>203</sup>

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<sup>197</sup> Period added by article 22 (4, b), decree-law n. 91 of 24 June 2014 coordinated with conversion law n. 116 of 11 August 2014.

<sup>198</sup> Paragraph inserted by article 1 (4) of legislative decree n. 68 of 21 May 2018.

<sup>199</sup> Paragraph repealed by article 1 (39, e) of legislative decree n. 74 of 12 May 2015. Paragraph 3 laid down: "*If ISVAP has reason to believe that the rules under paragraph 2 have not been observed for one or more assets, it shall inform the undertaking that such assets may not be admitted as cover for all or part of the technical provisions*".

<sup>200</sup> Paragraph repealed by article 1 (39, f) of legislative decree n. 74 of 12 May 2015. Paragraph 4 laid down: "*Without prejudice to the principles under paragraph 1, in exceptional circumstances and at the undertaking's reasoned request, ISVAP may, temporarily, allow the investment in categories of assets as cover for technical provisions other than those envisaged as a general rule*".

<sup>201</sup> Paragraph repealed by article 1 (39, g) of legislative decree n. 74 of 12 May 2015. Paragraph 6 laid down: "*In the case of contracts included in the Italian portfolio, the undertaking may localize assets representing technical provisions in one or more member States. At the undertaking's request, ISVAP may authorize the localization of part of the assets in a third State. Notwithstanding the provisions of this paragraph, the localization of claims against reinsurers used as cover for technical provisions is free, subject to Article 47*".

<sup>202</sup> Article repealed by article 1 (40) of legislative decree n. 74 of 12 May 2015. Article 39 laid down:

"Art. 39  
(Valuation of assets)

1. *Assets covering technical provisions shall be valued net of any debts arising out of their acquisition and of any adjusting entries.*

2. *Assets used as cover for technical provisions must be valued on a prudent basis, allowing for the risk of any amounts not being realizable.*

3. *ISVAP shall, by its own regulation, set out the provisions relating to the evaluation criteria for assets."*

<sup>203</sup> Article repealed by article 1 (41) of legislative decree n. 74 of 12 May 2015. Article 39 laid down:

"Art. 40  
(Matching rules)

1. *Where the insurance cover is expressed in terms of a particular currency, the undertaking's commitments are considered to be payable in that currency.*

2. *Where the insurance cover is not expressed in terms of any currency, the undertaking's commitments are considered to be payable in the currency of the country in which the risk is situated. In non-life insurance the undertaking may also pay the benefit in the same currency in which the premium was paid if, from the time the contract is entered into, it appears objectively likely that the benefit will be paid in the currency of the premium.*

#### Art. 41

(Index-linked contracts or contracts directly linked to units in UCITS)

1. Where the benefits provided by a contract are directly linked to the value of units in an UCITS or to the value of assets contained in an internal fund held by the insurance undertaking, the technical provisions in respect of those contracts shall be represented as closely as possible by the units in the UCITS or by the units in the internal fund, if it is divided into units, or by the assets contained in such fund.

2. Where the benefits provided by a contract are directly linked to a share index or another reference value other than those referred to in paragraph 1, the technical provisions in respect of those contracts shall be represented as closely as possible either by the units deemed to represent the reference value or, in the case where units are not established, by assets of appropriate security and marketability which correspond as closely as possible with those on which the particular reference value is based.

3. Article 37-ter (1, 2, 4, 5 and 6) and article 38 shall apply to assets representing the technical provisions regarding the contracts referred to under paragraphs 1 and 2<sup>204</sup>.

4. Article 37-ter and 38 shall apply to assets representing the technical provisions regarding the contracts referred to under paragraphs 1 and 2 which include a guarantee of investment performance or some other guaranteed benefit<sup>205</sup>.

5. IVASS may, by means of regulation<sup>206</sup>, limit the types of assets or reference values to which benefits can be linked, where the investment risk is borne by a policyholder who is a natural person. For insurance contracts where the benefits are directly linked to the value of units in an UCITS the provisions envisaged by IVASS shall be consistent with the provisions of legislative decree n. 47 of 16 April 2012<sup>207</sup>.

#### Art. 42

(Register of assets representing technical provisions<sup>208</sup>)

1. The undertaking shall keep a register showing assets representing technical provisions. The amount of such assets must at any time be at least equal to the amount of technical provisions, taking account of all the movements recorded<sup>209</sup>.

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3. *The undertaking shall cover its technical provisions in compliance with matching rules. ISVAP shall, by its own regulation, define cases of relaxations and establish the types, terms and limits to the use of assets expressed in another currency or of derivative financial instruments eligible to satisfy the same requirements.*

<sup>204</sup> Paragraph replaced by article 1 (42, a) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "Article 38 (1), second sentence, and the provisions on the maximum percentages provided for under paragraph 2 of the same article shall not apply to assets held to match liabilities directly linked to the benefits referred to in paragraphs 1 and 2. The provisions relating to the matching rules shall not apply to liabilities arising out of the contracts provided for under this article."

<sup>205</sup> Paragraph replaced by article 1 (42, b) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "Where the contract benefits referred to in paragraphs 1 and 2 include a guarantee of investment performance or some other guaranteed benefit, the corresponding additional technical provisions shall be subject to article 38".

<sup>206</sup> ISVAP Regulation n. 32 of 11 June 2009.

<sup>207</sup> Paragraph replaced by article 1 (42, c) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "ISVAP shall, by way of regulation, lay down more detailed rules fixing the categories of admissible assets, and of the relevant limits".

<sup>208</sup> Heading replaced by article 1 (43, a) of legislative Decree n. 74 of 12 May 2015.

<sup>209</sup> Paragraph replaced by article 1 (43, b) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "The undertaking shall keep a special register showing assets representing technical provisions for life and non-life business. The amount of such assets must at any time be at least equal to the amount of technical provisions, taking account of all the movements recorded".

1-bis. For the purposes of paragraph 1, assets representing technical provisions shall be entered in the register for an amount net of any debts arising out of their acquisition and of any adjusting entries and shall be valued in accordance with the provisions of article 35-quater<sup>210</sup>.

1-ter. The assets employed by the undertaking to cover the technical provisions corresponding to its reinsurance acceptances shall be managed and organised separately from the direct insurance activities, without any possibility of transfer<sup>211</sup>.

2. The assets representing the technical provisions written in said register are exclusively set aside for the fulfilment of the undertaking's obligations arising out of the contracts to which the provisions are referred. The assets provided for in this paragraph are segregate from the assets held by the undertaking and not written in said register<sup>212</sup>.

3. The undertaking shall inform IVASS of the state of the assets shown in the register<sup>213</sup>. IVASS shall, by its own regulation<sup>214</sup>, lay down provisions on the filling in and keeping of the register, with special regard to disclosure of operations effected, as well as to the terms, procedures and standard reports for periodical communications.

#### Art. 42-bis

(Assets representing technical provisions for reinsurance)<sup>215</sup>

1. *(repealed)*<sup>216</sup>

2. The assets representing technical provisions for life and non-life reinsurance shall be invested in compliance with the prudent person principle referred to under article 37-ter shall take account of the type of business carried out by the undertaking and, in particular, of the nature, amount and duration of the payments against the ceding undertaking<sup>217</sup>.

3. *(repealed)*<sup>218</sup>.

#### Article 42-ter *(repealed)*<sup>219</sup>

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<sup>210</sup> Paragraph inserted by article 1 (43, c) of legislative decree n. 74 of 12 May 2015.

<sup>211</sup> Paragraph inserted by article 1 (43, c) of legislative decree n. 74 of 12 May 2015.

<sup>212</sup> Paragraph replaced by article 1 (43, d) of legislative decree n. 74 of 12 May 2015. The previous version laid down: *"The assets representing the technical provisions written in said register are exclusively set aside for the fulfilment of the undertaking's obligations arising out of the contracts to which the provisions are referred. The assets provided for in this paragraph are segregate from the assets held by the undertaking and not written in said register"*.

<sup>213</sup> Period amended by article 1 (43, e) of legislative decree n. 74 of 12 May 2015.

<sup>214</sup> ISVAP Regulations n. 27 of 14 October 2008 and n. 36 of 31 January 2011, repealed by IVASS Regulation n. 24 of 6 June 2016.

<sup>215</sup> Article inserted by article 3 (2), legislative decree n. 56 of 29 February 2008.

<sup>216</sup> Paragraph repealed by article 1 (44, a) of legislative decree n. 74 of 12 May 2015. Paragraph 1 laid down: *"Articles 38, 39, 40 and 65-bis shall apply to assets representing technical provisions for life and non-life reinsurance as well as to the equalisation provisions referred to in article 37 (7). ISVAP shall issue a regulation establishing the categories of assets, including financial derivatives, accepted as cover for reinsurance technical provisions as well as the types, terms, limits of use and the relevant maximum percentages."*

<sup>217</sup> Paragraph replaced by article 1 (44, b) of legislative decree n. 74 of 12 May 2015. The previous version laid down: *"Until the issuing of the regulation referred to in paragraph 1 the assets covering reinsurance technical provisions shall take account of the type of business carried out by the undertaking and, in particular, of the nature, amount and duration of the expected claims payments, in such a way as to secure the sufficiency, liquidity, security, quality, profitability and matching of its investments"*

<sup>218</sup> Paragraph repealed by article 1 (44, c) of legislative decree n. 74 of 12 May 2015. Paragraph 3 laid down: *"The undertaking shall ensure that the assets are adequately diversified and spread and allow the undertaking to respond to changing economic circumstances, in particular developments in the financial markets and real estate markets or the impact of catastrophic events"*.

<sup>219</sup> Article inserted by article 3 (2), legislative decree n. 56 of 29 February 2008, as last repealed by article 1 (45) of legislative decree n. 74 of 12 May 2015. Article 42-ter laid down:

*"Art. 42-ter*

*(Assets representing reinsurance technical provisions for insurance undertakings when certain conditions are met)*

Art. 43

(Technical provisions relating to the business pursued under the right of establishment in third States)

1. As to the underwriting liabilities assumed by branches in third States, the undertaking shall establish the technical provisions in accordance with the laws applicable in those States and has sufficient assets to represent them in accordance with the provisions of article 38<sup>220</sup>.

2. *(repealed)*<sup>221</sup>

**Chapter IV**  
**OWN FUNDS**<sup>222</sup>

Art. 44  
*(repealed)*<sup>223</sup>

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1. *Where one of the conditions referred to in article 46 (3-bis) (a), (b) and (c) is met article 65 shall apply to the assets representing reinsurance technical provisions of the insurance undertaking that carries on simultaneously insurance and reinsurance business.*

2. *The assets employed by the insurance undertaking to cover the technical provisions corresponding to its reinsurance acceptances shall be managed and organised separately from the direct insurance activities, without any possibility of transfer.*

3. *Until the date of entry into force of the regulation envisaged under article 65 (3) and not later than 1 July 2008 the provisions of article 42-bis (2, 3) shall apply to the undertakings referred to in paragraph 1”.*

<sup>220</sup> Paragraph supplemented by article 1 (46, a) of legislative decree n. 74 of 12 May 2015.

<sup>221</sup> Paragraph repealed by article 1 (46, b) of legislative decree n. 74 of 12 May 2015. Paragraph 2 laid down: “*ISVAP shall verify that undertakings’ financial statements show assets adequate to cover the provisions provided for under paragraph 1”.*

<sup>222</sup> Heading replaced by article 1 (205) of legislative decree n. 74 of 12 May 2015. In the previous version, the wording of this Chapter was: “*Solvency margin*”.

<sup>223</sup> Article repealed by article 1 (47) of legislative decree n. 74 of 12 May 2015. Article 44 laid down:

“*Art. 44*  
*(Solvency margin)*

1. *The undertaking shall at all times possess an adequate solvency margin in respect of its entire business carried on in the territory of the Italian Republic and abroad. ISVAP shall, by its own regulation, lay down technical rules for calculating the required solvency margin, according to the insurance classes pursued, in compliance with the provisions of this chapter and with the laws and regulations on the supplementary supervision of undertakings belonging to a financial conglomerate.*

2. *The available solvency margin shall consist of the assets of the insurance undertaking free of any foreseeable liabilities, less any intangible items, including:*

- a) the paid-up share capital or, in the case of a mutual insurance undertaking, the paid-up initial fund;*
- b) statutory and free reserves neither corresponding to particular underwriting liabilities or to adjustments of asset items nor classified as equalisation provisions;*
- c) the profit for the current financial year and for the previous financial years brought forward after deduction of dividends to be paid;*
- d) the loss for the current financial year and for the previous financial years brought forward.*

3. *The available solvency margin may also consist of:*

*a) cumulative preferential share capital and subordinated loan capital up to 50 % of the lesser of the available solvency margin and the required solvency margin, no more than 25 % of which shall consist of subordinated loans with a fixed maturity, or fixed-term cumulative preferential share capital. To be included among the constituent elements of the available solvency margin subordinated loan capital must fulfil the conditions laid down in article 45 (1 and 2). Cumulative preferential share capital may be included provided that binding agreements exist under which, in the event of ordinary or compulsory liquidation of the undertaking, said share capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time of the liquidation have been settled;*

Art. 44-bis  
(repealed)<sup>224</sup>

**Section I**  
**DETERMINATION OF OWN FUNDS<sup>225</sup>**

Article 44-ter  
(Own funds)<sup>226</sup>

1. Own funds shall comprise the sum of basic own funds, referred to in article 44-quater and ancillary own funds referred to in article 44-quinquies, in compliance with the provisions established by IVASS regulation<sup>227</sup>, which lays down rules on the authorisation procedure referred to in article 44-quinquies.

2. With respect to the determination of own funds the undertaking shall comply with the directly applicable EU rules on the treatment of participations in financial and credit institutions and the adjustments that should be made to reflect the lack of transferability of those own-fund items that can only be used to cover losses arising from a particular segment of liabilities or from particular risks (*ring fenced funds*).

3. For the purposes of this article, treatment of participations in financial and credit institutions shall mean: 1) participations and 2) the other types of relevant financial instruments, according to the applicable sectoral regulations, that the undertaking has in financial and credit institutions and investment firms.

Article 44-quater  
(Basic own funds)<sup>228</sup>

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*(b) securities with no specified maturity date and other financial instruments, including cumulative preferential shares other than those mentioned in letter (a), up to 50% of the lesser of the available solvency margin and the required solvency margin, this limit refers to the total of such securities, instruments, cumulative preferential share capital and subordinated loan capital referred to in letter (a) of this paragraph. To be included among the constituent elements of the available solvency margin securities with no specified maturity and other financial instruments, including cumulative preferential share capital, must fulfil the conditions laid down in article 45 (8).*

4. *At the undertaking's reasoned request, accompanied by supporting evidence, ISVAP may allow that the available solvency margin may also consist of, for periods not exceeding twelve months each, the further asset items listed in the implementing provisions, as well as that the amounts recoverable from special purpose vehicles may be deducted from the required solvency margin as reinsurance amounts.*

5. *ISVAP shall, by its own regulation, define the assets which are not taken into account when calculating the undertaking's assets for the purposes of the solvency margin".*

<sup>224</sup> Article inserted by article 4 (2), legislative decree n. 56 of 29 February 2008, as last repealed by article 1 (48) of legislative decree n. 74 of 12 May 2015. Article 44-bis laid down:

*"Art. 44-bis*

*(Solvency margin of life assurance undertakings also pursuing reinsurance business)*

1. *The insurance undertaking authorised to pursue life assurance business that carries on simultaneously insurance and reinsurance business, in respect of its reinsurance acceptances, shall apply articles 66-bis, 66-ter, 66-quater and 66-quinquies for the solvency margin calculation and setting up where one of the following conditions is met:*

*a) the reinsurance premiums collected exceed 10% of its total premiums;*

*b) the reinsurance premiums collected exceed fifty million euros;*

*c) the technical provisions corresponding to its reinsurance acceptances exceed 10% of its total technical provisions".*

<sup>225</sup> Section inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.

<sup>226</sup> Article inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.

<sup>227</sup> IVASS Regulation n. 13 of 22 December 2015 and IVASS Regulation n. 25 of 26 July 2016.

<sup>228</sup> Article inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.

1. Basic own funds shall consist of the following asset and liability items:

The excess of assets over liabilities as assessed in compliance with Chapter I-bis and II of this Title and the relevant implementing measures adopted by the European Commission, reduced by the amount of own shares held by the undertaking.

b) subordinated liabilities.

Article 44-quinquies  
(Ancillary own funds)<sup>229</sup>

1. Ancillary own funds shall consist of asset items other than basic own funds referred to under article 44-quater which can be called up to absorb losses.

2. Ancillary own funds may comprise the following items if they are not basic own-fund items:

- a) unpaid share capital or initial fund that has not been called up;
- b) letters of credit and guarantees;
- c) any other legally binding commitments the undertaking has.

3. In a mutual insurance undertaking set up in accordance with article 2546 of the civil code ancillary own funds may comprise any future claims which that mutual insurance undertaking may have against its members by way of a call for supplementary contribution, within the following 12 months.

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

5. The amounts of ancillary own-fund items to be taken into account when determining own funds shall be subject to approval by IVASS.

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

7. For each ancillary own-fund item, for the purposes of paragraph 5, IVASS shall authorise:

- a) the use of a given monetary amount; or
- b) the adoption of a calculation method to quantify that amount; the authorisation of the calculation method shall be limited to a given period of time.

8. IVASS shall grant the authorisation referred to in paragraph 5 for each ancillary own-fund item taking the following elements of assessment into account:

- a) the status of the counterparties concerned, in relation to their ability and willingness to pay;
- b) the recoverability of the funds, taking account of the legal form of the item, as well as any conditions which would prevent the item from being successfully paid in or called up;
- c) any information on the outcome of past calls which undertakings have made for such ancillary own funds, to the extent that information can be reliably used to assess the expected outcome of future calls.

Article 44-sexies  
(Own funds regarding special with-profit contracts)<sup>230</sup>

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<sup>229</sup> Article inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.

<sup>230</sup> Article inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.



1. IVASS shall, by its own regulation, identify the characteristics of with-profit contracts in which the relevant profit provisions represent amounts which the undertaking has at its disposal for making them available, where appropriate, to policyholders and beneficiaries.

2. Such amounts will be considered as own funds if they meet the criteria referred to under article 44-octies (2).

## **Section II** **CLASSIFICATION AND ELIGIBILITY OF OWN FUNDS<sup>231</sup>**

### Article 44-septies (Characteristics and features used to classify own funds into tiers)<sup>232</sup>

1. Own-fund items shall be classified into three tiers. Their classification shall depend upon their inclusion in basic own fund or ancillary own-fund items and the extent to which such items possess the following characteristics:

- a) permanent availability: the item is available, or can be called up on demand, to fully absorb losses on a going-concern basis, as well as in the case of winding-up;
- b) subordination: in the case of winding-up of the undertaking, the total amount of the item is available to absorb losses and the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations towards policy holders and beneficiaries of insurance and reinsurance contracts, have been met.

2. When assessing the extent to which own funds possess the characteristics set out in paragraph 1 (a and b), due consideration shall be given to the duration of the item, in particular whether the item is dated or not. In case the item is dated its duration shall be assessed by taking into account its duration vis-à-vis *the* duration of undertakings' insurance and reinsurance obligations.

3. Without prejudice to paragraph 1, for the classification of own-fund items the undertaking shall assess that the following characteristics are met:

- a) absence of obligations or incentives to redeem the nominal sum of the item;
- b) absence of mandatory servicing costs;
- c) absence of encumbrances.

### Art. 44-octies (Classification into tiers)<sup>233</sup>

1. Undertakings shall classify their own-fund items on the basis of the criteria laid down in paragraphs 2, 3, 4 and 5.

2. Basic own-fund items shall be classified in tier 1 where they substantially possess the characteristics set out in article 44-septies (1, a and b), taking into consideration the features set out in article 44-septies (2 and 3).

3. Basic own-fund items shall be classified in tier 2 where they substantially possess the characteristics set out in article 44-septies (1, b), taking into consideration the features set out in article 44-septies (2 and 3).

4. Ancillary own-fund items shall be classified in tier 2 where they substantially possess the characteristics set out in article 44-septies (1, a and b), taking into consideration the features set out in article 44-septies (2 and 3).

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<sup>231</sup> Section inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.

<sup>232</sup> Article inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.

<sup>233</sup> Article inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.

5. Any basic and ancillary own-fund items which do not have the features referred to under paragraphs 1, 2 or 3 shall be classified in tier 3.

6. For the purposes of paragraph 1, the undertaking shall refer, where applicable, to the list of own-fund items adopted by the European Commission.

7. The undertaking shall evaluate and classify the elements not included in the list referred to under paragraph 6 in accordance with paragraph 1. The classification made by the undertaking shall be subject to the approval of IVASS

Article 44-novies  
(Classification of specific own-fund items)<sup>234</sup>

1. Without prejudice to article 44-octies and the list of own-fund items adopted by the European Commission the following classifications shall be applied:

- a) surplus funds regarding with-profit contracts falling under article 44-sexies (2) shall be classified in tier 1;
- b) letters of credit and guarantees which are held in trust for the benefit of insurance creditors by an independent trustee and provided by credit institutions authorised in accordance with the European regulations applicable shall be classified in tier 2;
- c) any future claims which a mutual insurance undertaking set up in accordance with article 2546 of the civil code may have against their members by way of a call for supplementary contributions, within the following 12 months, shall be classified in tier 2.

2. In accordance with article 44-octies (4), any future claims which a mutual insurance undertaking set up in accordance with article 2546 of the civil code may have against their members by way of a call for supplementary contributions, within the following 12 months, not falling under paragraph 1 (c) shall be classified in tier 2 where they substantially possess the characteristics set out in article 44-septies (1, a and b), taking into consideration the features set out in article 44-septies (2 and 3).

Article 44-decies  
(Eligibility and limits applicable to tiers 1, 2 and 3)<sup>235</sup>

1. As far as compliance with the Solvency Capital Requirement is concerned, the eligible own-fund items shall be identified in compliance with the quantitative limits envisaged by the directly applicable EU rules and be such as to ensure that the following conditions at least are met:

- a) the proportion of tier 1 items in the eligible own funds is higher than one third of the total amount of eligible own funds;
- b) the eligible amount of tier 3 items is less than one third of the total amount of eligible own funds.

2. As far as compliance with the Solvency Capital Requirement is concerned, the eligible basic own-fund items shall be identified in compliance with the quantitative limits envisaged by the directly applicable EU rules and be such as to ensure, as a minimum, that the amount of tier 1 items in the eligible basic own funds is higher than one half of the total amount of eligible basic own funds.

3. The eligible amount of own funds to cover the Solvency Capital Requirement set out in article 45-bis shall be equal to the sum of the amount of tier 1, the eligible amount of tier 2 and the eligible amount of tier 3.

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<sup>234</sup> Article inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.

<sup>235</sup> Article inserted by article 1 (49) of legislative decree n. 74 of 12 May 2015.

4. The eligible amount of basic own funds to cover the Minimum Capital Requirement set out in article 47-bis shall be equal to the sum of the amount of tier 1 and the eligible amount of basic own-fund items classified in tier 2.

5. IVASS shall, by way of regulation<sup>236</sup>, lay down provisions on the application of the provisions referred to in this Section.

Art. 45  
(repealed)<sup>237</sup>

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<sup>236</sup> Regulation no. 25 of 26 July 2016.

<sup>237</sup> Article repealed by article 1 (50) of legislative decree n. 74 of 12 May 2015. Article 45 laid down:

*"Art. 45*

*(Subordinated loan capital, securities with no specified maturity date and other financial instruments)*

*1. Subordinated loan capital may be included in the available solvency margin, taking account of only fully paid-up funds, provided that binding agreements exist under which, in the event of ordinary or compulsory liquidation of the undertaking, said loan capital ranks after the claims of all other creditors and is not to be repaid until all other debts outstanding at the time of the liquidation have been settled.*

*2. Subordinated loan capital may be included in the available solvency margin, without prejudice to the provisions of paragraph 1, when the documents governing its issue:*

- a) expressly provide that any amendments shall be valid only after ISVAP has approved them;*
- b) do not include any clause providing that in circumstances other than the winding-up of the undertaking, the loan will become repayable before the agreed repayment dates;*
- c) for loans with a fixed maturity, the minimum duration must be at least five years;*
- d) loans the maturity of which is not fixed must be repayable only subject to at least five years' notice;*
- e) provide for the early repayment of such loans only on the initiative of the issuing undertaking and subject to ISVAP's prior authorisation.*

*3. For loans with a fixed maturity, no later than one year before the repayment date, the undertaking must submit to IVASS for its approval a plan showing how and the means by which the undertaking intends to keep the state of solvency at maturity, taking also account of the foreseeable solvency margin requirements at the close of the financial year during which the undertaking intends to pay off the loan. The obligation to submit the plan shall not apply if the undertaking has gradually reduced, during the last five years before the repayment date, the amount of the loan taken into account for the available solvency margin, and has at the same time replaced it with eligible elements.*

*4. The provisions under paragraphs 2 and 3 shall not preclude the possibility of an early repayment of all or part of loans with a fixed maturity, on the initiative of the bearer and subject to ISVAP's prior authorisation.*

*5. The early repayment of all or part of the loans the maturity of which is not fixed may be effected only upon application by the undertaking and subject to ISVAP's prior authorisation.*

*6. In the cases provided for under paragraphs 4 and 5 a reasoned request must be submitted to ISVAP at least six months before the date for the early repayment, accompanied by supporting evidence showing how and the means by which the undertaking intends to keep the state of solvency and attesting that such early repayment will not prejudice the available solvency margin taking also account of the foreseeable solvency margin requirements at the close of the financial year during which the undertaking intends to make the early repayment. Such authorisation may also be granted for an amount lower than the amount requested.*

*7. For loans the maturity of which is not fixed, the serving of notice, to be immediately notified to ISVAP, or the request for early repayment results in the reduction in the utilization of subordinated loan capital from fifty per cent to twenty-five per cent of the lesser of the available solvency margin and the required solvency margin. If such notice is given the provisions under paragraph 3 shall apply.*

*8. Securities with no specified maturity date and the other financial instruments, including those with a fixed maturity of at least ten years, and cumulative preferential shares mentioned in article 44 (3) b), may be included in the available solvency margin, taking account of only fully paid-up funds, provided they fulfil the following:*

- a) the documents governing their issue state that they can be modified only subject to ISVAP's prior authorisation;*
- b) the documents governing their issue exclude the possibility that they can be repaid on the initiative of the bearer or without ISVAP's prior authorisation. Such authorisation may also be granted for an amount lower than the amount requested. For the purpose of early repayment and of the relevant authorisation, a reasoned request must be submitted*

**Chapter IV-bis**  
**SOLVENCY CAPITAL REQUIREMENTS<sup>238</sup>**

**Section I**  
**GENERAL PROVISIONS ON THE CALCULATION OF THE SOLVENCY CAPITAL REQUIREMENT<sup>239</sup>**

Art. 45-bis  
(Solvency Capital Requirement)<sup>240</sup>

1. Undertakings shall hold sufficient eligible own funds covering the Solvency Capital Requirement.
2. The Solvency Capital Requirement shall be calculated, either in accordance with the standard formula in Section II of this Chapter and with the relevant implementing measures adopted by the European Commission or using an internal model, as set out in Section III of this Chapter and in the relevant implementing measures adopted by the European Commission, in compliance with the guidelines provided by IVASS regulation<sup>241</sup>.

Article 45-ter  
(Calculation of the Solvency Capital Requirement)<sup>242</sup>

1. Undertakings shall calculate the Solvency Capital Requirement in accordance with paragraphs 2 to 6.
2. Undertakings shall calculate the Solvency Capital Requirement on the presumption that they will pursue business as a going concern.
3. The Solvency Capital Requirement shall be calibrated so as to ensure that all quantifiable risks to which an undertaking is exposed are taken into account. This requirement shall cover existing business, as well as the new business that the undertaking expects to write over the following 12 months. With respect to existing business, this requirement shall cover only unexpected losses.

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*to ISVAP, at least six months before the date of the early repayment, accompanied by supporting evidence showing how and the means by which the undertaking intends to keep the state of solvency and attesting that such early repayment will not prejudice the available solvency margin taking also account of the foreseeable solvency margin requirements at the close of the financial year during which the undertaking intends to make the early repayment;*

*c) the documents governing their issue must enable the undertaking to defer the payment of interest on the loan when the undertaking does not possess the required solvency margin. Accrued unpaid interest is not included in the calculation of the available solvency margin;*

*d) the documents governing their issue set out that the lender's claims on the undertaking must rank entirely after those of all non-subordinated creditors, including insured parties;*

*e) the documents governing their issue must provide for the definitive or temporary loss-absorption capacity of the debt and of accrued unpaid interest, while enabling the undertaking to continue its regular business. The losses shown in the undertaking's financial statements must have resulted in a reduction of the required solvency margin, without bringing the latter back to the required amount at the same time. The notes on the accounts must adequately indicate the existence and application of the loss-absorption clause.*

*9. ISVAP shall, by its own regulation, set out the conditions aimed at fully guaranteeing the insurance undertaking's stability, under which securities with no specified maturity date, the other financial instruments – including cumulative preferential shares – and subordinated loan capital may be included among the constituent elements of the available solvency margin.*

*10. In compliance with the conditions and limits provided for in this article cumulative preferential shares, subordinated loan capital, securities with no specified maturity date and the other financial instruments may be accepted for the calculation of the adjusted solvency of a reinsurance undertaking and of the solvency of its parent company as per articles 217 and 218<sup>o</sup>.*

<sup>238</sup> Chapter inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

<sup>239</sup> Section inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

<sup>240</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

<sup>241</sup> IVASS Regulations n. 11 and 12 of 22 December 2015 and IVASS Regulation n. 31 of 9 November 2016.

<sup>242</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

4. The Solvency Capital Requirement shall correspond to the Value-at-Risk of the basic own funds of the undertaking subject to a confidence level of ninety-nine point five percent (99,5%) over a one-year period.

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

- a) non-life underwriting risk;
- b) life underwriting risk;
- c) health underwriting risk;
- d) market risk;
- e) credit risk;
- f) operational risk. This risk shall include legal risks, and exclude risks arising from strategic decisions, as well as reputation risks.

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

**Article 45-quater**  
(Frequency of calculation of the Solvency Capital Requirement)<sup>243</sup>

1. Undertakings shall calculate the Solvency Capital Requirement at least once a year and report the result of that calculation to IVASS.

2. Undertakings shall hold eligible own funds which cover the last reported Solvency Capital Requirement, pursuant to paragraph 1.

3. Undertakings shall monitor the amount of eligible own funds and the Solvency Capital Requirement on an ongoing basis.

4. If the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as last reported in accordance with paragraph 1, the undertaking concerned shall recalculate the Solvency Capital Requirement without delay and report it to IVASS.

5. Where there is evidence that the risk profile of the undertaking has altered significantly since the date on which the communication referred to in paragraph 1 was last made, IVASS may require the undertaking to recalculate the Solvency Capital Requirement.

**Section II**  
**STANDARD FORMULA<sup>244</sup>**

**Article 45-quinquies**  
(Structure of the standard formula)<sup>245</sup>

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

- a) the Basic Solvency Capital Requirement, as laid down in article 45-sexies;
- b) the Capital Requirement for operational risk as set out in article 45-decies;

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<sup>243</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

<sup>244</sup> Section inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

<sup>245</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in article 45-undecies.

2. IVASS shall, by way of regulation<sup>246</sup>, lay down provisions implementing the standard formula in accordance with the provisions of the European Union.

Article 45-sexies  
(Design of the Basic Solvency Capital Requirement)<sup>247</sup>

1. The Basic Solvency Capital Requirement shall comprise individual risk modules, which are aggregated in accordance with the formula defined in IVASS regulation referred to in article 45-quinquies (2). It shall consist of at least the following risk modules:

- a) non-life underwriting risk;
- b) life underwriting risk;
- c) health underwriting risk;
- d) market risk;
- e) counterparty default risk.

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

3. The correlation coefficients for the aggregation of the risk modules referred to in paragraph 1, as well as the calibration of the capital requirements for each risk module, shall result in an overall Solvency Capital Requirement which complies with the principles set out in article 45-ter.

4. Each risk module referred to in paragraph 1 shall be calibrated using a Value-at-Risk measure, with a confidence level of ninety-nine point five percent (99,5%), over a one-year period. Where appropriate, diversification effects shall be taken into account in the design of each risk module.

5. Undertakings shall use the same design and specifications for the risk modules, both with respect to the Basic Solvency Capital Requirement and to any simplified calculations as laid down in article 45-duodecies.

6. With regard to catastrophe risks, geographical specifications may, where appropriate, be used for the calculation of the life, non-life and health underwriting risk modules.

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

Article 45-septies  
(Calculation of the Basic Solvency Capital Requirement)<sup>248</sup>

1. Undertakings shall calculate the Basic Solvency Capital Requirement in accordance with paragraphs 2 to 11.

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<sup>246</sup> IVASS Regulations no. 14, 15, 16 of 22 December 2015, IVASS Regulations no. 26, 27 and 28 of 26 July 2016, IVASS Regulation no. 31 of 9 November 2016 and IVASS Regulation no. 35 of 7 February 2017.

<sup>247</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

<sup>248</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

2. The non-life underwriting risk module shall reflect the risk arising from non-life insurance obligations, in relation to the risks covered and the processes used in the conduct of business. It shall also take account of the uncertainty in the results of the undertaking related to the existing insurance and reinsurance obligations as well as to the new business expected to be written over the following 12 months.

3. Undertakings shall calculate the module referred to in paragraph 2, in accordance with the formula defined in IVASS regulation referred to in article 45-quinquies (2), as a combination of the capital requirements for at least the following sub-modules:

- a) non-life premium and reserve risk: the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements;
- b) non-life catastrophe risk: the risk of loss, or of adverse change in the value of insurance liabilities, resulting from significant uncertainty of pricing and provisioning assumptions related to extreme or exceptional events.

4. The life underwriting risk module shall reflect the risk arising from life insurance obligations, in relation to the risks covered and the processes used in the conduct of business.

5. Undertakings shall calculate the risk module referred to in paragraph 4, in accordance with the formula defined in IVASS regulation referred to in article 45-quinquies, as a combination of the capital requirements for at least the following sub-modules:

- a) mortality risk: the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where an increase in the mortality rate leads to an increase in the value of insurance liabilities;
- b) longevity risk: the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of mortality rates, where a decrease in the mortality rate leads to an increase in the value of insurance liabilities;
- c) disability – morbidity risk: the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend or volatility of disability, sickness and morbidity rates;
- d) life-expense risk: the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts;
- e) revision risk: the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the level, trend, or volatility of the revision rates applied to annuities, due to changes in the legal environment or in the state of health of the person insured;
- f) lapse risk: the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level or volatility of the rates of policy reductions, lapses, including surrenders, terminations and renewals;
- g) life-catastrophe risk: the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to extreme or irregular events.

6. The health underwriting risk module shall reflect the risk arising from the underwriting of health insurance obligations, both when such obligations have been defined according to a similar technical basis to that of life insurance or according to a similar technical basis to that of non-life insurance, following from both the risks covered and the processes used in the conduct of business.

7. The module referred to in paragraph 6 shall be calculated so as to cover at least the following risks:

- a) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from changes in the level, trend, or volatility of the expenses incurred in servicing insurance or reinsurance contracts;
- b) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from fluctuations in the timing, frequency and severity of insured events, and in the timing and amount of claim settlements at the time of provisioning;
- c) the risk of loss, or of adverse change in the value of insurance liabilities, resulting from the significant uncertainty of pricing and provisioning assumptions related to outbreaks of major epidemics, as well as the unusual accumulation of risks under such extreme circumstances.

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

9. The module referred to in paragraph 8 shall be calculated in accordance with the formula defined in IVASS regulation referred to in article 45-quinquies (2), as a combination of the capital requirements for at least the following sub-modules:

- a) interest rate risk: the sensitivity of the values of assets, liabilities and financial instruments to changes in the term structure of interest rates, or in the volatility of interest rates;
- b) equity risk: the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of equities;
- c) property risk: the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of market prices of real estate;
- d) spread risk; the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of credit spreads over the risk-free interest rate term structure;
- e) currency risk: the sensitivity of the values of assets, liabilities and financial instruments to changes in the level or in the volatility of currency exchange rates;
- f) market risk concentrations: additional risks to an undertaking stemming either from lack of diversification in the asset portfolio or from large exposure to default risk by a single issuer of securities or a group of related issuers.

10. The counterparty default risk module shall reflect possible losses due to unexpected default, or deterioration in the credit standing, of the counterparties and debtors of the undertaking over the following 12 months. This module shall cover risk-mitigating contracts, such as reinsurance arrangements, securitisations and derivatives, and receivables from intermediaries, as well as any other credit exposures which are not covered in the spread risk sub-module. The module shall take appropriate account of collateral or other security held by or for the account of the undertaking and the risks associated therewith.

11. The counterparty default risk module referred to in paragraph 10 shall take account, for each counterparty, of the overall counterparty risk exposure of the undertaking to that counterparty, irrespective of the legal form of its contractual obligations.

#### Art. 45-octies

(Calculation of the equity risk sub-module: symmetric adjustment mechanism)<sup>249</sup>

1. The equity risk sub-module (*equity risk charge*) calculated by the undertaking in accordance with the standard formula shall include:

- a) standard equity risk charge applied to cover the risk arising from changes in the level of equity prices, calibrated in accordance with article 45-sexies (4);

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<sup>249</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.



b) a symmetric adjustment, based on a function of the current level of an appropriate equity index and a weighted average level of that index. The weighted average shall be calculated over an appropriate period of time which shall be the same for all undertakings as defined by the European Commission.

2. The symmetric adjustment referred to in point b) of paragraph 1 shall determine an equity risk sub-module (*equity risk charge*), calculated according to the standard formula, which is not more than ten (10) percentage points below or above the standard charge referred to in point a) of paragraph 1.

Article 45-novies  
(Duration-based equity risk sub-module)<sup>250</sup>

1. IVASS may authorise the application of an equity risk sub-module of the Solvency Capital Requirement referred to in paragraphs 3 and 4 by life insurance undertakings providing:

a) occupational retirement provision business; or  
b) retirement benefits paid by reference to reaching, or the expectation of reaching, retirement where the premiums paid for those benefits have a tax deduction for policy holders in accordance with Italian legislation.

2. The authorization referred to in paragraph 1 may be granted by IVASS when all the following conditions are met:

1) all assets and liabilities corresponding to the business are ring-fenced, managed and organised separately from the other activities of the undertaking, without any possibility of transfer;  
2) the activities of the undertaking related to points (a) and (b) of paragraph 1, in relation to which the approach referred to in this article is applied, are pursued only in the territory of the Italian Republic;  
3) the average duration of the liabilities corresponding to the business held by the undertaking exceeds 12 years.

3. The equity risk sub-module of the Solvency Capital Requirement is calibrated using a Value-at-Risk measure, over a time period, which is consistent with the typical holding period of equity investments for that undertaking, with a confidence level providing the policy holders and beneficiaries with a level of protection equivalent to that set out in article 45-ter, where the approach provided for in this article is used only in respect of those assets and liabilities referred to in point 1) of paragraph 2.

4. In the calculation of the Solvency Capital Requirement the undertaking shall fully consider those assets and liabilities referred to in point 1) of paragraph 2 for the purpose of assessing the diversification effects, without prejudice to the need to safeguard the interests of policy holders and beneficiaries in other Member States.

5. IVASS shall grant the approval referred to in paragraph 1 where the solvency and liquidity position as well as the strategies, processes and reporting procedures of the undertaking with respect to asset–liability management are such as to ensure, on an ongoing basis, that it is able to hold equity investments for a period which is consistent with the typical holding period of equity investments for that undertaking.

6. For the purposes of obtaining the approval referred to in paragraph 1, the undertaking shall demonstrate to IVASS that the condition under paragraph 5 is verified with the level of confidence necessary to provide policy holders and beneficiaries with a level of protection equivalent to that set out in article 45-ter.

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<sup>250</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

7. The undertaking applying the equity risk sub-module pursuant to paragraph 1 shall not revert to applying the approach set out in article 45-septies, except in duly justified circumstances and subject to the approval of IVASS.

Article 45-decies  
(Capital requirement for operational risk)<sup>251</sup>

1. The capital requirement for operational risk shall reflect operational risks to the extent they are not already reflected in the risk modules referred to in article 45-sexies. That requirement shall be calibrated in accordance with article 45-ter (3 and 4).

2. With respect to life insurance contracts where the investment risk is borne by the policy holders, the calculation of the capital requirement for operational risk shall take account of the amount of annual expenses incurred in respect of those insurance obligations.

3. With respect to insurance and reinsurance operations other than those referred to in paragraph 2, the calculation of the capital requirement for operational risk shall take account of the volume of those operations, in terms of earned premiums and technical provisions which are held in respect of those insurance and reinsurance obligations. In this case, the capital requirement for operational risks shall not exceed thirty percent (30%) of the Basic Solvency Capital Requirement relating to those insurance and reinsurance operations.

Article 45-undecies  
(Adjustment for the loss-absorbing capacity of technical provisions and deferred taxes)<sup>252</sup>

1. The adjustment referred to in article 45-quinquies (1) c) for the loss-absorbing capacity of technical provisions and deferred taxes shall reflect potential compensation of unexpected losses through a simultaneous decrease in technical provisions or deferred taxes or a combination of the two.

2. That adjustment shall take account of the risk mitigating effect provided by future discretionary benefits of insurance contracts, to the extent undertakings can establish that a reduction in such benefits may be used to cover unexpected losses when they arise. The risk mitigating effect provided by future discretionary benefits shall be no higher than the sum of technical provisions and deferred taxes relating to those future discretionary benefits.

3. For the purpose of paragraph 2, the value of future discretionary benefits under adverse circumstances shall be compared to the value of such benefits under the underlying assumptions of the best-estimate calculation of technical provisions.

Article 45-duodecies  
(Simplifications in the standard formula)<sup>253</sup>

1. Undertakings may use a simplified calculation for a specific sub-module or risk module where the nature, scale and complexity of the risks they face justifies it and where the application of the standardised calculation would be disproportionate. Simplified calculations shall be calibrated in accordance with article 45-ter (3 and 4).

Article 45-terdecies  
(Significant deviations from the assumptions underlying the standard formula calculation)<sup>254</sup>

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<sup>251</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

<sup>252</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

<sup>253</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

<sup>254</sup> Article inserted by article 1 (51) of legislative decree n. 74 of 12 May 2015.

1. Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula, because the risk profile of the undertaking deviates significantly from the assumptions underlying the standard formula calculation, IVASS may, by means of a decision stating the reasons, require the undertaking to replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in article 45-sexies (7). Those specific parameters shall be calculated in such a way to ensure that the undertaking complies with Article 45-ter (3 and 4).

Art. 46  
(repealed)<sup>255</sup>

### Section III FULL OR PARTIAL INTERNAL MODELS<sup>256</sup>

Art. 46-bis  
(Approval to use full or partial internal models: general provisions)<sup>257</sup>

1. Undertakings may be authorized by IVASS to calculate the Solvency Capital Requirement using a full internal model or one or more partial internal models, in accordance with directly applicable EU rules.
2. Undertakings may use partial internal models for the calculation of one or more of the following elements:
  - a) one or more risk modules, or sub-modules, of the Basic Solvency Capital Requirement, as set out in articles 45-sexies and 45-septies;
  - b) the Capital Requirement for operational risk as set out in article 45-decies;

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<sup>255</sup> Article repealed by article 1 (52) of legislative decree n. 74 of 12 May 2015. Article 46 laid down:

*“Art. 46  
(Guarantee fund)*

1. *One third of the required solvency margin shall constitute the guarantee fund.*
2. *The guarantee fund of an undertaking pursuing life business, without prejudice to the limits established for the amount of share capital or of the initial fund, may in no case be less than three million euros.*
3. *The guarantee fund of an undertaking pursuing non-life business, without prejudice to the limits established for the amount of corporate capital or of the initial fund, may in no case be less than two million euros. In the case where the undertaking is authorised to carry on the insurance classes 10, 11, 12, 13, 14 and 15 provided for in article 2 (3), the guarantee fund may in no case be lower than three million euros. If the authorisation covers several insurance classes, only that class for which the highest amount is required shall be taken into account.*
- 3-bis. *The insurance undertaking authorised to pursue non-life insurance business that carries on simultaneously insurance and reinsurance business shall possess, in respect of its entire business, a guarantee fund in accordance with article 66-sexies, where one of the following conditions is met:*
  - a) *the reinsurance premiums collected exceed 10% of its total premiums;*
  - b) *the reinsurance premiums collected exceed fifty million euros;*
  - c) *the technical provisions corresponding to its reinsurance acceptances exceed 10% of its total technical provisions.*
4. *The guarantee fund is covered exclusively by the asset items listed in article 44 (2), less any intangible items listed in the regulation mentioned in paragraph 5 of the same article.*
5. *The amount as laid down in paragraphs 2 and 3 shall be increased annually, by regulation adopted by ISVAP, in line with the increase in the European index of consumer prices as published by Eurostat, unless the increase is less than five per cent.*

<sup>256</sup> Section inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>257</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

c) the adjustment for the loss-absorbing capacity of technical provisions and deferred taxes, as laid down in article 45-undecies.

3. Subject to the provisions of paragraph 2, undertakings may apply partial modelling to the whole business or only to one or more major business units.

4. Undertakings shall submit, in support of their application for approval, all the documents giving evidence that the internal model fulfils the requirements set out in articles 46-novies, 46-decies, 46-undecies, 46-duodecies, 46-terdecies, 46-quaterdecies.

5. Where the application for approval relates to a partial internal model, the requirements set out in articles 46-novies, 46-decies, 46-undecies, 46-duodecies, 46-terdecies, 46-quaterdecies shall be adapted to take account of the limited scope of the application of the model.

5-bis. IVASS shall inform EIOPA of the application to use or change an internal model. IVASS may request EIOPA to provide technical assistance with respect to the decision on the application<sup>258</sup>.

6. IVASS shall grant the approval referred to in paragraph 1 within six months from the receipt of the complete application, after ascertaining that the systems of the undertaking for identifying, measuring, monitoring, managing and reporting risks are adequate and in particular, that the internal model fulfils the requirements referred to in paragraphs 4 and 5.

7. IVASS may reject the application for the use of an internal model by means of a decision stating the reasons on which it is based.

8. After having issued approval to use an internal model, as established in paragraph 1, IVASS may, by means of a decision stating the reasons, require undertakings to provide an estimate of the Solvency Capital Requirement determined in accordance with the standard formula, as set out in Section II of this Chapter.

#### Article 46-ter

(Approval to use partial internal models: specific provisions)<sup>259</sup>

1. For the purposes of the approval referred to in article 46-bis, the partial internal model may be approved only where that model fulfils the requirements set out in said article and the following additional conditions:

- a) the reason for the limited scope of application is properly justified by the undertaking;
- b) the Solvency Capital Requirement calculated by using the partial model reflects more appropriately the risk profile of the undertaking and in particular complies with the principles set out in Section I of this Chapter;
- c) its design is consistent with the principles set out in Section I of this Chapter so as to allow the partial internal model to be fully integrated into the standard formula.

2. When assessing an application for the use of a partial internal model which only covers certain sub-modules of a specific risk module, or some of the business units of an undertaking with respect to a specific risk module, or parts of both, IVASS may require the undertakings to submit a realistic transitional plan to extend the scope of the model.

3. The transitional plan referred to in paragraph 2 shall set out the manner in which undertakings plan to extend the scope of the partial model referred to in paragraph 1 to other sub-modules or

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<sup>258</sup> Paragraph inserted by article 28 (1, b) of Law n. 238 of 23 December 2021.

<sup>259</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

business units, in order to ensure that the model covers a predominant part of their insurance operations with respect to that specific risk module.

Article 46-quater  
(Policy for changing the full and partial internal models)<sup>260</sup>

1. Undertakings may change their internal model in accordance with the policy approved by IVASS within the application process for the approval of the full and partial internal model in accordance with article 46-bis.
2. The policy referred to in paragraph 1 shall include a specification of minor and major changes to the internal model.
3. Major changes to the internal model, as well as changes to the policy referred to in paragraph 1, shall be subject to the prior approval of IVASS, as laid down in article 46-bis.
4. Minor changes to the internal model shall not be subject to the approval of IVASS, insofar as they are developed in accordance with the policy referred to in paragraph 1.

Article 46-quinquies  
(Responsibility of the board of directors for the internal models)<sup>261</sup>

1. The board of directors of the undertaking shall approve the application for approval of the use of the internal model to be submitted to IVASS, pursuant to article 46-bis, as well as the application for approval of any subsequent major changes made to that model.
2. The board of directors shall put in place systems which ensure that the internal model operates properly on a continuous basis.

Article 46-sexies  
(Reversion to the standard formula)<sup>262</sup>

1. The undertaking that has received approval to use a full or partial internal model in accordance with article 46-bis shall not revert to calculating the whole or any part of the Solvency Capital Requirement in accordance with the standard formula, as set out in Section II of this Chapter, except in duly justified circumstances and subject to the approval of IVASS.

Article 46-septies  
(Non-compliance of the internal model)<sup>263</sup>

1. The undertaking which has received approval to use an internal model in accordance with article 46-bis, and which ceases to comply with the requirements set out in articles 46-novies, 46-decies, 46-undecies, 46-duodecies, 46-terdecies, 46-quaterdecies, shall, without delay, either present to IVASS a plan to restore compliance within a reasonable period of time, or demonstrate that the effect of non-compliance is immaterial.
2. In the event that the undertaking fails to implement the plan referred to in paragraph 1, IVASS may require the undertaking to revert to calculating the Solvency Capital Requirement in accordance with the standard formula, as set out in Section II of this Chapter.

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<sup>260</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>261</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>262</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>263</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

Art. 46-octies

(Significant deviations from the assumptions underlying the standard formula)<sup>264</sup>

1. Where it is inappropriate to calculate the Solvency Capital Requirement in accordance with the standard formula because the risk profile of the undertaking deviates significantly from the assumptions underlying the standard formula calculation, IVASS may, by means of a decision stating the reasons, require the undertaking to use an internal model to calculate the Solvency Capital Requirement, or the relevant risk modules thereof.

Article 46-novies

(Use test)<sup>265</sup>

1. Undertakings shall demonstrate that the full or partial internal model is widely used in and plays an important role in their system of governance, referred to in Title III, Chapter I, Section II, in particular:

- a) in the risk-management system as laid down in article 30-bis and the decision-making processes;
- b) in the economic and solvency capital assessment and allocation processes, including the own-risk and solvency assessment referred to in Article 30-ter.

2. Undertakings shall demonstrate that the frequency of calculation of the Solvency Capital Requirement using the internal model is consistent with the frequency with which they use their internal model for the other purposes covered by paragraph 1.

3. The board of directors shall ensure the ongoing appropriateness of the design and operations of the internal model, and that the internal model continues to appropriately reflect the risk profile of the undertaking.

Article 46-decies

(Statistical quality standards)<sup>266</sup>

1. The undertaking shall ensure that the internal model, and in particular the calculation of the probability distribution forecast underlying it, shall comply with the criteria set out in this article.

2. When calculating the probability distribution forecast undertakings shall use methods which shall be based on adequate, applicable and relevant actuarial and statistical techniques, and shall be consistent with the methods used to calculate technical provisions. The methods used to calculate the probability distribution forecast shall be based upon current and credible information and realistic assumptions. Where required, undertakings shall justify the assumptions underlying their internal model to IVASS.

3. The undertaking shall ensure that the data used for the internal model are accurate, complete and appropriate and shall update the data sets used in the calculation of the probability distribution forecast at least annually.

4. Regardless of the method chosen for the calculation of the probability distribution forecast, the undertaking shall ensure that the ability of the internal model to rank risk shall be sufficient to ensure that it is widely used in and plays an important role in the governance system, in particular in the risk-management system and decision-making processes, and capital allocation in accordance with article 46-novies.

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<sup>264</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>265</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>266</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

5. The internal model shall cover all of the material risks to which undertakings are exposed and at least the risks set out in article 45-ter (5).

6. As regards diversification effects, undertakings may take account in their internal model of dependencies within and across risk categories, provided that IVASS is satisfied that the system used for measuring those diversification effects is adequate.

7. Undertakings may take full account of the effect of risk-mitigation techniques in their internal model, as long as credit risk and other risks arising from the use of risk-mitigation techniques are properly reflected in the internal model.

8. Undertakings shall accurately assess the particular risks associated with financial guarantees and any contractual options in their internal model, where material. They shall also assess the risks associated with both policy holder options and options for insurance and reinsurance undertakings. For that purpose, undertakings shall take account of the impact that future changes in financial and non-financial conditions may have on the exercise of those options.

9. In their internal model, undertakings may take account of future management actions that they would reasonably expect to carry out in specific circumstances, making allowance for the time necessary to implement such actions.

10. In their internal model, undertakings shall take account of all payments to policy holders, beneficiaries, insureds and any other subject entitled to insurance benefits, which they expect to make, whether or not those payments are contractually guaranteed.

Article 46-undecies  
(Calibration standards)<sup>267</sup>

1. Undertakings may use a different time period or risk measure than that set out in article 45ter (3 and 4) for internal modelling purposes as long as the outputs of the internal model can be used by those undertakings to calculate the Solvency Capital Requirement in a manner that provides policy holders, beneficiaries, insureds and any other subject entitled to insurance benefits with a level of protection equivalent to that set out in article 45-ter.

2. Where practicable, undertakings shall derive the Solvency Capital Requirement directly from the probability distribution forecast generated by their internal model, using the Value-at-Risk measure set out in article 45-ter (4).

3. Where undertakings cannot derive the Solvency Capital Requirement directly from the probability distribution forecast generated by their internal model, IVASS may allow approximations to be used in the process to calculate the Solvency Capital Requirement, as long as those undertakings can demonstrate that policy holders and insureds are provided with a level of protection equivalent to that provided for in article 45-ter.

4. IVASS may require undertakings to run their internal model on relevant benchmark portfolios and using assumptions based on external rather than internal data in order to verify the calibration of the internal model and to check that its specification is in line with generally accepted market practice.

Article 46-duodecies  
(Profit and loss attribution)<sup>268</sup>

1. Undertakings shall review, at least annually, the causes and sources of profits and losses for each major business unit.

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<sup>267</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>268</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

2. Undertakings shall demonstrate how the categorisation of risk adopted in the internal model explains the causes and sources of profits and losses. The categorisation of risk and attribution of profits and losses shall reflect the risk profile of the undertaking.

Article 46-terdecies  
(Validation standards)<sup>269</sup>

1. Undertakings shall adopt a regular cycle of model validation which includes, with reference to this model, monitoring the performance of the internal model, reviewing the ongoing appropriateness of its specification, and testing its results against experience.

2. Undertakings shall include in their model validation process an effective statistical process for validating the internal model which enables those undertakings to demonstrate to IVASS that the resulting capital requirements are appropriate.

3. Undertakings shall use statistical methods which allow to test the appropriateness of the probability distribution forecast compared to loss experience as well as to all material new data and information relating to this probability distribution.

4. Undertakings shall include in their model validation process an analysis of the stability of the internal model and in particular the testing of the sensitivity of the results to changes in key underlying assumptions. This validation process shall also include an assessment of the accuracy, completeness and appropriateness of the data used by the internal model.

Article 46-quaterdecies  
(Documentation standards)<sup>270</sup>

1. Undertakings shall document the design and operational details of their internal model.

2. The documentation referred to under paragraph 1 shall:

- a) demonstrate compliance with articles 46-novies, 46-decies, 46-undecies, 46-duodecies, 46-terdecies;
- b) provide a detailed outline of the theory, assumptions, and mathematical and empirical bases underlying the internal model;
- c) indicate any circumstances under which the internal model does not work effectively.

3. Undertakings shall document all major changes to their internal model, as set out in article 46-quater.

Article 46-quinquiesdecies  
(External models and data)<sup>271</sup>

1. Undertakings using a model or data obtained from a third party shall comply with all the requirements for the internal model set out in articles 46-novies, 46-decies, 46-undecies, 46-duodecies, 46-terdecies, 46-quaterdecies and in the relevant implementing provisions.

Art. 47  
(repealed)<sup>272</sup>

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<sup>269</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>270</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>271</sup> Article inserted by article 1 (53) of legislative decree n. 74 of 12 May 2015.

<sup>272</sup> Article repealed by article 1 (54) of legislative decree n. 74 of 12 May 2015. Article 47 laid down:

“Art. 47

(Cession of risks accepted by a reinsurer)



**Section IV**  
**MINIMUM CAPITAL REQUIREMENT<sup>273</sup>**

Art. 47-bis  
(Minimum Capital Requirement: general provisions)<sup>274</sup>

1. Undertakings hold eligible basic own funds, to cover the Minimum Capital Requirement.

Article 47-ter  
(Calculation of the Minimum Capital Requirement)<sup>275</sup>

1. The Minimum Capital Requirement shall be calculated in accordance with the relevant implementing provisions adopted by the European Commission, in compliance with the following principles:

- a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;
- b) it shall correspond to an amount of eligible basic own funds below which policy holders, beneficiaries, insureds and any other subject entitled to insurance benefits are exposed to an unacceptable level of risk were undertakings allowed to continue their operations;
- c) the linear function referred to in paragraph 2 used to calculate the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of an undertaking subject to a confidence level of eighty-five (85%) over a one-year period;
- d) it shall have an absolute floor of:

- 1) EUR 2 500 000 for non-life insurance undertakings, including captive insurance undertakings, save in the case where all or some of the risks included in one of the classes 10 to 15 listed in article 2 (3) are covered, in which case it shall be no less than EUR 3 700 000;
- 2) EUR 3,700,000 for life insurance undertakings, including captive insurance undertakings;
- 3) EUR 6 200 000, i.e. the sum of the amounts set out in points 1) and 2) for undertakings carrying on life assurance and non-life insurance simultaneously.

2. Subject to paragraph 3, the Minimum Capital Requirement shall be calculated as a linear function of a set or sub-set of the following variables: the undertaking's technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses. The variables used shall be measured net of reinsurance.

3. Without prejudice to paragraph 1(d), the Minimum Capital Requirement shall neither fall below twenty-five per cent (25%) nor exceed forty-five per cent (45%) of the undertaking's Solvency Capital Requirement, calculated in accordance with Sections II and III of this Chapter, including any capital add-on imposed in accordance with article 47-sexies.

4. Until 31 December 2017, IVASS may require the undertaking to apply the percentages referred to in paragraph 3 exclusively to the Solvency Capital Requirement calculated in accordance with Section II of this Chapter.

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*1. ISVAP may decide, as regards the representation of technical provisions and the calculation of the solvency margin, not to take account of the cession of reinsurance risks to undertakings with head office in third States which have not appointed a legal representative in the territory of the Italian Republic or in the territory of another member State.*

*2. The reasons for ISVAP's decision must be based exclusively on assessments concerning the solvency of reinsurance undertakings".*

<sup>273</sup> Section inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

<sup>274</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

<sup>275</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

5. Undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the result of that calculation to IVASS.

6. For the purposes of calculating the limits referred to in paragraph 3, undertakings shall not be required to calculate the Solvency Capital Requirement on a quarterly basis.

7. Where the Minimum Capital Requirement referred to in paragraph 5 coincides with either of the limits referred to in paragraph 3, the undertaking shall provide to IVASS any information necessary for a proper understanding of the reasons therefor.

#### **Chapter IV-ter** **INFORMATION AND SUPERVISORY REVIEW PROCESS<sup>276</sup>**

##### Art. 47-quater

(Requirements of the information to be provided to IVASS for the purpose of verifying the conditions for the pursuit of business)<sup>277</sup>

1. Undertakings shall submit to IVASS the information which, taking into account the objectives of supervision laid down in articles 3 and 5, is necessary to IVASS for performing the supervisory review process referred to in article 47-quinquies. Such information, in compliance with the provisions established by IVASS regulation<sup>278</sup>, shall include at least elements:

- a) to assess the system of governance applied by the undertakings, the business they are pursuing, the valuation principles applied for solvency purposes, the risks faced and the risk-management systems, and their capital structure, needs and management;
- b) to make any appropriate decisions resulting from the exercise of their supervisory functions and powers.

2. Without prejudice to article 190 (1-bis and 1-ter), IVASS shall, by its own regulation<sup>279</sup>, determine the nature, the scope and the format of the information referred to in paragraph 1 which undertakings are required to submit at predefined periods, upon occurrence of predefined events and during enquiries regarding the situation of the undertaking.

3. Without prejudice to article 47-ter (5), where information must be provided at predefined intervals which are shorter than one year, IVASS may limit such reporting, where

- a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;
- b) the information is reported at least annually.

4. Paragraph 3 shall not apply where regular supervisory reporting relates to insurance or reinsurance undertakings that are part of a group within the meaning of article 210, unless the undertaking can demonstrate to the satisfaction of IVASS that a frequency longer than one year is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group.

5. The limitation to regular supervisory reporting shall be granted only to undertakings that do not represent more than 20 % of the domestic life and non-life market respectively. The non-life

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<sup>276</sup> Chapter inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

<sup>277</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

<sup>278</sup> IVASS Regulation n.33 of 6 December 2016

<sup>279</sup> IVASS Regulation n.33 of 6 December 2016.

market share is based on gross written premiums and the life market share is based on gross technical provisions.

6. IVASS, when determining the eligibility for the limitations referred to in paragraphs 3 and 5, shall take account of the size of the undertakings and give priority to the smallest undertakings.

7. IVASS may limit regular supervisory reporting or exempt undertakings from reporting on an item-by-item basis, where:

- a) the submission of that information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking;
- b) the submission of that information is not necessary for the effective supervision of the undertaking;
- c) the exemption does not undermine the stability of the financial systems concerned in the Union; and
- d) the undertaking is able to provide the information on an ad-hoc basis.

8. IVASS shall not exempt from reporting on an item-by-item basis undertakings that are part of a group within the meaning of article 210, unless the undertaking can demonstrate to the satisfaction of IVASS that reporting on an item-by-item basis is inappropriate, given the nature, scale and complexity of the risks inherent in the business of the group and taking into account the objective of financial stability.

9. The exemption from reporting on an item-by-item basis shall be granted only to undertakings that do not represent more than 20 % of the domestic life and non-life market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.

10. IVASS shall give priority to the smallest undertakings when determining the eligibility of the undertakings for the exemptions referred to in paragraphs 7, 8 and 9.

11. For the purposes of exercising the power of limitation of or exemption from the obligation to submit information as set out in paragraphs 3, 4, 5, 6, 7, 8, 9 and 10, as part of the supervisory review process referred to in article 47-quinquies, IVASS shall assess whether the submission of information would be overly burdensome in relation to the nature, scale and complexity of the risks inherent in the business of the undertaking, taking into account, at least:

- a) the volume of premiums, technical provisions and assets of the undertaking;
- b) the volatility of the claims and benefits covered by the undertaking;
- c) the market risks that the investments of the undertaking give rise to;
- d) the level of risk concentrations;
- e) the total number of classes of life and non-life insurance for which authorisation is granted;
- f) possible effects of the management of the assets of the undertaking on financial stability;
- g) the systems and structures of the undertaking to provide information for supervisory purposes and the written policy on information referred to in article 30 (5);
- h) the appropriateness of the system of governance of the undertaking;
- i) the level of own funds covering the Solvency Capital Requirement and the Minimum Capital Requirement;
- l) whether the undertaking is a captive undertaking.

Article 47-quinquies  
(Supervisory review process)<sup>280</sup>

1. IVASS shall review and evaluate the strategies, processes and reporting procedures which are adopted by undertakings to comply with the provisions of this code and with directly applicable

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<sup>280</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

EU rules. The supervisory review process shall comprise the assessment of the qualitative requirements relating to the system of governance, the assessment of the risks which undertakings face or may face and the assessment of the ability of those undertakings to assess those risks taking into account the environment in which the undertakings are operating.

2. IVASS shall in particular review and evaluate that undertakings comply with the provisions relating to:

- a) the system of governance, including the own-risk and solvency assessment, as set out in Title III, Chapter I, Section II;
- b) the technical provisions as set out in Title II, Chapter II;
- c) the capital requirements as set out in Title III, Chapter IV-bis;
- d) the investments as set out in articles 37-ter, 38 and 41;
- e) the quality and quantity of own funds as set out in Title III, Chapter IV;
- f) the requirements for full or partial internal models set out in Title III, Chapter IV-bis, Section III.

3. IVASS shall monitor undertakings by means of appropriate tools with a view to identifying deteriorating financial conditions and monitoring how that deterioration is remedied.

4. IVASS shall assess:

- a) the adequacy of the methods and practices of the undertaking designed to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of that undertaking.
- b) the ability of the undertaking to face those possible events or future changes in economic conditions.

5. As part of the supervisory review process, in addition to the calculation of the Solvency Capital Requirement and where appropriate, IVASS may use necessary quantitative tools to assess the ability of the undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. IVASS may require undertakings to perform corresponding tests or analyses.

6. IVASS, in case of weaknesses or deficiencies identified in the supervisory review process, shall take measures as it deems appropriate among those envisaged in Titles XIV, XVI and XVIII.

7. The supervisory review process shall be conducted regularly. IVASS shall, by way of regulation, establish the minimum frequency and the scope of the supervisory review process, having regard to the nature, scale and complexity of the activities of the undertaking.

Article 47-sexies  
(Capital add-on)<sup>281</sup>

1. Following the supervisory review process referred to in article 47-quinquies IVASS may, in exceptional circumstances, set a capital add-on for an undertaking by a decision stating the reasons when the following conditions are met:

a) in the judgement of IVASS the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with Title II, Chapter IV-bis, Section II and:

- 1) the use of an internal model under article 46-octies is inappropriate or has been ineffective; or
- 2) while a partial or full internal model is being developed in accordance with article 46-octies;

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<sup>281</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

b) in the judgement of IVASS the risk profile of the undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with Title III, Chapter IV-bis, Section III, because certain quantifiable risks are captured insufficiently and the undertaking has not been able to adapt the model to better reflect its own risk profile within the timeframe set by IVASS;

c) the system of governance of an undertaking deviates significantly from the provisions laid down in Title III, Chapter I, Section II, and those deviations prevent it from being able to properly identify, measure, monitor, manage and report the risks that it is or could be exposed to, and the other measures which could be adopted by IVASS would not be appropriate to improve the deficiencies sufficiently within an appropriate timeframe.

d) the undertaking applies the matching adjustment referred to in article 36-quinquies, the volatility adjustment referred to in article 36-septies or the transitional measures referred to in Articles 344-novies and 344-decies and IVASS concludes that the risk profile of that undertaking deviates significantly from the assumptions underlying those adjustments and transitional measures.

2. In the circumstances set out in points (a) and (b) of paragraph 1 the capital add-on shall be calculated in such a way as to ensure that the undertaking complies with article 45-ter (3 and 4).

3. In the circumstances set out in point (c) of paragraph 1 the capital add-on shall be proportionate to the material risks arising from the deficiencies which gave rise to the decision of IVASS to set the add-on.

4. In the circumstances set out in point (d) of paragraph 1 the capital add-on shall be proportionate to the material risks arising from the deviation.

5. In the cases set out in points (b) and (c) of paragraph 1 IVASS shall ensure that the undertaking makes every effort to remedy the deficiencies that led to the imposition of the capital add-on.

6. IVASS shall review, at least once a year, the imposition of the capital add-on and shall remove it when the undertaking has remedied the deficiencies found.

7. The Solvency Capital Requirement including the capital add-on imposed shall replace the inadequate Solvency Capital Requirement.

8. Notwithstanding paragraph 7, for the purposes of the calculation of the risk margin referred to in article 36-ter (9, 10 and 11), the Solvency Capital Requirement shall not include the capital add-on imposed in accordance with paragraph 1(c).

9. IVASS shall, by way of regulation<sup>282</sup>, lay down provisions on the application of the capital add-on referred to in this article.

#### Article 47-septies

(Report on solvency and financial condition: contents)<sup>283</sup>

1. Undertakings shall, taking into account the provisions of article 190 (1-bis and 1-ter), disclose publicly, on an annual basis, a report on their solvency and financial condition and shall submit it to IVASS together with the information referred to in article 47-quater (1).

2. The report referred to in paragraph 1 shall contain information, either in full or by way of references to other equivalent information, both in nature and scope, disclosed publicly under other legal or regulatory requirements, concerning:

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

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<sup>282</sup> IVASS Regulation n. 48 of 13 July 2021

<sup>283</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

- b) the description of the system of governance and the assessment of the adequacy of this system for the risk profile of the undertaking;
- c) the description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;
- d) the description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;
- e) the description of the capital management, including at least:

- 1) the structure and amount of own funds, and their quality;
- 2) the amounts of the Solvency Capital Requirement and of the Minimum Capital Requirement;
- 3) the exercise of the option set out in article 45-novies used for the calculation of the Solvency Capital Requirement;
- 4) information allowing a proper understanding of the main differences between the underlying assumptions of the standard formula and those of each internal model used by the undertaking for the calculation of its Solvency Capital Requirement;
- 5) the amount of non-compliance with the Minimum Capital Requirement or any significant non-compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, together with an explanation of its causes, consequences and any remedial measures taken.

3. Where the matching adjustment referred to in article 36-quinquies is applied, the description referred to in paragraph 2(d) shall include a description of the matching adjustment and of the portfolio of obligations and assigned assets to which the matching adjustment is applied, as well as a quantification of the impact of a change to zero of the matching adjustment on the undertaking's financial position. The description referred to in paragraph 2(d) shall also include a statement on whether the volatility adjustment referred to in article 36-sexies is used by the undertaking and a quantification of the impact of a change to zero of the volatility adjustment on the undertaking's financial position.

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

5. The disclosure of the Solvency Capital Requirement referred to in point (e)(2) of paragraph 2 shall show separately the amount calculated in accordance with Title III, Chapter IV-bis, Section II and Section III and any capital add-on as required by IVASS in accordance with article 47-sexies or the impact of the specific parameters the undertaking has been required to use by IVASS in accordance with article 45-terdecies, together with concise information on its justification by IVASS.

6. The disclosure referred to in point (e)(2) of paragraph 2 shall be accompanied, where applicable, by the indication that the Solvency Capital Requirement is still subject to assessment by IVASS.

7. IVASS shall, by its own regulation<sup>284</sup>, determine the elements of the report referred to in paragraph 1, which shall be accompanied by the report by the statutory auditor or by the statutory auditing firm.

#### Art. 47-octies

(Report on solvency and financial condition: applicable principles)<sup>285</sup>

1. IVASS shall permit an undertaking not to disclose information where such disclosure:

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<sup>284</sup> IVASS Regulation n. 42 of 02 August 2018.

<sup>285</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

a) may allow market competitors to gain significant undue advantage;  
b) is covered by secrecy or confidentiality obligations of the undertaking to policy holders or other counterparties.

2. In the case referred to in paragraph 1, undertakings shall make a statement on the exemption from the disclosure obligation in their report on solvency and financial condition and shall state the reasons.

3. IVASS shall permit undertakings to make use of – or refer to – public disclosures made under other legal or regulatory requirements, to the extent that those disclosures are equivalent to the information required under article 47-septies in both their nature and scope.

4. Paragraphs 1 and 2 shall not apply to the information referred to in Article 47-septies (2)(e).

5. IVASS shall, by its own regulation<sup>286</sup>, establish the arrangements, terms and contents of the report on solvency and financial condition.

#### Article 47-novies

(Report on solvency and financial condition: updates and additional voluntary information)<sup>287</sup>

1. In the event of any relevant circumstance affecting significantly the information disclosed in accordance with articles 47-septies and 47-octies, the undertaking shall disclose appropriate information on the nature and effects of that relevant circumstance.

2. For the purposes of paragraph 1, at least the following shall be regarded as relevant circumstances:

a) IVASS, after observing non-compliance with the Minimum Capital Requirement, considers that the undertaking will not be able to submit a realistic short-term finance scheme or the undertaking does not submit such a scheme within one month of the date when non-compliance was observed;

b) IVASS observes that the undertaking has not submitted a realistic recovery plan within two months of the date when significant non-compliance with the Solvency Capital Requirement was observed.

3. In regard to point (a) of paragraph 2, IVASS shall require the undertaking to disclose immediately the amount of non-compliance with the Solvency Capital Requirement, together with an explanation of the relevant causes and effects for the undertaking, including any remedial measure taken. Where, in spite of a short-term finance scheme initially considered to be realistic, non-compliance with the Minimum Capital Requirement has not been resolved three months after its observation, the undertaking shall disclose it at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures planned.

4. In regard to point (b) of paragraph 2, IVASS shall require the undertaking to disclose immediately the amount of non-compliance, together with an explanation of its causes and effects for the undertaking, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be realistic, a significant non-compliance with the Solvency Capital Requirement has not been resolved six months after its observation, the undertaking shall disclose it at the end of that period, together with an explanation of its origin and consequences, including any remedial measures taken as well as any further remedial measures.

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<sup>286</sup> IVASS Regulation n. 33 of 06 December 2016.

<sup>287</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

5. Undertakings may publish any information, also of an explanatory nature relating to their solvency and financial condition, which is not already subject to the disclosure obligation in accordance with articles 47-septies and 47-octies and with paragraphs 1, 2, 3 and 4 of this article.

Article 47-decies  
(Approval of the report on solvency and financial condition)<sup>288</sup>

1. The solvency and financial condition report shall be subject to approval by the board of directors and be published only after that approval.

Article 47-undecies  
(Information for EIOPA)<sup>289</sup>

1. IVASS shall, on an annual basis, provide EIOPA with information regarding:

a) the average capital add-on per undertaking and the distribution of capital add-ons imposed by IVASS during the previous year, measured as a percentage of the Solvency Capital Requirement, shown separately as follows:

- 1) for insurance and reinsurance undertakings;
- 2) for insurance undertakings pursuing life assurance;
- 3) for insurance undertakings pursuing non-life insurance;
- 4) for insurance undertakings pursuing both life assurance and non-life insurance;
- 5) for undertakings pursuing reinsurance business;

b) for each of the disclosures set out in point (a), the proportion of capital add-ons imposed under points (a), (b) and (c) of Article 47-sexies (1) respectively.

c) the number of undertakings benefiting from the limitation from regular supervisory reporting and the number of insurance and reinsurance undertakings benefiting from the exemption of reporting on an item-by-item basis referred to in article 47-quater (3, 4, 5, 6, 7, 8, 9, 10 and 11), together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of the insurance or reinsurance undertakings with head office in the territory of the Italian Republic;

d) the number of groups benefiting from the limitation from regular supervisory reporting and the number of insurance and reinsurance undertakings benefiting from the exemption of reporting on an item-by-item basis referred to in article 216-octies, together with their volume of capital requirements, premiums, technical provisions and assets, respectively measured as percentages of the total volume of capital requirements, premiums, technical provisions and assets of all the groups referred to in article 210.

**CHAPTER IV-quater  
(Insurance undertakings acting as institutional investors) <sup>290</sup>**

Article 47-duodecies  
(Disclosure by institutional investors)

1. The undertaking referred to in art. 124-quater, par. 1, b), 1) of legislative decree n.58 of 24 February 1998, shall comply with the provisions of Part IV, Title III, Chapter II, Section I-ter of said legislative decree, concerning disclosure by institutional investors.

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<sup>288</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

<sup>289</sup> Article inserted by article 1 (55) of legislative decree n. 74 of 12 May 2015.

<sup>290</sup> Chapter inserted by article 6 (2) of legislative decree n. 49 of 10 May 2019.



2. IVASS shall lay down provisions implementing paragraph 1, in compliance with art. 124-novies, par. 3, of legislative decree n.58 of 24 February 1998.

## **CHAPTER V**

### **UNDERTAKINGS WITH HEAD OFFICE IN A THIRD STATE**

#### Art. 48

(Provisions applicable to undertakings which have their head office in a third country)<sup>291</sup>

1. Branches established in the territory of the Italian Republic by undertakings with head office in a third State shall comply with the supervisory provisions set forth in this Chapter.

2. IVASS shall exercise the powers referred to in articles 188, 189, 190, 190 bis (1), and 191 also in respect of the branches established in the territory of the Italian Republic by undertakings with head office in a third State.

3. IVASS shall, by its own regulation, set out the provisions applicable to the branches referred to in paragraph 1, also with regard to the organisational requirements and operating conditions including those applicable to the branches authorised to pursue simultaneously both life assurance and accident and sickness insurance. Articles 30-octies, 30-novies, 32, 33, 35, 35-bis and 35-ter shall apply.

#### Art. 48-bis

(Financial statements, registers and accounts)<sup>292</sup>

1. Branches established in the territory of the Italian Republic by undertakings with head office in a third State shall comply with the provisions relating to financial statements, registers and accounts set forth in Title VIII.

#### Art. 49

(Technical provisions)<sup>293</sup>

1. As regards insurance and reinsurance obligations included in the portfolio of the branch, the non-member-country insurance undertaking shall comply with the rules relating to technical provisions of undertakings with head office within the territory of the Italian Republic, referred to in Chapter II of this Title.

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<sup>291</sup> Article replaced by article 1 (56) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "1. Branches established in the territory of the Italian Republic by undertakings with head office in a third State shall carry on business by means of an adequate administrative and accounting organization and an adequate internal control system. Article 30 (2 and 3) shall apply.

2. The provisions of articles 31, 32, 33, 34 and 35 shall apply to the branch".

<sup>292</sup> Article inserted by article 1 (57) of legislative decree n. 74 of 12 May 2015.

<sup>293</sup> Article replaced by article 1 (58) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "1. As regards insurance business and the operations included in the portfolio of the branch, the undertaking shall comply with the rules relating to technical provisions of undertakings with head office within the territory of the Italian Republic.

2. As regards the localization of assets representing technical provisions the provisions of article 38 (6) shall be applicable. ISVAP may however require that such assets shall be localised in the territory of the Italian Republic, wherever that is deemed necessary to protect the interests of policyholders and of those entitled to insurance benefits.

3. Undertakings authorised to carry on life assurance and accident and sickness insurance simultaneously shall comply with the provisions applicable to undertakings with head office within the territory of the Italian Republic".

1-bis. The undertakings referred to in paragraph 1 shall value the assets and liabilities of the branch in accordance with article 35-quater, shall determine the own funds of the branch in accordance with the provisions of Sections I and II, Chapter IV of this Title and shall invest assets in accordance with the provisions of articles 37-ter (1, 2, 3, 5 and 6), 38, 41 and 42.

2. IVASS may require that assets representing technical provisions shall be localised in the territory of the Italian Republic, wherever that is deemed necessary to protect the interests of policyholders and of those entitled to insurance benefits.

#### Art. 50

(Calculation of the Solvency Capital Requirement and of the Minimum Capital Requirement)<sup>294</sup>

1. The non-member-country insurance undertaking shall possess, for its branch, an amount of eligible own funds consisting of the items referred to in article 44-decies (3).

1-bis. The undertakings referred to in paragraph 1 shall calculate the Solvency Capital Requirement and the Minimum Capital Requirement in accordance with the provisions of Chapter IV-bis, as regards the operations effected by the branch.

2. The eligible amount of basic own funds required to cover the Minimum Capital Requirement and the absolute floor of that Minimum Capital Requirement shall be constituted in accordance with article 44-decies (4). The eligible amount of basic own funds may not be less than half of the absolute floor required under article 47-ter (1)(d).

2-bis. The deposit lodged in accordance with article 28 (5) shall be counted towards such eligible basic own funds to cover the Minimum Capital Requirement.

3. The assets representing the Solvency Capital Requirement must be kept within the territory of the Italian Republic up to the amount of the Minimum Capital Requirement and the excess within the territory of other member States.

4. The provisions under paragraphs 1 and 1-bis shall not apply to undertakings authorized to pursue business also in other member States, whose overall solvency is supervised by the supervisory authority of one of those States pursuant to article 51.

#### Art. 51

(Advantages to undertakings operating in more than one member State)<sup>295</sup>

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<sup>294</sup> Article replaced by article 1 (59) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

*“Art. 50*

*(Calculation of the solvency margin and the guarantee fund)*

*1. The undertaking possesses, for its branch, a solvency margin set up in accordance with the provisions of chapter IV, where applicable, and calculated taking account of the business pursued by the branch in line with the provisions in the regulation adopted by ISVAP.*

*2. One-third of the minimum solvency margin shall constitute the guarantee fund. The fund may not be less than one-half of the amounts required under article 46 for the insurance classes referred to in the authorization.*

*3. The assets representing the solvency margin must be kept within the territory of the Italian Republic up to the amount of the guarantee fund and the excess within the territory of other member States.*

*4. The provision under paragraph 1 shall not apply to undertakings authorized to pursue business also in other member States, whose overall solvency is supervised by the supervisory authority of one of those States pursuant to article 51”.*

<sup>295</sup> Article replaced by article 1 (60) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

*“Art. 51*

*(Advantages to undertakings operating in more than one member State)*

1. A non-member-country undertaking which, when requesting authorisation to pursue business within the territory of the Italian Republic, is already authorized to pursue life or non-life business in one or several member States or has filed an application for authorisation in those States, may ask that:

- a) by derogation from the provisions in article 50 (1-bis), the Solvency Capital Requirement shall be calculated in relation to the entire business carried on by its branches established within the territory of the member States;
- b) the deposit required under article 28 (5) shall be lodged in only one of those member States;
- c) the assets representing the Minimum Capital Requirement shall be localised in any one of the member States in which it has established a branch.

1-bis. The application referred to in paragraph 1 shall be made to IVASS and to the supervisory authorities of the other member States concerned.

2. The undertaking which, after obtaining the authorization to pursue business within the territory of the Italian Republic, establishes a branch also within the territory of another member State may also apply for these advantages.

3. In the application the undertaking shall state the selected authority which is to supervise the solvency of the entire business of the branches established within the member States. Reasons must be given for the application. If the application is accepted the undertaking shall lodge the deposit required under article 28 (5) in the member State whose authority is to supervise the solvency of the entire business carried on within the territory of the European Union.

4. Advantages may be granted only jointly and with the consent of all authorities of the member States concerned. They shall take effect from the time when the authority selected to supervise the solvency of the entire business, after receiving the agreement of all the member States concerned, informs the other authorities that it will supervise the state of solvency. At the request of one or more of the Member States concerned, the advantages shall be withdrawn by all Member States concerned.

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*1. Any undertaking which, when requesting authorisation to pursue business within the territory of the Italian Republic, is already authorized to pursue life or non-life business in one or several member States or has filed an application for authorisation in those States, may ask that:*

- a) by derogation from the provisions in article 50 (1), the solvency margin shall be calculated in relation to the entire business carried on by its branches established within the territory of the member States;*
- b) the deposit required under article 28 (5) shall be lodged in only one of those member States;*
- c) the assets representing the minimum guarantee fund shall be localised in any one of the member States in which it has established a branch. The application shall be made to ISVAP and to the supervisory authorities of the other member States concerned.*

*2. The undertaking which, after obtaining the authorization to pursue business within the territory of the Italian Republic, establishes a branch also within the territory of another member State may also apply for these advantages.*

*3. In the application the undertaking shall state the selected authority which is to supervise the solvency of the entire business of the branches established within the member States. Reasons must be given for the application. If the application is accepted the undertaking shall lodge the deposit required under article 28 (5) in the member State whose authority is to supervise the solvency of the entire business carried on within the territory of the European Union.*

*4. Advantages may be granted only jointly and with the consent of all authorities of the member States concerned. They shall take effect from the time when the authority selected to supervise the solvency of the entire business, after receiving the agreement of all the member States concerned, informs the other authorities that it will supervise the state of solvency. The advantages shall be withdrawn in all member States concerned in case they are withdrawn by just one single supervisory authority.*

*5. The undertaking to which the advantages have been granted shall calculate the solvency margin in relation to the entire business carried on by all the branches established within the member States".*

5. The undertaking to which the advantages have been granted shall calculate the Solvency Capital Requirement in relation to the entire business carried on by all the branches established within the member States.

6. IVASS shall cooperate with the supervisory authorities of the other Member States with a view to exchanging the information necessary for the supervision of the overall solvency.

## **TITLE IV LOCAL UNDERTAKINGS AND PARTICULAR MUTUAL INSURANCE UNDERTAKINGS<sup>296</sup>**

### **Chapter I GENERAL PROVISIONS<sup>297</sup>**

#### Art. 51-bis

(Provisions relating to local undertakings and particular mutual insurance undertakings)<sup>298</sup>

1. The provisions of this Title shall apply to:

- a) local insurance undertakings which satisfy the conditions under article 51-ter, including mutual insurance undertakings set up in accordance with article 2546 of the civil code, which exceed the amounts as laid down in paragraphs 2 and 3 of article 52 and which do not exceed the amounts as laid down in article 51-ter;
- b) the particular mutual insurance undertakings referred to in article 52.

2. The undertakings referred to in point a) of paragraph 1 shall be entered in the section of the register of insurance undertakings headed "Local undertakings referred to in Title IV, Chapter II, of the Code of Private Insurance".

3. The undertakings referred to in point b) of paragraph 1 shall be entered in the section of the register of insurance undertakings headed "Particular mutual insurance undertakings referred to in Title IV, Chapter III, of the Code of Private Insurance".

4. IVASS shall promptly inform the undertaking concerned of the registration in the register, in compliance with paragraphs 2 and 3. Undertakings shall indicate their registration in the register in their acts and correspondence.

### **Chapter II LOCAL INSURANCE UNDERTAKINGS<sup>299</sup>**

#### Article 51-ter

(Concept of local insurance undertaking)<sup>300</sup>

1. The Italian insurance undertaking shall be classified as local insurance undertaking pursuant to this Chapter when all the following conditions are met:

- a) the undertaking's annual gross written premium income does not exceed EUR 5 million;
- b) the total of the undertaking's technical provisions, gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed EUR 25 million;

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<sup>296</sup> Heading replaced by article 1 (61) of legislative decree n. 74 of 12 May 2015. In the previous version, the wording of this title was: "*Provisions relating to particular mutual undertakings*".

<sup>297</sup> Chapter inserted by article 1 (61) of legislative decree n. 74 of 12 May 2015.

<sup>298</sup> Article inserted by article 1 (61) of legislative decree n. 74 of 12 May 2015.

<sup>299</sup> Chapter inserted by article 1 (61) of legislative decree n. 74 of 12 May 2015.

<sup>300</sup> Article inserted by article 1 (61) of legislative decree n. 74 of 12 May 2015.

- c) where the undertaking belongs to a group, the total of the technical provisions of the group defined as gross of the amounts recoverable from reinsurance contracts and special purpose vehicles does not exceed EUR 25 million;
- d) the business of the undertaking does not include insurance or reinsurance activities covering liability, credit and suretyship insurance risks, unless they constitute ancillary risks;
- e) the business of the undertaking does not include reinsurance operations exceeding EUR 0.5 million of its gross written premium income or EUR 2.5 million of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles, or more than 10 % of its gross written premium income or of its technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles.

2. The undertaking complying with the conditions referred to in paragraph 1 shall not be classified as local insurance undertaking when:

- a) it carries on insurance or reinsurance business under the freedom of services or the right of establishment in other Member States; or
- b) following its application, it is authorised to the pursuit of insurance business pursuant to article 13 or to continue pursuing business pursuant to article 13;
- c) the annual gross written premium income or the amount of technical provisions gross of the amounts recoverable from reinsurance contracts and special purpose vehicles is expected to exceed any of the amounts set out in points a), b), c) and e) of paragraph 1 within the following five years.

**Article 51-quater**  
(Rules applicable to local insurance undertakings)<sup>301</sup>

1. IVASS shall, by its own regulation<sup>302</sup>, lay down the conditions for the taking-up and pursuit of business and the other provisions of this code applicable to local undertakings under article 51-ter. In any case article 12 (3) shall apply.

2. The rules under paragraph 1 shall also apply to undertakings authorized pursuant to article 13 which have not exceeded the amounts under article 51-ter in the three previous consecutive years and will unlikely exceed them in the five subsequent consecutive years. IVASS shall, by its own regulation, establish the procedure for verifying the conditions for application of the rules under paragraph 1.

3. The rules under paragraph 1 shall cease to apply starting from the fourth year, if the undertaking has exceeded the amounts under points a), b), c), e) of article 51-ter for three consecutive years. IVASS shall, by its own regulation<sup>303</sup>, establish the procedure for verifying non-compliance with the conditions under article 51-ter and - as a consequence - for filing the application for authorisation under article 13 within thirty days from the approval of the financial statements for the third financial year.

**Chapter III**  
**PARTICULAR MUTUAL INSURANCE UNDERTAKINGS<sup>304</sup>**

**Art. 52**  
(Particular mutual insurance undertakings)<sup>305</sup>

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<sup>301</sup> Article inserted by article 1 (61) of legislative decree n. 74 of 12 May 2015.

<sup>302</sup> IVASS Regulation n. 29 of 06 September 2016

<sup>303</sup> IVASS Regulation n. 29 of 06 September 2016

<sup>304</sup> Chapter inserted by article 1 (206) of legislative decree n. 74 of 12 May 2015.

<sup>305</sup> Heading replaced by article 1 (62, a) of legislative Decree n. 74 of 12 May 2015.

1. Mutual insurance undertakings set up in accordance with article 2546 of the civil code, shall be classified as particular mutual insurance undertakings in accordance with this Chapter when the conditions established respectively by paragraph 2 and 3 are fulfilled. These undertakings may pursue life or non-life insurance only in the territory of the Italian Republic, without being subject to the rules on the taking up of insurance business under chapter II of title II. The units of such undertakings must be represented by shares<sup>306</sup>.

2. To carry on life business the articles of association of mutual insurance undertakings shall contain provisions for calling up additional contributions, or reducing their benefits and collecting annual contributions not exceeding five-hundred-thousand euros<sup>307</sup>.

3. To carry on non-life business the articles of association of mutual insurance undertakings shall contain provisions for calling up additional contributions and collecting annual contributions not exceeding one million euros, at least one half of which from members<sup>308</sup>.

4. If the amounts under paragraphs 2 and 3 are exceeded for three consecutive years, with effect from the fourth year the undertaking shall no longer be classified as particular mutual insurance undertakings, shall no longer be subject to the provisions under this Chapter and shall apply for the authorisation under article 51-quater or article 13, if the amounts under article 51-ter have been exceeded, within 30 days from the approval of the financial statements for the third financial year in which the amounts were exceeded<sup>309</sup>.

#### Art. 53

(Business which may be carried on)

1. The undertaking under article 52 (2) may only carry on the insurance classes I and II under article 2 (1).

2. The undertaking under article 52 (3) may not pursue the insurance classes 10, 11, 12, 13, 14, 15, 17 and 18 under article 2 (3).

3. The particular mutual insurance undertaking shall limit its objects to the pursuit of solely life assurance or solely non-life insurance and the related or instrumental operations. Article 12 shall apply<sup>310</sup>.

#### Art. 54

(repealed)<sup>311</sup>

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<sup>306</sup> Paragraph replaced by article 1 (62, b) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "1. The rules on the taking up of insurance business under title II (chapter II) shall not apply in case of mutual insurance undertakings set up in accordance with article 2546 of the civil code, which may pursue life or non-life insurance only in the territory of the Italian Republic when the conditions established respectively by paragraph 2 and 3 are fulfilled. The units of such undertakings must be represented by shares".

<sup>307</sup> Paragraph amended by article 1 (62, c) of legislative decree n. 74 of 12 May 2015.

<sup>308</sup> Paragraph amended by article 1 (62, d) of legislative decree n. 74 of 12 May 2015.

<sup>309</sup> Paragraph replaced by article 1 (62, e) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "4. If the amounts under paragraphs 2 and 3 are exceeded for three consecutive years the mutual insurance undertaking shall no longer be subject to the provisions under this title with effect from the fourth year, and shall apply for the authorisation under article 13 within 30 days from the approval of the financial statements for the third financial year in which the amounts were exceeded".

<sup>310</sup> Paragraph amended by article 1 (63) of legislative decree n. 74 of 12 May 2015.

<sup>311</sup> Article repealed by article 1 (64) of legislative decree n. 74 of 12 May 2015. Article 54 laid down:

"Art. 54

(Requirements applying to significant owners and key functionaries)

1. The Minister of Production Activities shall lay down, by the regulation provided for under article 76, the good repute and independence requirements of significant owners and key functionaries as well as their professional requirements, which take account of the size and limits of the business pursued by mutual insurance undertakings as per article 52".

Art. 55  
(Authorisation)

1. IVASS or, in case of special statute regions, the relevant regional body, shall authorise - without prejudice to the provisions of article 347 (3 and 4) – the mutual insurance undertakings under article 52<sup>312</sup>.

2. *(repealed)*<sup>313</sup>.

3. IVASS shall set out, by its own regulation and without prejudice to the powers of the special statute regions, the procedure for granting, extending and refusing authorisation. Article 14 (3) shall apply.

Art. 56  
(Rules applicable to particular mutual insurance undertakings)<sup>314</sup>

1. Without prejudice to the provisions of paragraph 3, IVASS shall, by its own regulation, lay down the provisions applicable to particular mutual insurance undertakings under article 52, taking account of the size and limits of the insurance business, and in particular:

- a) the provisions relating to the financial and organisational adequacy, the obligation to keep the accounting registers as well as to inform the supervisory authority;
- b) the good repute, independence and professional requirements of corporate officers;
- c) the provisions of titles VIII, XIII, XIV, XVI and XVIII in so far as they are compatible<sup>315</sup>.

2. *(repealed)*<sup>316</sup>.

3. Articles 2346 (6), 2349 (2), 2519 (2), 2526, 2541, 2543, 2544 (2, 1st sentence), 2545-quater, 2545-quinquies, 2545-octies (2), 2545-undecies (3), 2545-terdecies, 2545-quinquiesdecies, 2545-sexiesdecies, 2545-septiesdecies and 2545-octiesdecies of the civil code shall not apply to the particular mutual insurance undertakings under this Chapter<sup>317</sup>.

**TITLE V  
TAKING UP OF THE BUSINESS OF REINSURANCE**

**Chapter I  
GENERAL PROVISIONS**

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<sup>312</sup> Paragraph amended by article 1 (65, a) of legislative decree n. 74 of 12 May 2015.

<sup>313</sup> Paragraph repealed by article 1 (65, b) of legislative decree n. 74 of 12 May 2015. Article 54 laid down: *"The authorised mutual undertakings shall be entered in a special section headed "altre mutue assicuratrici" of the register of insurance undertakings under article 14 (4)".*

<sup>314</sup> Heading replaced by article 1 (66, a) of legislative Decree n. 74 of 12 May 2015.

<sup>315</sup> Paragraph replaced by article 1 (66, b) of legislative decree n. 74 of 12 May 2015. The previous version laid down: *"By its own regulation ISVAP shall establish the undertaking's financial and organisational adequacy, the obligation to keep the accounting registers as well as to inform the supervisory Authority, taking account of the size and limits of the business carried on by the mutual insurance undertakings under article 52":*

<sup>316</sup> Paragraph repealed by article 1 (66, c) of legislative decree n. 74 of 12 May 2015. Paragraph 2 laid down: *"When pursuing business the mutual insurance undertakings referred to in article 52 shall be subject to the provisions of titles VIII, XIII, XIV, XVI and XVIII in so far as they are compatible".*

<sup>317</sup> Paragraph amended by article 1 (66, d) of legislative decree n. 74 of 12 May 2015.

Art. 57  
(Reinsurance business)

1. The pursuit of pure reinsurance business shall be reserved to reinsurance undertakings<sup>318</sup>.
2. Reinsurance undertakings shall limit their objects to the pursuit of reinsurance business and related or instrumental operations. These operations may include a holding company function and activities with respect to financial sector activities within the meaning of article 1 (1, m) of legislative decree n.142 of 30 May 2005<sup>319</sup>.
3. The setting up on the territory of the Italian Republic of companies which have as their exclusive purpose the pursuit of reinsurance business abroad shall be prohibited.
4. The insurance undertaking that carries on simultaneously insurance and reinsurance business shall be subject to the provisions under title II<sup>320</sup>.

Art. 57-bis  
(Special purpose vehicles)<sup>321</sup>

1. The pursuit of business in the territory of the Italian Republic by special purpose vehicles with head office in the territory of the Italian Republic is subject to IVASS' prior authorisation.
2. The conditions for the taking-up and pursuit of business by the special purpose vehicles shall be established by regulation adopted in accordance with article 17 (1) of law n. 400 of 23 August 1988 upon a proposal by the Minister of Economic Development. More specifically the regulation lays down provisions regarding:
  - a) the scope of the authorisation;
  - b) the mandatory conditions for inclusion in the contracts issued;
  - c) fit and proper requirements for persons running the special purpose vehicle;
  - d) fit and proper requirements for shareholders or holders of a qualifying holding in the special purpose vehicle<sup>322</sup>;
  - e) administrative and accounting procedures, internal control and risk management mechanisms;
  - f) balance-sheet, accounting, prudential and statistical information requirements;
  - g) solvency requirements<sup>323</sup>.

**Chapter II**  
**REINSURANCE UNDERTAKINGS WITH HEAD OFFICE IN THE TERRITORY OF THE ITALIAN REPUBLIC**

Art. 58  
(Authorisation)

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<sup>318</sup> Paragraph amended by article 5 (1, a), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (67, a) of legislative decree n. 74 of 12 May 2015.

<sup>319</sup> Sentence inserted by article 5 (1, b), legislative decree n. 56 of 29 February 2008, as amended by article 3 (3) of legislative decree n. 53 of 4 March 2014. This paragraph was last amended by article 1 (67, b) of legislative decree n. 74 of 12 May 2015.

<sup>320</sup> Paragraph amended by article 5 (1, c and d), legislative Decree n. 56 of 29 February 2008.

<sup>321</sup> Article inserted by article 5 (2) of legislative decree n. 56 of 29 February 2008.

<sup>322</sup> Letter amended by article 1 (68, a) of legislative decree n. 74 of 12 May 2015.

<sup>323</sup> Letter replaced by article 1 (68, b) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "*the solvency requirements of special purpose vehicles*".



1. The undertaking having its head office within the territory of the Italian Republic and proposing to pursue reinsurance business exclusively shall be authorized by IVASS, by order to be published in the Bulletin, under the conditions envisaged in article 59.

2. Authorization shall be granted for one or more life or non-life classes or, simultaneously, for one or more life and non-life classes.

3. Authorisation shall be valid within the territory of the Italian Republic, of the other member States – in compliance with the provisions relating to the conditions for the taking up of insurance business under the right of establishment or the freedom to provide services referred to under articles 59-ter and 59-quater – as well as of the third States referred to under article 59-quinquies, in compliance with the legislation of these States<sup>324</sup>.

Art. 59  
(Requirements and procedure)

1. IVASS shall grant authorization as per article 58 when the following conditions are met:

a) the undertaking has adopted the form of società per azioni set up in accordance with article 2325 of the civil code, or the form of European company according to Regulation (EC) No 2157/2001 on the statute for a European company;

b) the applicant undertaking has its general direction and administrative offices in the territory of the Italian Republic;

c) the undertaking holds the eligible basic own funds to cover the absolute floor of the Minimum Capital Requirement referred to under article 66-sexies (1, d), which may not be less than EUR 3,600,000, except in the case of captive undertakings, in which case the Minimum Capital Requirement shall be no less than EUR 1,200,000<sup>325</sup>;

c-bis) the undertaking shows evidence that it will be in a position to hold eligible own funds to cover the Minimum Solvency Requirement, as provided for in article 45-bis, going forward<sup>326</sup>;

c-ter) the undertaking shows evidence that it will be in a position to hold eligible own funds to cover the Minimum Capital Requirement, as provided for in article 47-bis, going forward<sup>327</sup>;

d) the undertaking submits a scheme of operations, together with the memorandum and articles of association, in compliance with article 14-bis (1 and 2, a, b, c, d and e); the scheme also describes the kind of reinsurance arrangements which the undertaking proposes to make with ceding undertakings<sup>328</sup>;

e) the holders of qualifying holdings indicated in article 68 meet the good repute requirements established in article 77 and there are sufficient grounds for granting the authorization envisaged in article 68<sup>329</sup>;

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<sup>324</sup> Paragraph amended by article 6 (1), legislative decree n. 56 of 29 February 2008, and then replaced by article 1 (69) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "Authorization shall be valid within the territory of the Italian Republic, of the other member States - in compliance with the provisions relating to the conditions for the taking up of insurance business under the right of establishment or the freedom to provide services - as well as of the third States, in compliance with the legislation of these States".

<sup>325</sup> Letter amended by article 6 (2), legislative decree n. 56 of 29 February 2008, and then replaced by article 1 (70, a) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "the fully paid up capital may not be less than the minimum amount established as a general rule by ISVAP regulation, varying between five million and three million euros, according to the insurance classes pursued, and is made up exclusively of cash".

<sup>326</sup> Letter inserted by article 1 (70, b) of legislative decree n. 74 of 12 May 2015.

<sup>327</sup> Letter inserted by article 1 (70, c) of legislative decree n. 74 of 12 May 2015.

<sup>328</sup> Letter replaced by article 1 (70, d) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "the undertaking submits a scheme of operations, together with the memorandum and articles of association, describing the initial activity and the organisational and management structure, accompanied by a technical report signed by a certified actuary, setting out the criteria for drawing up the scheme of operations and for making the estimates of costs and revenues".

<sup>329</sup> Letter amended by article 4 (1, c) of legislative decree n. 21 of 27 January 2010.

e-bis) the undertaking shows evidence that it will be in a position to comply with the system of corporate governance referred to under Title III, Chapter I, Section I and to articles 30, 30-bis, 30-ter, 30-quater, 30-quinquies, 30-sexies and 30-septies<sup>330</sup>;

f) the persons charged with the administration, management and control functions and those who are responsible for the key functions within the undertaking meet the professional, good repute and independence requirements indicated in article 76<sup>331</sup>;

g) there are no close links between the undertaking or other group entities and other natural or legal persons, which may prevent the effective exercise of supervisory functions.

2. IVASS shall deny authorization when from a check of the conditions indicated in paragraph 1 the sound and prudent management does not seem guaranteed, and no account may be taken of the structure and trend of the markets concerned. The relevant decision shall be accompanied by precise and adequate grounds for doing so and notified to the undertaking in question within ninety days of submission of the application for authorisation along with the documents required.

2-bis. Where the scheme of operations indicates that a relevant part of the undertaking's activities will be based on the freedom of establishment or the freedom to provide services in another Member State, and that those activities are likely to be of relevance with respect to the host Member State's market, IVASS shall notify EIOPA and the supervisory authority of the relevant host Member State thereof, with an adequate level of detail.<sup>332</sup>

3. The procedure for entering the undertaking in the registrar of companies cannot be started in the absence of the authorization envisaged in article 58.

4. IVASS, after ascertaining the registration in the registrar of companies, shall enter reinsurance undertakings authorized in Italy in a special section of the register and promptly inform the undertaking concerned. The undertaking shall indicate its registration in the register in its acts and correspondence<sup>333</sup>.

5. IVASS shall establish, by regulation<sup>334</sup>, the procedure for authorization and the forms of publicity of the registrar.

5-bis. IVASS shall communicate to EIOPA any authorisation granted for the publication in the list kept by it, with the following details:

- 1) the insurance classes and risks for which the undertaking is authorised;
- 2) any licence to pursue business in other Member States under the right of establishment or the freedom to provide services<sup>335</sup>.

#### Art. 59-bis (Extension of activity to other classes)

1. The undertaking already authorised to pursue reinsurance business in one or more life or non-life insurance classes and wishing to extend the activity to other classes referred to in article 2 (1 or 3), must first be authorised by IVASS. Article 59 (2) shall apply.

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<sup>330</sup> Letter inserted by article 1 (70, e) of legislative decree n. 74 of 12 May 2015.

<sup>331</sup> Letter amended by article 1 (70, f) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "*the persons charged with the administration, management and control functions meet the professional, good repute and independence requirements indicated in article 76*".

<sup>332</sup> Paragraph inserted by article 28 (1, c) of Law n. 238 of 23 December 2021.

<sup>333</sup> Period amended by article 1 (70, g) of legislative decree n. 74 of 12 May 2015.

<sup>334</sup> ISVAP Regulation n. 33 of 10 March 2010, in particular Part II, Title I, Chapters I and II.

<sup>335</sup> Paragraph inserted by article 1 (70, h) of legislative decree n. 74 of 12 May 2015.

2. To obtain extension of authorisation, the undertaking shall show proof that it complies with the provisions on technical provisions, the Solvency Capital Requirement and the Minimum Capital Requirement<sup>336</sup>.

2-bis. To obtain extension of authorisation, the undertaking shall also submit a scheme of operations in accordance with article 59 (1, d)<sup>337</sup>.

3. IVASS shall set out, by its own regulation<sup>338</sup>, the procedure for the extension of authorization to other classes and the content of the scheme of operations.

4. The undertaking may not extend its business before the order updating the registrar is adopted. The undertaking shall be immediately informed of that order<sup>339</sup>.

4-bis. The extension order shall be communicated to EIOPA in compliance with article 59 (5-bis)<sup>340</sup>.

#### Article 59-ter

(Business pursued by way of establishment in another member State)

1. The reinsurance undertaking that proposes to establish a branch in another member State shall first notify IVASS thereof. The notification shall show:

- a) the address of the branch;
- b) the name and powers of the authorised agent;
- c) the member States in which it intends to carry on business;
- d) a scheme of operations illustrating the type of business it proposes to pursue.

2. Within thirty days of receiving the notification referred to in paragraph 1, where there are no objections, IVASS shall inform the competent supervisory Authority of the member State concerned of the undertaking's intention to establish a branch in that State and transmit the information required under Community provisions.

3. IVASS shall at the same time inform the undertaking of the notification sent pursuant to paragraph 2.

4. If the undertaking intends to change any of the particulars communicated under paragraph 1, it shall first inform IVASS. IVASS shall assess the impact of the information received on the maintenance of the conditions justifying the sending of the notification under paragraph 2 and shall inform the competent authority of the member State concerned as required under Community provisions<sup>341</sup>.

#### Article 59-quater

(Business pursued by way of freedom of services in another member State)

1. The reinsurance undertaking that intends to carry on business for the first time in another member State under the freedom to provide services shall inform IVASS. When effecting the notification the undertaking shall provide a scheme of operations setting out the establishments

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<sup>336</sup> Paragraph amended by article 1 (71, a) of legislative decree n. 74 of 12 May 2015.

<sup>337</sup> Paragraph inserted by article 1 (71, b) of legislative decree n. 74 of 12 May 2015.

<sup>338</sup> ISVAP Regulation n. 33 of 10 March 2010, in particular Part II, Title I, Chapter III.

<sup>339</sup> Article inserted by article 6 (3) of legislative decree n. 56 of 29 February 2008.

<sup>340</sup> Paragraph inserted by article 1 (71, c) of legislative decree n. 74 of 12 May 2015.

<sup>341</sup> Article inserted by article 6 (3), legislative decree n. 56 of 29 February 2008.

from which it proposes to carry on business, the member States in which it proposes to pursue business and the type of business it proposes to pursue<sup>342</sup>.

Article 59-quinquies  
(Business pursued in a third State)

1. The reinsurance undertaking that proposes to establish a branch in a third State shall first notify IVASS thereof.
2. IVASS shall prevent the undertaking from establishing a branch if it has reason to believe that the undertaking's financial position is not sufficiently sound or that the branch's administrative structure is inadequate, taking into account the scheme of operations.
3. Article 59-quater shall apply to undertakings proposing to pursue business under the freedom to provide services in a third State<sup>343</sup>.

**Chapter III**  
**REINSURANCE UNDERTAKINGS WITH HEAD OFFICE IN ANOTHER MEMBER STATE OR IN A THIRD STATE**

Art. 60  
(Business pursued by way of establishment by undertakings with head office in another member State)

1. The taking up of reinsurance business under the right of establishment in the territory of the Italian Republic, by an undertaking with head office in another member State, is subject to the notification to IVASS, by the supervisory authority of that State, of the information and conditions required under Community provisions.
2. The authorised agent of the branch must possess a brief expressly including also the powers to represent the undertaking in relations with all the authorities and courts of the Italian Republic, as well as to conclude and underwrite the contracts and the other documents relating to the business pursued in the Italian territory. The authorised agent must be resident at the address of the branch. If the brief is given to a legal person this must have its head office in the territory of the Italian Republic and appoint in turn a natural person resident in Italy and having a brief which includes the above powers.
3. The undertaking may set up its branch and start business in the territory of the Italian Republic as soon as it is informed by the home supervisory authority that the notification referred to in paragraph 1 has been sent to IVASS.
4. The competent authority of the home member State shall inform IVASS, as required under Community provisions, of any change in the notification under paragraph 1<sup>344</sup>.

Art. 60-bis  
(Business pursued by way of establishment by undertakings with head office in a third State)

1. If an undertaking with head office in a third State intends to pursue reinsurance business under the right of establishment in the territory of the Italian Republic, it shall first be authorized by IVASS order to be published in the Bulletin.

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<sup>342</sup> Article inserted by article 6 (3), legislative decree n. 56 of 29 February 2008.

<sup>343</sup> Article inserted by article 6 (3), legislative decree n. 56 of 29 February 2008.

<sup>344</sup> Article amended by article 7 (1), legislative decree n. 56 of 29 February 2008.

2. Authorization shall be valid only within the national territory, without prejudice to the provisions on the conditions for the taking up of business abroad under the freedom of services.

3. The undertaking under paragraph 1 must set up a branch – within the territory of the Italian Republic – and appoint an authorised agent resident in Italy and possessing the powers envisaged in article 60 (2), as well as the power to effect the transactions necessary to lodge and bind the security provided for in article 28 (5). The authorised agent or the person actually running the branch (if other than the authorised agent) must meet the good repute and professional qualifications requirements during all the duration of his/her appointment, according to the provisions of article 76<sup>345</sup>.

4. By its own regulation<sup>346</sup> IVASS shall, under conditions equivalent to those under article 59 (1), establish the requirements and procedure for issuing the initial authorisation. Article 59 (2 and 3) shall apply.

5. IVASS, after ascertaining the registration in the registrar of companies, shall enter the undertaking in a special section of the register and promptly inform it. Undertakings shall indicate their registration in the registrar in their acts and correspondence.

6. By the regulation referred to in paragraph 4<sup>347</sup> ISVAP shall establish the procedures and conditions for the extension of business to other classes and for refusal of authorisation. Article 59-bis shall apply<sup>348</sup>.

#### Art. 61

(Business under the freedom of services)

1. Authorization for the taking up and pursuit of reinsurance business under the freedom to provide services, in the territory of the Italian Republic, by undertakings with head office in another member State or in a third State shall not be required.

1-bis. As regards the pursuit of reinsurance business in the territory of the Italian Republic under the freedom to provide services article 23 (1-bis) shall apply<sup>349</sup>.

## TITLE VI PURSUIT OF REINSURANCE BUSINESS

### Chapter I

#### REINSURANCE UNDERTAKINGS WITH HEAD OFFICE IN THE TERRITORY OF THE ITALIAN REPUBLIC

#### Art. 62

(Pursuit of reinsurance business)

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<sup>345</sup> Paragraph amended by article 1 (72) of legislative decree n. 74 of 12 May 2015.

<sup>346</sup> ISVAP Regulation n. 33 of 10 March 2010, in particular Part II, Title II.

<sup>347</sup> ISVAP Regulation n. 33 of 10 March 2010, in particular Part II, Title II.

<sup>348</sup> Article inserted by article 7 (2), legislative decree n. 56 of 29 February 2008.

<sup>349</sup> Paragraph inserted by article 7 (3), legislative decree n. 56 of 29 February 2008, and then amended by article 1 (73) of legislative decree n. 74 of 12 May 2015.

1. IVASS shall, by its own regulation<sup>350</sup>, lay down rules on the pursuit of reinsurance business in compliance with the general principles established in articles 63, 63-bis, 64, 64-bis, 65, 65-bis, 66-bis, 66-quater, 66-sexies, 66-sexies.1, and 66-septies, taking into account the need to ensure the sound and prudent management of the undertaking<sup>351</sup>.

2. The insurance undertaking that carries on simultaneously insurance and reinsurance business shall be subject to the provisions under title III<sup>352</sup>.

#### Art. 63

(Responsibility of the board of directors and system of governance)<sup>353</sup>

1. Reinsurance undertakings shall have in place a system of corporate governance in accordance with the provisions of Title III, Chapter I, Section I and II.

2. Those who are charged with administration, management and control functions and those who carry out key functions within the undertaking shall meet the professional, good repute and independence requirements indicated by IVASS in article 76.

#### Art. 63-bis

(Valuation of assets and liabilities)

1. Reinsurance undertakings shall value their assets and liabilities in accordance with article 35-quater<sup>354</sup>.

#### Art. 64

(Technical provisions)<sup>355</sup>

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<sup>350</sup> ISVAP Regulation n. 33 of 10 March 2010, in particular Part III.

<sup>351</sup> Paragraph replaced by article 8 (1, a), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (74) of legislative decree n. 74 of 12 May 2015. The previous version of paragraph 1) laid down: *"ISVAP shall, by its own regulation, lay down rules on the setting up and representation of technical provisions and on the solvency margin for the pursuit of reinsurance business in compliance with the general principles established in articles 63, 64, 65, 66, 66-bis, 66-ter, 66-quater, 66-quinquies, 66-sexies and 66-septies, taking into account the need to ensure the sound and prudent management of the undertaking"*.

<sup>352</sup> Paragraph amended by article 8 (1, b and c), legislative decree n. 56 of 29 February 2008.

<sup>353</sup> Paragraph replaced by article 1 (75) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

*"Art. 63*

*(Organisational requirements)*

*1. The reinsurance undertaking shall carry on business by means of an appropriate administrative and accounting organisation and an adequate internal control system.*

*2. The internal control system shall provide for adequate procedures to ensure that their risk monitoring systems are well integrated into the undertaking's organisation and that all necessary measures are taken to ensure that the systems implemented are consistent, so that risks can be measured and monitored"*.

<sup>354</sup> Article inserted by article 1 (76) of legislative decree n. 74 of 12 May 2015.

<sup>355</sup> Article replaced by article 8 (2), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (77) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

*"Art. 64*

*(Technical provisions)*

*1. The reinsurance undertaking shall establish technical provisions at the end of each year, gross of retrocessions, of sufficient amount to meet its underwriting liabilities in respect of its entire business.*

*2. The amount of technical provisions shall be calculated in compliance with articles 36 and 37 and with the relevant implementing provisions. For this purpose technical provisions are generally entered in the financial statements according to the statements submitted by ceding undertakings.*

*3. The undertakings authorised to pursue credit reinsurance shall set up an equalisation provision, for the purpose of offsetting any retained technical deficit arising in that class at each balance-sheet date, calculated in accordance with method n. 1 under letter D of the annex to directive 73/239/EEC.*

1. The reinsurance undertaking shall establish technical provisions at the end of each year, gross of retrocessions, of sufficient amount to meet its underwriting liabilities in respect of its entire business in accordance with the provisions of Chapter II, Title III.

2. The amount of technical provisions shall be calculated in compliance with Title III, Chapter II.

Art. 64-bis

(Principles on investments)<sup>356</sup>

1. The reinsurance undertaking shall invest assets in accordance with the provisions of article 37-ter.

Art. 65

(Assets representing technical provisions)<sup>357</sup>

1. The technical provisions referred to in article 64 shall be covered by assets belonging to the undertaking in accordance with article 38 and article 41.

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*4. The undertaking authorised to pursue non-life reinsurance, except credit and suretyship, shall set up an equalisation provision for risks arising from natural catastrophes and for damage or loss due to nuclear energy for the purpose of offsetting the trend in claims ratio over time. The conditions and terms for setting up an equalisation provision for risks arising from natural catastrophes and for damage or loss due to nuclear energy are established by decree of the Minister of Economic Development, in agreement with the Minister of Economic and Financial Affairs, after hearing ISVAP."*

<sup>356</sup> Article inserted by article 1 (78) of legislative decree n. 74 of 12 May 2015.

<sup>357</sup> Article replaced by article 8 (3), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (79) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

"Art. 65

(Assets representing technical provisions)

1. The technical provisions and the equalisation provisions referred to in article 64 shall be covered by assets belonging to the undertaking. When choosing representative assets the undertaking shall:

a) take account of the type of business carried out and, in particular, of the nature, amount and duration of the expected claims payments, in such a way as to secure the sufficiency, liquidity, security, quality, profitability and matching of its investments;

b) ensure that the assets are adequately diversified and spread and allow it to respond to changing economic circumstances, in particular developments in the financial markets and real estate markets or the impact of catastrophic events. The undertaking shall assess the impact of irregular market circumstances on its assets and diversify the assets in such a way as to reduce such impact;

c) make sure that investments in assets which are not admitted to trading on a regulated market shall in any event be kept to prudent levels;

d) use investment in derivative instruments insofar as they contribute to a reduction of investment risks or facilitate efficient portfolio management. Derivative instruments shall be valued on a prudent basis, taking into account the underlying assets which are included in the valuation of the undertaking's assets. The undertaking shall avoid excessive risk exposure to a single counterparty of other derivative operations;

e) be subject to the requirement to properly diversify its assets in such a way as to avoid excessive reliance on any one particular asset, issuer or group of undertakings and accumulations of risk in the portfolio as a whole. Investments in assets issued by the same issuer or by issuers belonging to the same group shall not expose the undertaking to excessive risk concentration.

2. Where the representative assets include an investment in a subsidiary undertaking which manages all or part of the insurance undertaking's investments on its behalf, ISVAP shall, when verifying the correct application of the rules and principles laid down in this article, take into account the assets held by the subsidiary undertaking.

3. ISVAP shall issue a regulation establishing further detailed provisions in relation to the principles referred to in paragraphs 1 and 2 in compliance with the provisions set by Community law. By the same regulation ISVAP shall lay down the rules setting the conditions for the use by reinsurance undertakings of amounts outstanding from a special purpose vehicle as assets covering technical provisions.

4. If ISVAP has reason to believe that the rules under paragraph 1 have not been observed for one or more assets, it shall inform the undertaking that such assets may not be admitted as cover for all or part of the technical provisions."

1-bis. The reinsurance undertaking shall invest assets held to cover the technical provisions in a manner appropriate to the nature of the commitments and to the duration of reinsurance and retrocession liabilities.

Art. 65-bis  
(Register of assets representing technical provisions)

1. The reinsurance undertaking shall keep a register showing assets representing technical provisions for life and non-life business. The amount of such assets must at any time be at least equal to the amount of technical provisions, taking account of all the movements recorded.

1-bis. For the purposes of paragraph 1, assets representing technical provisions shall be entered in the register for an amount net of any debts arising out of their acquisition and of any adjusting entries and shall be valued in accordance with the provisions of article 35-quater<sup>358</sup>.

1-ter. The assets used by the undertaking to cover the technical provisions corresponding to its retrocession acceptances shall be managed and organised separately from the reinsurance activities, without any possibility of transfer<sup>359</sup>.

2. The assets representing technical provisions written in said register are exclusively set aside for the fulfilment of the reinsurance undertaking's obligations arising out of the contracts to which the provisions are referred. Assets provided for in this paragraph are segregate from the assets held by the reinsurance undertaking and not written in said register.

3. The reinsurance undertaking shall inform IVASS of the state of the assets shown in the register. IVASS shall, by its own regulation<sup>360</sup>, lay down provisions on the filling in and keeping of the register, with special regard to disclosure of operations effected, as well as to the terms, procedures and standard reports for periodical communications<sup>361</sup>.

Art. 66  
(*repealed*)<sup>362</sup>

Art. 66-bis  
(Own funds)

1. Reinsurance undertakings shall be subject to the provisions of articles 44-ter, 44-quater, 44-quinquies, 44-septies, 44-octies, 44-decies, as well as to the implementing measures adopted by the European Commission for the classification and eligibility of own funds<sup>363</sup>.

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<sup>358</sup> Paragraph inserted by article 1 (80, a) of legislative decree n. 74 of 12 May 2015.

<sup>359</sup> Paragraph inserted by article 1 (80, b) of legislative decree no. 74 of 12 May 2015.

<sup>360</sup> ISVAP Regulation n. 33 of 10 March 2010, in particular article 134 repealed by IVASS Regulation n. 24 of 6 June 2016.

<sup>361</sup> Article inserted by article 8 (4), legislative decree n. 56 of 29 February 2008.

<sup>362</sup> Article repealed by article 1 (81) of legislative decree n. 74 of 12 May 2015. Article 66 laid down:

"Art. 66

(*Retrocession of risks*)

1. *ISVAP may decide, as regards the representation of technical provisions and the setting up of the solvency margin for the pursuit of reinsurance business, not to take account of the retrocession of risks to reinsurance undertakings with head office in third States which have not appointed a legal representative in the territory of the Italian Republic or in the territory of another member State.*

2. *The reasons for ISVAP's decision shall be based exclusively on assessments concerning the solvency of retrocessionaires*".

<sup>363</sup> Article replaced by article 1 (82) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

"Art. 66-bis

(*Available solvency margin*)



Article 66-ter  
(repealed)<sup>364</sup>

Article 66-quater  
(Solvency Capital Requirements)<sup>365</sup>

1. Reinsurance undertakings shall be subject to the provisions of Title III, Chapter IV-bis, Section I, Section II and Section III and of article 47-bis.

Article 66-quinquies  
(repealed)<sup>366</sup>

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1. *The reinsurance undertaking shall at all times possess an adequate solvency margin in respect of its entire business carried on in the territory of the Italian Republic and abroad.*

2. *ISVAP shall, by its own regulation, lay down the technical rules for calculating the available solvency margin, in compliance with the provisions about reinsurance set by Community law and with the laws and regulations on the supplementary supervision of undertakings belonging to a financial conglomerate.*

3. *The available solvency margin shall consist of the assets of the insurance undertaking free of any foreseeable liabilities, less any intangible items, including the items envisaged by article 44 (2 and 3).*

4. *At the undertaking's reasoned request, accompanied by supporting evidence, ISVAP may allow that the available solvency margin may also consist of, for periods not exceeding twelve months each, the further asset items listed in the implementing provisions.*

5. *ISVAP shall, by its own regulation, define the assets which are not taken into account when calculating the undertaking's assets for the purposes of the solvency margin, in compliance with the principles and options envisaged by the changes to the provisions implementing Community regulations on direct insurance introduced by legislative decree n. 142 of 30 May 2005<sup>364</sup>.*

<sup>364</sup> Article inserted by article 8 (6), legislative decree n. 56 of 29 February 2008, and then repealed by article 1 (83) of legislative decree n. 74 of 12 May 2015. Article 66-ter laid down:

"Art. 66-ter

*(Subordinated loan capital, securities with no specified maturity date and other financial instruments)*

1. *Subordinated loan capital, securities with no specified maturity date and other financial instruments may be included among the constituent elements of the available solvency margin in compliance with the conditions referred to in article 45.*

2. *ISVAP shall, by its own regulation, set out the conditions aimed at fully guaranteeing the reinsurance undertaking's stability, under which securities with no specified maturity date, the other financial instruments – including cumulative preferential shares – and subordinated loan capital may be included among the constituent elements of the available solvency margin.*

3. *In compliance with the conditions and limits provided for in this article cumulative preferential shares, subordinated loan capital, securities with no specified maturity date and the other financial instruments may be accepted for the calculation of the adjusted solvency of a reinsurance undertaking and of the solvency of its parent company as per articles 217 and 218<sup>365</sup>.*

<sup>365</sup> Article replaced by article 1 (84) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

"Art. 66-quater

*(Required solvency margin)*

1. *ISVAP shall, by its own regulation, lay down the technical rules for calculating the required solvency margin, and envisage that the undertakings which pursue reinsurance in the life classes calculate the required solvency margin according to the criteria established for the undertakings which pursue reinsurance in the non-life classes, in compliance with the provisions about reinsurance set by Community law and with the laws and regulations on the supplementary supervision of undertakings belonging to a financial conglomerate. At the undertaking's reasoned request, accompanied by supporting evidence, ISVAP may allow that the amounts recoverable from special purpose vehicles may be deducted from the required solvency margin as retrocession amounts<sup>366</sup>.*

<sup>366</sup> Article inserted by article 8 (6), legislative decree n. 56 of 29 February 2008, and then repealed by article 1 (85) of legislative decree n. 74 of 12 May 2015. Article 66-quinquies laid down:

"Art. 66-quinquies

*(Required solvency margin of undertakings carrying on life and non-life reinsurance business)*

Article 66-sexies  
(Calculation of the Minimum Capital Requirement)<sup>367</sup>

1. The Minimum Capital Requirement shall be calculated in accordance with the relevant implementing provisions adopted by the European Commission, in compliance with the following principles:

- a) it shall be calculated in a clear and simple manner, and in such a way as to ensure that the calculation can be audited;
- b) it shall correspond to an amount of eligible basic own funds below which policy holders, beneficiaries, insureds and other subject entitled to insurance benefits are exposed to an unacceptable level of risk were reinsurance undertakings allowed to continue their operations;
- c) the linear function referred to in paragraph 2 used to calculate the Minimum Capital Requirement shall be calibrated to the Value-at-Risk of the basic own funds of an undertaking subject to a confidence level of eighty-five (85%) over a one-year period;
- d) it shall have an absolute floor of EUR 3 200 000 for reinsurance undertakings, except in the case of captive reinsurance undertakings, in which case the Minimum Capital Requirement shall be no less than EUR 1 200 000.

2. Subject to paragraph 3, the Minimum Capital Requirement shall be calculated as a linear function of a set or sub-set of the following variables: the undertaking's technical provisions, written premiums, capital-at-risk, deferred tax and administrative expenses. The variables used shall be measured net of reinsurance.

3. Without prejudice to paragraph 1(d), the Minimum Capital Requirement shall neither fall below twenty-five per cent (25%) nor exceed forty-five per cent (45%) of the undertaking's Solvency Capital Requirement, calculated in accordance with Title III, Chapter IV-bis, Sections II and III.

4. Until 31 December 2017, IVASS may require the undertaking to apply the percentages referred to in paragraph 3 exclusively to the Solvency Capital Requirement calculated in accordance with Title III, Chapter IV-bis, Section II.

5. Undertakings shall calculate the Minimum Capital Requirement at least quarterly and report the result of that calculation to IVASS.

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*1. A reinsurance undertaking carrying on both life and non-life reinsurance business shall set up an available solvency margin to cover the total sum of required solvency margins in respect of both reinsurance activities.*

*2. If the available solvency margin does not reach the level required in paragraph 1, ISVAP shall apply the measures provided for in title XVI.*

<sup>367</sup> Article replaced by article 1 (86) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

*"Art. 66-sexies*

*(Amount of the guarantee fund)*

*1. One third of the required solvency margin shall constitute the guarantee fund.*

*2. The guarantee fund of a reinsurance undertaking, without prejudice to the limits established for the amount of share capital, may not be less than three million euros.*

*3. The guarantee fund is covered exclusively by the asset items listed in article 44 (2), less any intangible items listed in the regulation referred to in paragraph 66-bis (5).*

*4. The amount laid down in paragraph 2 shall be increased annually in line with the increase in the European index of consumer prices as published by Eurostat, unless the increase is less than five per cent. The amount of the increase shall be communicated by ISVAP's order.*

6. For the purposes of calculating the limits referred to in paragraph 3, undertakings shall not be required to calculate the Solvency Capital Requirement on a quarterly basis.

7. Where the Minimum Capital Requirement of the undertaking coincides with either of the limits referred to in paragraph 3, this undertaking shall provide to IVASS any information necessary for a proper understanding of the reasons therefor.

#### Article 66-sexies.1

(Information and supervisory review process)<sup>368</sup>

1. The provisions of Title III, Chapter IV-ter shall also apply to reinsurance undertakings.

#### Article 66-septies (Finite reinsurance)<sup>369</sup>

01. Undertakings which conclude finite reinsurance contracts or pursue finite reinsurance activities shall adopt adequate processes and reporting procedures and shall be able to properly identify, measure, monitor, manage, control and report the risks arising from those contracts or activities<sup>370</sup>.

1. IVASS shall, by its own regulation<sup>371</sup>, lay down specific provisions for the pursuit of finite reinsurance business in accordance with EU rules and supervise over compliance with the conditions and provisions referred to in this article<sup>372</sup>.

### Chapter II

#### REINSURANCE UNDERTAKINGS WITH HEAD OFFICE IN A THIRD STATE<sup>373</sup>

#### Art. 67

(Business under the right of establishment)<sup>374</sup>

<sup>368</sup> Article inserted by article 1 (87) of legislative decree n. 74 of 12 May 2015.

<sup>369</sup> Article inserted by article 8 (6), legislative decree n. 56 of 29 February 2008.

<sup>370</sup> Paragraph inserted by article 1 (88, a) of legislative decree n. 74 of 12 May 2015.

<sup>371</sup> ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title VI.

<sup>372</sup> Paragraph amended by article 1 (88, b) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

"1. ISVAP shall, by its own regulation, lay down specific provisions for the pursuit of finite reinsurance business with regard to:

a) the mandatory conditions for inclusion in the contracts issued;  
b) administrative and accounting procedures, internal control and risk management mechanisms;  
c) balance-sheet, accounting, prudential and statistical information requirements;  
d) the setting up of adequate technical provisions;  
e) assets covering technical provisions which take account of the type of business carried on by the reinsurance undertaking, and in particular the nature, amount and duration of the expected claims settlements, in such a way as to secure sufficiency, liquidity, security, profitability and matching of its investments;  
f) rules regarding the available solvency margin, the required solvency margin, and the guarantee fund which the reinsurance undertaking keeps in relation to finite reinsurance operations."

<sup>373</sup> Heading replaced by article 9 (1), legislative decree n. 56 of 29 February 2008.

<sup>374</sup> Article replaced by article 9 (2), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (89) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

"Art. 67

(Business under the right of establishment)

1. ISVAP shall, by its own regulation, lay down rules on the setting up and representation of technical provisions and on the solvency margin of the branch for the pursuit of reinsurance business in the territory of the Italian Republic in compliance with the general principles established in articles 63, 64, 65, 66, 66-bis, 66-ter, 66-quater, 66-quinquies, 66-sexies and 66-septies, taking into account the need to ensure the sound and prudent management of the undertaking."

1. IVASS shall, by its own regulation<sup>375</sup>, lay down rules applicable to branches of reinsurance undertakings with head office in a third State, in compliance with the general principles established in Chapter I of this Title as well as with the provisions applicable to them relating to financial statements, registers and accounts set forth in Title VIII.

2. The provisions of paragraph 1 shall also apply to undertakings with head office in a third State and authorised there to the simultaneous pursuit of insurance and reinsurance business, seeking authorisation to pursue only reinsurance in the territory of the Italian Republic.

## **TITLE VII OWNERSHIP STRUCTURE<sup>376</sup>**

### **CHAPTER I HOLDINGS IN INSURANCE AND REINSURANCE UNDERTAKINGS**

#### Art. 68 (Authorisations)

1. IVASS shall authorise in advance any acquisition, on any basis whatsoever, of participations in an insurance or reinsurance undertaking amounting to a controlling interest or the acquisition of a qualifying holding, after taking the shares already owned into account<sup>377</sup>.

2. IVASS shall authorise in advance changes in holdings whenever the proportion of the voting rights or of the capital reaches or exceeds 20, 30 or 50% and, at any rate, whenever such changes convey the control of the insurance or reinsurance undertaking<sup>378</sup>.

2-bis. For the purposes of applying Chapters I and II of this Title account shall also be taken of the acquisitions of holdings by more than one subject proposing to exercise the relevant rights in concert on the basis of agreements, in whatever form they are concluded, when those participations, taken together, can be regarded as participations pursuant to paragraphs 1 and 2<sup>379</sup>.

3. The authorisation under paragraph 1 is also necessary for acquiring control of a company which owns the participations under the same paragraph. The authorisations under this article shall also apply to the direct or indirect acquisition of control through a contract with the insurance or reinsurance undertaking or a provision in its memorandum and articles of association.

4. IVASS shall, by its own regulation, define the subjects required to apply for authorisation when the rights deriving from the participations indicated in paragraphs 1 and 2 arise for or are attributed to a person other than the owner of the holdings<sup>380</sup>.

5. IVASS shall issue the authorisation when the conditions for the sound and prudent management of the insurance or reinsurance undertaking are met, after looking into the quality of the potential purchaser to be assessed in compliance with the European legal framework including guidelines, provisions and recommendations,<sup>381</sup> and the financial soundness of the

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<sup>375</sup> ISVAP Regulation n. 22 of 4 April 2008, ISVAP Regulation n. 33 of 10 March 2010, in particular Part III.

<sup>376</sup> Heading replaced by article 1 (207) of legislative decree n. 74 of 12 May 2015.

<sup>377</sup> Paragraph amended by article 4 (1, d), legislative decree n. 21 of 27 January 2010, as last replaced by article 1 (90, a) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "1. *ISVAP shall authorise in advance any acquisition, on any basis whatsoever, of participations in an insurance or reinsurance undertaking amounting to a controlling interest or making it possible to exercise a significant influence over the undertaking or conferring a proportion of the voting rights or of the capital at least equal to 10%, after taking the shares already owned into account*".

<sup>378</sup> Paragraph amended by article 4 (1, e) of legislative decree n. 21 of 27 January 2010.

<sup>379</sup> Paragraph inserted by article 4 (1, f) of legislative decree n. 21 of 27 January 2010.

<sup>380</sup> Paragraph amended by article 4 (1, g) of legislative decree n. 21 of 27 January 2010.

<sup>381</sup> Sentence amended by article 6 (3) of legislative decree n. 49 of 10 May 2019.

proposed acquisition, also with regard to the possible impact of the operation on the protection of the policyholders of the undertaking concerned, in accordance with the following principles: the reputation of the potential purchaser, including compliance with the requirements envisaged under article 77; compliance with the requirements envisaged under article 76 by those who, after the acquisition, will be charged with administration, management and control functions in the undertaking; the potential purchaser's financial soundness; the undertaking's ability - after the acquisition - to comply with the provisions regulating the undertaking's activity; the suitability of the structure of the potential purchaser's group to allow the effective exercise of supervision; that there are no reasonable grounds for suspecting that the acquisition is connected with activities related to money laundering and the financing of terrorism<sup>382</sup>.

5-bis. IVASS shall perform its activity in full consultation with the other competent Authorities, in those cases where the potential purchaser is a bank, an investment firm or a management company as per art. 2-bis (para. 1, point 2 of directive 2009/65/EC) authorised in Italy, or one of the subjects referred to in art. 204 (1, b or c) relating to them. In those cases the provisions under article 204 (1-bis and 1-ter) shall apply<sup>383</sup>.

6. If subjects from third States not ensuring reciprocity take part in the operations under paragraphs 1 and 3 IVASS shall inform the Minister of Economic Development of the application for authorisation, and upon a proposal by the latter the President of the Council of Ministers can prohibit the granting of authorisation within one month from the date of the communication.

7. IVASS may suspend or withdraw the authorisation in view of the participations acquired or enhanced further to the agreements under article 70 or other events following the authorisation.

8. The measures granting, refusing, withdrawing or suspending the authorisation shall be accompanied by the precise grounds for doing so, shall be immediately communicated to the applicant and to the undertaking concerned and then published in ISVAP's Bulletin.

9. IVASS shall, by its own regulation, establish the implementing provisions based on the relevant Community provisions, and in particular it shall lay down the calculation criteria of the voting rights which are relevant for the application of the thresholds envisaged under paragraphs 1 and 2, including those cases where the voting rights are not taken into account for the purpose of applying the same paragraphs and the identification criteria for cases of significant influence<sup>384</sup>.

#### Art. 69

##### (Obligations to give information)

1. Anyone intending to become holder of the qualifying holdings indicated in article 68 in an insurance or reinsurance undertaking shall inform IVASS thereof. In the other cases the changes in participations shall be communicated whenever the amount of the holder has risen beyond or fallen below the limits set by IVASS's regulation<sup>385</sup>.

2. Trust companies intending to acquire in their own name participations belonging to third parties shall communicate the particulars of the latter to IVASS.

3. For the purposes of verifying compliance with the obligations envisaged in this article IVASS may require that information be provided, records produced and checks be made by all the subjects concerned.

<sup>382</sup> Paragraph amended by article 4 (1, h) of legislative decree n. 21 of 27 January 2010.

<sup>383</sup> Paragraph inserted by article 4 (1, i), legislative decree n. 21 of 27 January 2010, as last amended by article 1 (90, b) of legislative decree n. 74 of 12 May 2015.

<sup>384</sup> Paragraph amended by article 4 (1, l) of legislative decree n. 21 of 27 January 2010.

<sup>385</sup> Paragraph amended by article 4 (1, m), legislative decree n. 21 of 27 January 2010, as last amended by article 1 (91, a) of legislative decree n. 74 of 12 May 2015.

4. IVASS shall, by its own regulation, establish the conditions, arrangements, terms and contents of the notifications under paragraphs 1 and 2, having also regard to the cases where the person entitled to vote is not the holder of the participations<sup>386</sup>.

Art. 70  
(Communication of voting agreements)

1. Any agreement, in whatever form it is concluded, whose object or effect is the concerted exercise of the voting rights in an insurance or reinsurance undertaking or in the relevant parent company shall be communicated to IVASS by the parties to such agreement or by the legal representatives of the undertaking to which the agreement refers. IVASS shall in general establish the terms and procedures of the communication<sup>387</sup>.

2. When the agreement results in a concerted exercise of the voting rights which might undermine the sound and prudent management of the insurance or reinsurance undertaking IVASS may suspend the voting rights of the parties to such agreement and set a deadline within which the participations which are the object of the agreement must be sold<sup>388</sup>.

3. Article 69 (3 and 4) shall apply to the communications under paragraph 1.

Art. 71  
(Request for information)

1. IVASS may ask insurance and reinsurance undertakings as well as companies and bodies of any nature which own participations in said undertakings to indicate the names of the holders of participations as they are recorded in the share register, the communications received or as they can be inferred from other data.

2. IVASS may also ask managers and directors of companies and bodies which hold participations in insurance and reinsurance undertakings to indicate the identity of controlling subjects.

3. To verify all financial interrelationships between insurance and reinsurance undertakings and their parent companies, subsidiaries and affiliated companies IVASS may require that such companies produce information and records and make checks.

4. As to the checks under paragraphs 1, 2 and 3 IVASS may request information from the subjects, including foreign ones, who hold participations in an insurance or reinsurance undertaking<sup>389</sup>.

5. IVASS may also ask trust companies, stock brokerage companies and anyone who is aware of it information about the acquisition of participations in insurance and reinsurance undertakings.

6. In case of requests concerning companies whose securities are dealt in on a regulated market IVASS shall inform CONSOB, and may avail itself of the latter in case of investigations involving those companies.

Art. 72

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<sup>386</sup> Paragraph amended by article 1 (91, b) of legislative decree n. 74 of 12 May 2015.

<sup>387</sup> Paragraph amended by article 4 (1, n) of legislative decree n. 21 of 27 January 2010.

<sup>388</sup> Paragraph amended by article 4 (1, o) of legislative decree n. 21 of 27 January 2010.

<sup>389</sup> Paragraph amended by article 1 (92) of legislative decree n. 74 of 12 May 2015.

(Concept of control)

1. For the purposes of this title control exists also with reference to subjects other than companies, in the cases envisaged by article 2359 (1 and 2) of the civil code and in case of contracts or provisions in the memorandum or articles of association whose object or effect is the power to perform management and coordination activities.

2. Control is regarded as existing in the form of dominant influence, unless proved otherwise, where one of the following conditions is met:

a) existence of a person who, by way of agreements, has the power to appoint or dismiss the majority of the directors or of the supervisory committee, or holds alone the majority of votes needed to implement the decisions on the subject-matters under articles 2364 and 2364-bis of the civil code;

b) the holding of participations necessary to permit the appointment or dismissal of the majority of members of the administrative body or of the supervisory committee;

c) existence, even between shareholders, of insurance, reinsurance, financial and organisational links capable of producing one of the following effects:

1) profit or loss transfer;

2) coordination between the undertaking's management and that of other undertakings for the pursuit of a common purpose;

3) giving authority going beyond that deriving from the participations owned;

4) giving persons other than those entitled, based on the ownership of participations, authority in the matter of selection of directors or members of the supervisory committee;

d) being under a unified management, based on the composition of the administrative bodies or due to other consistent elements such as, for instance, important and durable reinsurance links.

Art. 73

(Indirect participations)

1. For the purposes of applying chapters I and III of this title account is also taken of the following participations, whether they are acquired or anyhow owned:

a) through subsidiaries, trust companies or third parties;

b) by way of deposit, pledge or usufruct in case the depositary, the pledgee or the usufructuary can exercise the voting rights attaching to them at their discretion;

c) for which repurchase agreements or derivative contracts have been concluded, which are taken into account with regard to the lender and the borrower or to both parties to those contracts, unless it is proven that the power to influence the undertaking's management and control is attributed exclusively to one party.

Art. 74

(Suspension of the voting right and of the other rights, obligation to sell)

1. The voting rights and the other rights which make it possible to exercise an influence over the undertaking may not be exercised when they pertain to participations for which the authorisations under article 68 have not been obtained, or have been suspended or withdrawn. The voting rights and the other rights which make it possible to exercise an influence over the undertaking may

also not be exercised in case of participations for which the communication requirements under articles 69 and 70 have not been met.

2. In case of non compliance with the prohibition, the decision or other measure adopted with the deciding vote or contribution of the participations envisaged in paragraph 1 may be challenged in accordance with the provisions of the civil code. The challenge may be brought by IVASS too, within six months of the decision or, if this is subject to enrolment in the registrar of companies, within six months of the enrolment or, if it is only subject to a lodging at the office of the registrar of companies, within six months of the lodging. Participations for which no voting right can be exercised shall be taken into account in order to ensure that the general meeting is duly constituted.

3. The participations for which the authorisations under article 68 have not been obtained, or have been withdrawn, shall be transferred within the deadline established by IVASS.

4. The rights arising out of the contracts or of the provisions in the memorandum and articles of association for which the authorisations under article 68 have not been obtained or have been suspended or withdrawn may not be exercised.

#### Art. 75 (Statements of independence)

1. For the purposes of applying this chapter IVASS may require the holders of qualifying holdings referred to under article 68 in insurance and reinsurance undertakings to submit a responsible statement, whose general or specific contents and terms are established by IVASS, indicating the nature and size of the financial and operational relations, as well as the measures and commitments that the holders of participations intend to enforce to ensure the undertaking's independence<sup>390</sup>.

2. IVASS may suspend the voting rights of the holders of participations who have refused to submit such declaration or have misrepresented data or have failed to fulfil the commitments undertaken with regard to the endangerment of the sound and prudent management of the insurance or reinsurance undertaking.

### CHAPTER II GOOD REPUTE, PROFESSIONAL AND INDEPENDENCE REQUIREMENTS

#### Art. 76 (Professional, good repute and independence requirements of corporate officers and of the persons who carry out key functions<sup>391</sup>)

1. The persons charged with administration, management and control functions and those who carry out key functions at insurance and reinsurance undertakings must be fit to perform their function<sup>392</sup>.

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<sup>390</sup> Paragraph amended by article 4 (1, P), legislative decree n. 21 of 27 January 2010, as last amended by article 1 (93) of legislative decree n. 74 of 12 May 2015.

<sup>391</sup> Heading supplemented by article 1 (94, a) of legislative decree n. 74 of 12 May 2015.

<sup>392</sup> Paragraph replaced by article 3 (1, a) of legislative decree n. 74 of 14 July 2020. The paragraph laid down: "1. *The persons charged with administration, management and control functions and those who carry out key functions at insurance and reinsurance undertakings must meet the professional, good repute and independence requirements, graded according to the principle of proportionality and on account of the importance and complexity of the role played, established with regulation adopted by the Minister of Economic Development, after hearing the opinion of IVASS.*"



1-bis. The insurance or reinsurance undertaking shall show proof to IVASS that the persons charged with administration, management and control functions and those who carry out key functions meet the requirements and criteria referred to under paragraphs 1-ter, 1-quater and 1-quinquies<sup>393</sup>.

1-ter. For the purposes of paragraph 1, corporate officers must meet the professional, good repute and independence requirements, meet criteria of competence and fairness, dedicate the time necessary to efficiently carry out the role assigned in order to guarantee the sound and prudent management of the insurance or reinsurance undertaking<sup>394</sup>.

1-quater. The Minister of Economic Development, by its own regulation adopted after hearing the opinion of IVASS, in accordance with the provisions of the EU law and taking into account the relevant guidelines and recommendations, shall establish:

- a) the good repute requirements applicable to all corporate officers;
- b) professional and independence requirements, graded according to the principle of proportionality and on account of the importance and complexity of the role played;
- c) the competence criteria consistent with the post to be filled and with the characteristics of the insurance or reinsurance undertaking, and of adequate composition of the body;
- d) the fairness criteria, with regard, inter alia, to the business relations of the corporate officer, to the conduct of the same vis-à-vis the supervisory authorities and to sanctions or corrective measures imposed by the latter, to restrictive provisions relating to the professional activities performed, as well as to any other element that may influence the correctness of the corporate officer;
- e) the limits on the number of posts that corporate officers of insurance or reinsurance undertakings may hold, graded according to the principle of proportionality;
- f) the grounds for temporary suspension from office and its duration<sup>395</sup>.

1-quinquies. With the regulation set forth in paragraph 1-quater, the cases in which said requirements and suitability criteria apply to those who carry out key functions in insurance and reinsurance undertakings are established<sup>396</sup>.

1-sexies. The administrative and control bodies of insurance and reinsurance undertakings shall assess the suitability of their corporate officers and the overall adequacy of the body, documenting the assessment process and appropriately justifying the outcome of the assessment. In the case of specific and limited shortcomings relating to the criteria envisaged pursuant to paragraph 1-quater, c), the same bodies may adopt the measures required to overcome them. The assessment shall also include the holders of key functions<sup>397</sup>.

2. The absence or loss of the suitability requirement or violations to the limit on the number of posts held shall entail disqualification. The disqualification is declared by the body of which they are members within thirty days of the appointment or of the date when it has become aware of the loss of requirements. The disqualification of those who are not members of a body shall be assessed and declared by the body which has appointed them. The replacement shall be communicated to IVASS<sup>398</sup>.

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<sup>393</sup> Paragraph inserted by article 1 (94, c), of legislative decree n. 74 of 12 May 2015 and amended by article 3 (1, b) of legislative decree n. 84 of 14 July 2020.

<sup>394</sup> Paragraph inserted by article 3 (1, c) of legislative decree n. 84 of 14 July 2020.

<sup>395</sup> Paragraph inserted by article 3 (1, c) of legislative decree n. 84 of 14 July 2020.

<sup>396</sup> Paragraph inserted by article 3 (1, c) of legislative decree n. 84 of 14 July 2020.

<sup>397</sup> Paragraph inserted by article 3 (1, c) of legislative decree n. 84 of 14 July 2020.

<sup>398</sup> Paragraph replaced by article 3 (1, d) of legislative decree n. 84 of 14 July 2020. The paragraph laid down: "2 The absence or loss of the above requirements shall entail disqualification. The disqualification must be declared by the board of directors or the supervisory committee or the management board within thirty days of the appointment or of the date when it has become aware of the loss of requirements. The replacement shall be communicated to IVASS. If said boards fail to act the disqualification shall be declared by IVASS, which shall order that the persons be removed as per article 188 (3-bis, e)".

2. bis. IVASS, in accordance with the procedures and terms established by the same, also to reduce the burdens borne by supervised entities to a minimum, shall assess the suitability of the corporate officers and the compliance with the limits to the number of posts held, and the suitability of the holders of key functions, also taking into account the analyses conducted by the undertakings and any measures adopted pursuant to paragraph 1-sexies. In the event of absence or loss of the requirement or violation, it shall declare the disqualification<sup>399</sup>.

3. In case of loss or absence of the independence requirements set out in the civil code or in the memorandum and articles of association of the insurance or reinsurance undertaking, paragraphs 2 and 2-bis shall apply<sup>400</sup>.

4. The regulation under paragraphs 1-quater and 1-quinquies lays down the grounds for temporary suspension from office and its duration. Suspension must be declared in accordance with the terms set in paragraph 2<sup>401</sup>.

#### Art. 77

##### (Requirements for holders of qualifying holdings)

1. The owners of the shareholdings indicated in article 68 must fulfil good repute requirements and meet criteria of competence and fairness, in order to guarantee the sound and prudent management of the insurance or reinsurance undertaking<sup>402</sup>.

1-bis. The Minister of Economic Development, by its own regulation adopted after hearing the opinion of IVASS, in accordance with the provisions of the EU law and taking into account the relevant guidelines and recommendations, shall establish:

- a) the good repute requirements;
- b) the competence criteria, graded on the basis of the influence on the management of the insurance or reinsurance undertaking that the owner of the shareholding may exercise;
- c) the fairness criteria, with regard, inter alia, to the business relations of the owner of the shareholding, to the conduct of the same vis-à-vis the supervisory authorities and to sanctions or corrective measures imposed by the same, to restrictive provisions relating to the professional activities performed, as well as to any other element that may influence the correctness, including the reputation, of the owner of the shareholding<sup>403</sup>.

2. *(repealed)*<sup>404</sup>

3. If such criteria and requirements are not fulfilled the voting rights and the other rights, which make it possible to exercise an influence over the insurance or reinsurance undertaking, relating to participations exceeding the thresholds referred to under paragraph 1<sup>405</sup>, may not be exercised. In case of non compliance, the decision or other measure adopted with the deciding vote or contribution of the participations envisaged in paragraph 1 may be challenged in accordance with

<sup>399</sup> Paragraph inserted by article 3 (1, e) of legislative decree n. 84 of 14 July 2020.

<sup>400</sup> Paragraph amended by article 3 (1, f) of legislative decree n. 84 of 14 July 2020.

<sup>401</sup> Paragraph inserted by article 3 (1, g) of legislative decree n. 84 of 14 July 2020.

<sup>402</sup> Paragraph replaced by article 3 (2, a) of legislative decree n. 84 of 14 July 2020. The paragraph laid down: "1. The Minister of Economic Development, after hearing the opinion of IVASS, shall, by its own regulation, establish the good repute requirements for holders of qualifying holdings referred to under article 68."

<sup>403</sup> Paragraph inserted by article 3 (2, b) of legislative decree n. 84 of 14 July 2020.

<sup>404</sup> Paragraph repealed by article 4 (1, r), of legislative decree n. 21 of 27 January 2010; The previous version laid down: "2. By the regulation referred to in paragraph 1, the Minister of Production Activities shall establish the thresholds for holdings for the application of paragraph 1. To this end account shall also be taken of participations held through subsidiaries, trust companies or third parties."

<sup>405</sup> Paragraph amended by article 4 (1, s), legislative decree n. 21 of 27 January 2010, and by article 3 (2, c) of legislative decree n. 84 of 14 July 2020.

the provisions of the civil code. The challenge may be brought by IVASS too, within six months of the decision or, if this is subject to enrolment in the registrar of companies, within six months of the enrolment or, if it is only subject to a lodging at the office of the registrar of companies, within six months of the lodging. Participations for which no voting right can be exercised shall be taken into account in order to ensure that the general meeting is duly constituted.

4. Participations exceeding the thresholds provided for in paragraph 1, held by persons not complying with the requirements and criteria, are sold within the deadline set by IVASS.<sup>406</sup>

#### Art. 78

(Management board, supervisory committee and management supervisory committee)

1. Unless otherwise provided, the provisions of this code referred to the board of directors and its members shall also apply to the management board and its members.

2. Unless otherwise provided, the provisions of this code referred to the board of auditors, the members of the board of auditors and the body performing the control function shall also apply to the supervisory committee and to the management supervisory committee.

### Chapter III

#### PARTICIPATIONS HELD BY INSURANCE AND REINSURANCE UNDERTAKINGS

#### Art. 79

(Participations acquired by insurance and reinsurance undertakings)

1. Insurance and reinsurance undertakings may acquire participations, including controlling interests, in other companies even if the latter pursue activities other than those allowed to the former<sup>407</sup>.

2. When the participation in a subsidiary undertaking, acquired as per paragraph 1, are related or instrumental to the insurance or reinsurance business, IVASS may require that it be shown in a specific scheme of operations<sup>408</sup>.

3. IVASS shall, by its own regulation<sup>409</sup>, lay down the conditions and criteria for identifying the acquisition of participations subject to prior notification, or to prior approval, and the conditions for the exercise of the powers referred to under paragraph 3-bis and article 81<sup>410</sup>.

3-bis. IVASS may condition or deny the approval or acquisition of participations subject to prior notification if it is in contrast with the sound and prudent management of the undertaking or may undermine its stability<sup>411</sup>.

3-ter. For the purposes of the communications referred to under paragraph 3, any other acquisition of participations shall be taken into account when the latter, by itself or together with another one already held, is significant in relation to the net assets or the total investments of the

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<sup>406</sup> Paragraph amended by article 4 (1, t) of legislative Decree n. 21 of 27 January 2010 and by article 3 (2, d) of legislative Decree n. 84 of 14 July 2020.

<sup>407</sup> Paragraph amended by article 1 (96, a) of legislative decree n. 74 of 12 May 2015.

<sup>408</sup> Paragraph amended by article 1 (96, b) of legislative decree n. 74 of 12 May 2015.

<sup>409</sup> IVASS Regulation n. 10 of 22 December 2015.

<sup>410</sup> Paragraph amended by article 1 (96, c) of legislative decree n. 74 of 12 May 2015.

<sup>411</sup> Paragraph inserted by article 1 (96, d) of legislative decree n. 74 of 12 May 2015.

insurance or reinsurance undertaking or to the amount of the voting rights or the importance of the other rights which make it possible to exercise an influence over the related undertaking<sup>412</sup>.

4. The provisions in this chapter shall also apply to any other acquisition concerning participations in foreign insurance or reinsurance undertakings. By way of derogation from this chapter, in case of acquisition of qualifying holdings referred to under article 68 in other Italian insurance or reinsurance undertakings, the provisions under chapter I shall apply<sup>413</sup>.

Art. 80  
(repealed)<sup>414</sup>

Art. 81  
(Prudential supervision)

1. For the purposes of verifying compliance with the obligations envisaged in article 79, IVASS may ask information to any person concerned<sup>415</sup>.

2. When the participation may undermine the undertaking's stability, having regard to the nature and trend of the business pursued by the related undertaking as well as to the size of the investment, IVASS shall order that such participation be sold or adequately reduced, even below the control threshold, and for this purpose it shall fix a deadline compatible with the need to perform such operation without prejudice for the stability of the insurance or reinsurance undertaking<sup>416</sup>.

3. If the undertaking does not abide by this order, IVASS shall appoint a commissioner charged with the tasks envisaged in article 229 or, should the conditions under article 230 be met, a provisional administrator or propose to the Minister of Economic Development the adoption of the extraordinary administration or the withdrawal of the authorization to pursue business.

4. Failure to comply with the order under paragraph 2 shall, in any case, entail a reduction of the same amount from the own funds covering the Solvency Capital Requirement of the insurance or reinsurance undertaking<sup>417</sup>.

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<sup>412</sup> Paragraph inserted by article 1 (96, e) of legislative decree n. 74 of 12 May 2015.

<sup>413</sup> Paragraph amended by article 4 (1, u), legislative decree n. 21 of 27 January 2010, as last amended by article 1 (96, f) of legislative decree n. 74 of 12 May 2015.

<sup>414</sup> Article repealed by article 1 (97) of legislative decree n. 74 of 12 May 2015. Article 80 laid down:

“Art. 80

(Obligations to give information)

1. *The insurance or reinsurance undertaking shall immediately inform ISVAP of its intention to acquire a participation in another company, when such participation, by itself or together with another one already held, conveys the control of the related undertaking.*

2. *Undertakings must also give prior notification of their intention to acquire any other participation when the latter, by itself or together with another one already held, is significant in relation to the net assets or the total investments of the insurance or reinsurance undertaking or to the amount of the voting rights or the importance of the other rights which make it possible to exercise an influence over the related undertaking.*

3. *ISVAP, taking account of the need to verify the concentration of investments and their influence over the financial structure of the insurance or reinsurance undertaking, shall issue a regulation establishing the conditions, arrangements and terms of the notifications under paragraphs 1 and 2, having also regard to the cases where the person entitled to vote is not the holder of the participation”.*

<sup>415</sup> Paragraph amended by article 1 (98, a) of legislative decree n. 74 of 12 May 2015.

<sup>416</sup> Paragraph amended by article 1 (98, b) of legislative decree n. 74 of 12 May 2015.

<sup>417</sup> Paragraph amended by article 1 (98, c) of legislative decree n. 74 of 12 May 2015.

**Chapter IV<sup>418</sup>**  
**(REPEALED)**

Art. 82  
(repealed)<sup>419</sup>

Art. 83  
(repealed)<sup>420</sup>

Art. 84  
(repealed)<sup>421</sup>

Art. 85  
(repealed)<sup>422</sup>

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<sup>418</sup> Chapter repealed by article 1 (208) of legislative decree n. 74 of 12 May 2015. The wording of the Chapter was "Insurance Group"

<sup>419</sup> Article repealed by article 1 (208) of legislative decree n. 74 of 12 May 2015. Article 82 laid down:

"Art. 82  
(Insurance group)

1. For supervisory purposes an insurance group is alternatively made up of:

- a) the ultimate parent Italian insurance or reinsurance undertaking and the insurance undertakings, reinsurance undertakings and instrumental companies controlled by the former;
  - b) the ultimate parent Italian insurance or reinsurance holding company and the insurance undertakings, reinsurance undertakings and instrumental companies controlled by the former;
- b-bis) by the Italian parent mixed financial holding company as per article 3 (2) of legislative decree n. 142 of 30 May 2005, and by the insurance undertakings, reinsurance undertakings and instrumental subsidiaries, provided that there is at least one Italian insurance or reinsurance subsidiary".

<sup>420</sup> Article repealed by article 1 (208) of legislative decree n. 74 of 12 May 2015. Article 83 laid down:

"Art. 83  
(Ultimate parent undertaking)

1. An ultimate parent company is the Italian insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding undertaking with head office in Italy which directly or indirectly controls the companies belonging to the insurance group and which is not, in its turn, controlled by another Italian insurance or reinsurance undertaking or another insurance or reinsurance holding company or by another mixed financial holding undertaking with head office in Italy, which may be considered as the ultimate parent company.

2. ISVAP shall verify that the memorandum and articles of association of the ultimate parent company are not incompatible with the sound and prudent management of the group".

<sup>421</sup> Article repealed by article 1 (208) of legislative decree n. 74 of 12 May 2015. Article 84 laid down:

"Art. 84  
(Ultimate parent holding undertaking)

1. The persons charged with administration, management and control functions at the ultimate parent insurance or reinsurance holding company or the parent mixed financial holding company shall be subject to the provisions on professional, good repute and independence requirements applicable to the persons charged with the same functions at insurance and reinsurance undertakings, without prejudice to the provisions of art. 87-bis.

2. The obligations to give information referred to in article 190 (3, 4 and 5) shall apply to the ultimate parent insurance or reinsurance holding company or to the parent mixed financial holding company.

3. The provisions under chapters I and II shall apply to ultimate parent holding companies, without prejudice to the provisions of art. 87-bis".

<sup>422</sup> Article repealed by article 1 (208) of legislative decree n. 74 of 12 May 2015. Article 85 laid down:

"Art. 85  
(Register of ultimate parent undertakings)

1. The ultimate parent undertaking is registered in a special register kept by ISVAP.

2. The ultimate parent undertaking shall inform ISVAP of the existence of the insurance group and of its updated composition.

Art. 86  
(repealed)<sup>423</sup>

Art. 87  
(repealed)<sup>424</sup>

Art. 87-bis  
(repealed)<sup>425</sup>

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3. ISVAP may, on its own initiative, verify the existence of an insurance group and its registration in the register and may ask the ultimate parent company for a new determination of the composition of the insurance group.

4. In their acts and correspondence group undertakings shall show proof of their registration in the register of insurance groups.

5. ISVAP shall, by its own regulation, establish the requirements for keeping and updating the register".

<sup>423</sup> Article repealed by article 1 (208) of legislative decree n. 74 of 12 May 2015. Article 86 laid down:

"Art. 86

(Powers of investigation)

1. For the purposes of verifying supervisory information and data referred to in this chapter ISVAP may carry out, itself or through the intermediary of persons whom it appoints for that purpose, on-the-spot inspections at the parent company and at the companies with head office within the territory of the Italian Republic, belonging to the insurance group.

2. On-the-spot verifications at companies other than insurance and reinsurance undertakings shall be limited to checking the exactness of data and information required for the exercise of supervision over the insurance group.

3. The powers attributed to ISVAP by article 71 shall also be exercised over companies belonging to the insurance group and holders of participations in the same companies".

<sup>424</sup> Article repealed by article 1 (208) of legislative decree n. 74 of 12 May 2015. Article 87 laid down:

"Art. 87

(General or specific provisions)

1. With a view to ensuring a stable and efficient management of the group, ISVAP may, by regulation or specific measures, give the ultimate parent company instructions concerning the whole insurance group or its components, intended to guarantee adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

2. The risk management processes shall include:

a) adequate and effective governance of the group and its components, with the development and periodical review of the strategies by the bodies charged with administration, management and control functions within the group undertakings, in particular with respect to all the risks they assume;

b) adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all necessary measures are taken to ensure that the systems implemented by the undertakings envisaged in article 82 are consistent, so that risks can be measured and monitored at the level of the insurance group.

3. The internal control mechanisms shall include sound procedures to identify and measure risks and their matching with the net assets of the single group undertakings. The ultimate parent company shall adopt measures implementing the instructions given by ISVAP and ensure that they are complied with by group undertakings, and shall regularly inform ISVAP thereof.

4. Directors and managers of subsidiaries are required to provide the ultimate parent company with the necessary collaboration to ensure compliance with insurance supervisory provisions".

<sup>425</sup> Article repealed by article 1 (208) of legislative decree n. 74 of 12 May 2015. Article 87-bis laid down:

"Article 87-bis

(Provisions applicable to mixed financial holding companies)

1. IVASS may identify the cases in which the parent mixed financial holding company is not required to apply one or more provisions adopted under this chapter.

2. The provisions referred to in articles 83 (2) and 84 (1 and 3) shall apply to the mixed financial holding company if the largest area within the financial conglomerate is the insurance area, determined according to legislative decree n. 142 of 30 May 2005. The orders referred to under article 196 (approval), article 76 (disqualification) and article 68 (authorization) shall be adopted by IVASS upon agreement with the Bank of Italy.

3. The orders envisaged by title XVI, chapter I, II, IV and VII, in relation to the mixed financial holding company shall be adopted or proposed by IVASS upon agreement with the Bank of Italy".

**TITLE VIII**  
**FINANCIAL STATEMENTS AND ACCOUNTING RECORDS**

**Chapter I**  
**GENERAL PROVISIONS ABOUT FINANCIAL STATEMENTS**

Art. 88  
(Applicable provisions)

1. Insurance and reinsurance undertakings with head office in the territory of the Italian Republic shall draw up their financial statements in accordance with chapters I, II and III of this title.

2. *(repealed)*<sup>426</sup>

3. The provisions pertaining to life assurance shall also apply to insurance undertakings which underwrite only health insurance exclusively or principally according to the technical principles of life assurance.

Art. 89  
(Special provisions)

1. The provisions of the civil code and those of legislative decrees n. 127 of 9 April 1991, n. 173 of 26 May 1997<sup>427</sup>, and n. 38 of 28 February 2005 shall apply to situations not envisaged by this title and by implementing measures.

2. The keeping of accounts in various currencies is allowed. By way of derogation from the provisions of article 2423 (last paragraph) of the civil code IVASS may, by its own regulation<sup>428</sup>, require or permit that the notes on the accounts be drawn up in thousands euros or require or permit a higher degree of synthesis than thousands, after hearing the opinion of CONSOB for listed companies.

Art. 90  
(Layouts)

1. In compliance with the provisions of the civil code<sup>429</sup>, of legislative decree n. 127 of 9 April 1991, legislative decree n. 173 of 26 May 1997<sup>430</sup>, and legislative decree n. 38 of 28 February 2005 IVASS shall establish, by way of regulation<sup>431</sup>:

- a) the layout of accounts;
- b) the chart of accounts undertakings must adopt in their management;
- c) the calculation methods of technical provisions for drafting the financial statement referred to under Chapter II and III;

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<sup>426</sup> Paragraph amended by article 10, legislative decree n. 56 of 29 February 2008, and then repealed by article 1 (88) of legislative decree n. 74 of 12 May 2015. Paragraph 2 laid down: "*The provisions on the financial statements of insurance and reinsurance undertakings shall also apply to branches of undertakings with head office in a third State authorised to pursue life or non-life insurance or reinsurance in the territory of the Italian Republic*".

<sup>427</sup> See also decree-law n. 185 of 29 November 2008, converted into law n. 2 of 28 January 2009, as amended and supplemented, as last implemented through ISVAP regulation n. 43 of 12 July 2012.

<sup>428</sup> ISVAP Regulation n. 22 of 04 April 2008.

<sup>429</sup> ISVAP regulation n. 7 of 13 July 2007, ISVAP regulation n. 22 of 4 April 2008 and ISVAP regulation n. 19 of 14 March 2008, as amended by ISVAP regulation n. 28 of 17 February 2009, implementing decree-law n. 185 of 29 November 2009, converted by law n. 2 of 28 January 2009

<sup>430</sup> See also decree-law n. 185 of 29 November 2008, converted into law n. 2 of 28 January 2009, implemented through ISVAP regulation n. 28 of 17 February 2009.

<sup>431</sup> ISVAP Regulation n. 7 of 13 July 2007, ISVAP Regulation n. 22 of 4 April 2008 and ISVAP Regulation n. 19 of 14 March 2008.

d) the calculation methods of the other balance-sheet items for drafting the financial statement referred to under Chapter II and III<sup>432</sup>;

2. IVASS may, by its own regulation<sup>433</sup>, issue explanatory and application instructions, require additional or more detailed information also as regards the transactions with related parties and off-balance-sheet arrangements referred to in article 2427 (1) (22-bis and 22-ter) of the civil code and article 38 (1) (o-quinquies and o-sexies) of legislative decree n. 127 of 9 April 1991. IVASS may also establish<sup>434</sup> the documents required for the performance of supervision over financial statements and consolidated accounts<sup>435</sup>.

3. The accounting system shall be such as to enable confrontation with the budgetary accounts, in line with the provisions set out by IVASS through its own regulation<sup>436</sup>.

4. The powers of IVASS are exercised in line with the international accounting standards with regard to the subjects who draw up financial statements or consolidated accounts in compliance with the international accounting standards. To verify that the data shown in the consolidated accounts are correct, IVASS may request that the companies and entities controlled by insurance and reinsurance undertakings communicate data, news and information, or it may carry out inspections of said entities and companies. In the event that the company or entity is subject to the supervision of another authority IVASS shall request the collaboration of that authority.

## **Chapter II**

### **FINANCIAL STATEMENTS**

#### Art. 91 (Drafting principles)

1. Insurance and reinsurance undertakings under article 88 (1) which issue financial instruments admitted to trading on regulated markets of any EU member State and do not draw up consolidated accounts shall draw up their financial statements in compliance with the international accounting standards.

2. Insurance and reinsurance undertakings under article 88 (1) which do not apply the international accounting standards shall draw up their financial statements in compliance with legislative decree n. 173 of 26 May 1997. For each of the assets dedicated to a specific business activity set up in accordance with article 2447-bis (1) (a) of the civil code a separate statement drawn up according to the provisions of article 89<sup>437</sup> shall be enclosed to the financial statements.

#### Art. 92 (Business year and time-limit for approval)

1. The business year shall start on 1 January and end on 31 December of each year.

2. Where contemplated by the memorandum and articles of association, the date indicated under article 2364 (2) of the civil code may be extended by the insurance undertaking to 30 June where specific needs so require or where the undertaking is also authorised to pursue reinsurance

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<sup>432</sup> Paragraph replaced by article 1 (100) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "1. *ISVAP shall, by its own regulation, set out the layout of accounts, the chart of accounts undertakings must adopt in their management, the statements relating to assets representing technical provisions and the statement relating to the solvency margin.*"

<sup>433</sup> ISVAP Regulation n. 22 of 04 April 2008.

<sup>434</sup> ISVAP Regulation n. 7 of 13 July 2007.

<sup>435</sup> Paragraph amended by article 4, legislative decree n. 173 of 3 November 2007.

<sup>436</sup> ISVAP Regulation n. 22 of 04 April 2008.

<sup>437</sup> Paragraph amended by article 1 (101) of legislative decree n. 74 of 12 May 2015.



business and such business plays a significant role in the same undertaking or in case of undertakings required to draw up consolidated accounts.

3. Undertakings which conduct only reinsurance business shall approve their financial statements by 30 June of the year following that to which the financial statements refer. Where contemplated by the memorandum and articles of association, the date indicated may be extended by the reinsurance undertaking to 30 September where specific needs so require.

4. Insurance and reinsurance undertakings making use of the possibility set out in paragraphs 2 and 3 shall indicate it in the notes on the accounts and previously notify IVASS thereof, specifying the reasons for such extension.

#### Art. 93 (Filing and publication)

1. Insurance and reinsurance undertakings under article 88 (1) shall file and publish their financial statements in line with article 2435 of the civil code<sup>438</sup>.

2. Insurance and reinsurance undertakings shall have their financial statements audited and file the auditing report<sup>439</sup>.

3. *(repealed)*<sup>440</sup>

4. Insurance undertakings carrying on assistance insurance shall file, enclosed to their financial statements, a report illustrating the staff and equipment available to them to meet their commitments.

5. *(repealed)*<sup>441</sup>

#### Art. 94 (Annual report)

1. The accounts shall be accompanied by a report by management containing a fair, balanced and comprehensive analysis about the position of the undertaking and about the development and performance achieved on the management side as a whole, together with a description of the principal risks and uncertainties faced by the undertaking. The report shall anyhow disclose the following information<sup>442</sup>:

- a) changes in the insurance portfolio;
- b) the claims frequency in the main insurance classes pursued;
- c) the most significant reinsurance arrangements used in the main insurance classes pursued;
- d) research and development and the new products placed on the market;
- e) the guidelines regarding investments;
- e-bis) financial risk management objectives and policies and the policy for hedging the major type of transactions for which hedging is used, and the undertaking's exposure to price risk, credit risk, liquidity risk and cash flow risk<sup>443</sup>;
- f) information about litigations, in case they are significant;

<sup>438</sup> Paragraph amended by article 1 (102, a) of legislative decree n. 74 of 12 May 2015.

<sup>439</sup> Paragraph amended by article 1 (102, b) of legislative decree n. 74 of 12 May 2015.

<sup>440</sup> Paragraph repealed by article 1 (102, c) of legislative decree n. 74 of 12 May 2015. Paragraph 3 laid down: "*Insurance and reinsurance undertakings shall file, as annex to the financial statements, a statement relating to the assets representing technical provisions at the closing of the financial year.*".

<sup>441</sup> Paragraph repealed by article 1 (102, d) of legislative decree n. 74 of 12 May 2015. Paragraph 5 laid down: "*Insurance undertakings shall also file the statement relating to the solvency margin, which must also be underwritten by the appointed actuary for life assurance.*".

<sup>442</sup> As amended by article 1, legislative Decree n. 32 of 2 February 2007.

<sup>443</sup> Letter inserted by article 1, legislative decree n. 32 of 2 February 2007.

- g) the number and nominal value of own shares, of the shares of the parent undertaking held in the portfolio, of the shares purchased and of those transferred during the financial year, of the corresponding subscribed capital, of the consideration and the grounds for the purchase and transfer;
- h) the relations with group undertakings, drawing a distinction between parent undertakings, subsidiaries and associated undertakings, and the relations with affiliated undertakings;
- i) the foreseeable development of the management, with special regard to the changes in the insurance portfolio, the claims frequency and any changes in the reinsurance arrangements adopted;
- l) any important events that have occurred since the end of the financial year.

1-bis. The analysis referred to in paragraph 1 shall be consistent with the size and complexity of the undertaking's business and, to the extent necessary for an understanding of the undertaking's position and of the development and performance of its management, shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business of the undertaking, including information relating to environmental and employee matters. The analysis shall, where appropriate, include references to and additional explanations of amounts reported in the undertaking's accounts<sup>444</sup>.

2. The provisions under paragraph 1 (g) shall also apply to the shares held, purchased or transferred through trust companies or third parties.

### **Chapter III** **CONSOLIDATED ACCOUNTS**

#### Art. 95 (Obligated undertakings)

1. Insurance and reinsurance undertakings with head office in the territory of the Italian Republic, which control one or more companies, shall draw up their consolidated accounts according to the international accounting standards<sup>445</sup>.

2. The same requirement shall also apply to insurance holding companies with head office in Italy, which control one or more insurance or reinsurance undertakings wherever they are set up.

2-bis. The same requirement shall also apply to mixed financial holding undertakings with head office in Italy, which control one or more insurance or reinsurance undertakings wherever they are set up, if the largest area within the financial conglomerate is the insurance area, determined according to legislative decree n. 142 of 30 May 2005<sup>446</sup>.

3. Only as concerns the requirement to draw up consolidated accounts undertakings referred to in article 26 of legislative decree n. 127 of 9 April 1991 shall be considered as subsidiary undertakings.

#### Art. 96 (Unified management)

1. The requirement to draw up consolidated accounts shall also apply when two or more insurance or reinsurance undertakings with head office in the territory of the Italian Republic or insurance

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<sup>444</sup> Paragraph inserted by article 1, legislative decree n. 32 of 2 February 2007. See also article 5 of the same decree.

<sup>445</sup> Paragraph amended by article 1 (103) of legislative decree n. 74 of 12 May 2015.

<sup>446</sup> Paragraph inserted by article 3 (8), legislative decree n. 53 of 4 March 2014.

holding companies or mixed financial holding undertakings referred to in article 95 (2 or 2-bis), which are not connected as described in article 95 (3), are managed on a unified basis pursuant to a contract or provisions of their memoranda or articles of association, or when their management bodies are mainly made up of the same persons. Unified management between undertakings may also consist of important and durable reinsurance links<sup>447</sup>.

2. Undertakings managed on a unified basis by one of the following controlling entities shall also be treated in the same way as undertakings referred to in paragraph 1:

- a) an undertaking or entity, set up in Italy, other than an insurance or reinsurance undertaking or an insurance holding company or a mixed financial holding undertaking referred to in article 95 (2 or 2-bis)<sup>448</sup>;
- b) an undertaking or entity set up in another State, except when the conditions for exemption envisaged in article 97 are met;
- c) a natural person.

3. In the cases under paragraphs 1 and 2 the undertaking which, according to the data in the last approved balance sheet, has the higher amount of total assets is required to draw up consolidated accounts.

4. The undertaking subject to compulsory consolidation which is also managed on a unified basis pursuant to paragraphs 1 and 2 is required to draw up consolidated accounts exclusively pursuant to paragraph 3, when the following conditions are met:

- a) the undertaking has not issued securities dealt in on regulated markets;
- b) the drawing up of consolidated accounts is not requested at least six months before the end of the financial year by a number of shareholders representing at least five per cent of the share capital.

5. In case of exemption from the obligation to draw up consolidated accounts pursuant to paragraph 4, the reasons for this exemption shall be shown in the notes on the accounts. The notes on the accounts shall also indicate the name and head office of the undertaking which draws up the consolidated accounts under this article. Copies of the accounts, of the annual report and the report by the supervisory bodies shall be lodged at the office of the registrar of companies of the place where the exempted undertaking has its head office.

6. The provisions relating to undertakings which have issued securities dealt in on regulated markets remain unaffected.

#### Art. 97

##### (Exemption from compulsory consolidation)

1. The requirement to draw up consolidated accounts shall not apply to undertakings envisaged in article 95 (1 and 2), which are in turn directly or indirectly controlled by another undertaking subject to this requirement under this title or by an insurance or reinsurance undertaking set up in another member State.

2. The exemption is subject to the following conditions:

- a) the subsidiary undertaking has not issued securities dealt in on regulated markets;
- b) the parent company holds more than ninety-five per cent of the shares of the subsidiary or, in the absence of such condition, the drawing up of consolidated accounts is requested at least six months before the end of the financial year by a number of shareholders representing at least five per cent of the share capital;

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<sup>447</sup> Paragraph replaced by article 3 (9, a), legislative decree n. 53 of 4 March 2014.

<sup>448</sup> Letter replaced by article 3 (9, b), legislative Decree n. 53 of 4 March 2014.

- c) the subsidiary and its subsidiary undertakings to be included in the consolidation pursuant to this title are included in the consolidated accounts of the parent company;
- d) the parent company, governed by the law of a member State, draws up and has its consolidated accounts audited in accordance with Community provisions.

3. The reasons for the exemption shall be shown in the notes on the accounts. The notes on the accounts shall also indicate the name and head office of the undertaking which draws up the consolidated accounts under this article. Copies of the accounts of the parent company, the annual report and the report by the supervisory bodies – drawn up in Italian – shall be lodged at the office of the registrar of undertakings of the place where the subsidiary has its head office.

#### Art. 98

(Compulsory consolidation for the sole purpose of supervision)

1. IVASS shall, by its own regulation<sup>449</sup>, indicate the entities not subject to compulsory consolidation as envisaged in articles 95 and 96, which are required to draw up consolidated accounts for the sole purpose of supervision.

#### Art. 99

(Reference date)

1. The reference date for consolidated accounts shall be the balance-sheet date of the parent company subject to compulsory consolidation. If the latter is an insurance holding company or a mixed financial holding undertaking referred to in article 95 (2 or 2-bis) the reference date shall be the balance-sheet date of the subsidiary insurance undertakings<sup>450</sup>.

#### Art. 100

(Annual report)

1. The consolidated accounts shall be accompanied by a report by management containing a fair, balanced and comprehensive analysis about the position of the undertakings included in the consolidation taken as a whole and about the development and performance achieved on the management side as a whole and in the various sectors, with special regard to costs, revenues and investments, together with a description of the principal risks and uncertainties faced by the undertakings included in the consolidation. The report shall disclose the following information <sup>451</sup>:

- a) research and development and the new products placed on the market;
- b) the number and nominal value of the shares of the parent undertaking held by the latter or by subsidiaries, including those held through trust companies or third parties, with the indication of the corresponding amount of capital;
- c) the foreseeable development of the management, with special regard to the changes in the insurance portfolio, the claims frequency and any changes – if significant – in the reinsurance arrangements;
- d) any important events that have occurred since the reference date of the consolidated accounts;
- d-bis) financial risk management objectives and policies and the policy for hedging the major type of transactions for which hedging is used, and the exposure of the undertakings included in the consolidation to price risk, credit risk, liquidity risk and cash flow risk<sup>452</sup>.

<sup>449</sup> ISVAP regulation n. 7 of 13 July 2007, in particular article 20.

<sup>450</sup> Paragraph amended by article 3 (10), legislative decree n. 53 of 04 March 2014.

<sup>451</sup> As amended by legislative decree n. 32 of 2 February 2007.

<sup>452</sup> Letter added by legislative decree n. 32 of 2 February 2007.

1-bis. The analysis referred to in paragraph 1 shall be consistent with the size and complexity of the business of the undertakings included in the consolidation taken as a whole and, to the extent necessary for an understanding of the position of the undertakings included in the consolidation taken as a whole and of the development and performance of their management, shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business of the undertakings, including information relating to environmental and employee matters. The analysis shall, where appropriate, include references to and additional explanations of amounts reported in the consolidated accounts <sup>453</sup>.

1-ter. The report referred to in paragraph 1 and the report referred to in article 94 may be presented as a single report, giving greater emphasis, where appropriate, to those matters which are significant to the undertakings included in the consolidation taken as a whole<sup>454</sup>.

## **Chapter IV** **COMPULSORY BOOKS AND RECORDS**

### Art. 101 (Compulsory books and records)

1. Notwithstanding the other provisions established by the law, insurance undertakings having their head office in the territory of the Italian Republic shall keep their books and records in accordance with paragraphs 2 and 3<sup>455</sup>.

2. Undertakings authorised to pursue life assurance shall not only keep the register of assets representing technical provisions, but also records of:

- a) contracts issued;
- b) the contracts cancelled in accordance with article 1924 (2) of the civil code, for non-execution or for which the right of withdrawal under article 177 has been exercised;
- c) contracts expired;
- d) the contracts for which the right of surrender under article 1924 (2) of the civil code has been exercised;
- e) contracts converted;
- f) outstanding claims;
- g) claims paid;
- h) complaints received.

3. Undertakings authorised to pursue non-life insurance shall not only keep the register of assets representing technical provisions, but also records of:

- a) contracts issued;
- b) outstanding claims;
- c) claims paid;
- d) claims closed without payment;
- e) claims payable at the close of the financial year;
- f) claims already classified under (c) or (d) for which the settlement procedure has been re-opened;
- g) complaints received.

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<sup>453</sup> Paragraph inserted by legislative decree n. 32 of 2 February 2007.

<sup>454</sup> Paragraph inserted by legislative decree n. 32 of 2 February 2007, and then amended by article 1 (104) of legislative decree n. 74 of 12 May 2015.

<sup>455</sup> Paragraph amended by article 1 (105) of legislative decree n. 74 of 12 May 2015.

4. IVASS shall, by its own regulation<sup>456</sup>, lay down provisions on the keeping of the insurance registers envisaged by paragraphs 2 and 3 and establish the information, terms and conditions for their keeping and filling in, in line with the provisions of article 2421 (last paragraph) of the civil code.

5. IVASS shall, by its own regulation<sup>457</sup>, establish the books and records pertaining to the activity carried on by reinsurance undertakings and establish the information, terms and conditions for their keeping and filling in, in line with the provisions of article 2421 (last paragraph) of the civil code.

## Chapter V

### STATUTORY AUDITS OF THE ACCOUNTS<sup>458</sup>

#### Art. 102

(Statutory audits of the financial statement)<sup>459</sup>

1. The financial statements of insurance and reinsurance undertakings with head office in the territory of the Italian Republic shall be accompanied by a report by a statutory auditor or by a statutory auditing firm registered in the relevant register<sup>460</sup>.

2. The report by the statutory auditor or by the statutory auditing firm shall also express an opinion on the sufficiency of the undertaking's technical provisions, in accordance with the provisions of this code and taking account of correct actuarial techniques. To that end IVASS shall, by its own regulation, identify the criteria for determining the sufficiency of technical provisions and the correct actuarial techniques against which the statutory auditor or the statutory auditing firm shall express their opinion, as well as the arrangements and terms for expressing such opinion<sup>461</sup>.

3. The provisions on the statutory auditing of accounts under section VI of chapter II of title III of the consolidated law on financial mediation shall apply to the undertakings under paragraph 1, except for articles 155 (2), 156 (4), 157 (2) and 159 (1)<sup>462</sup>.

4. IVASS may challenge the resolution by the shareholder's meeting in which insurance and reinsurance undertakings' financial statements are passed for failure to comply with the relevant drafting rules within six months of recording such resolution in the registrar of companies.

5. *(repealed)*<sup>463</sup>.

#### Art. 103

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<sup>456</sup> ISVAP Regulation n. 27 of 14 October 2008.

<sup>457</sup> ISVAP Regulation n. 27 of 14 October 2008, in particular Title IV.

<sup>458</sup> Heading amended by article 41 (1) of legislative decree n. 39 of 27 January 2010.

<sup>459</sup> Heading amended by article 41 (2, a) of legislative Decree n. 39 of 27 January 2010.

<sup>460</sup> Paragraph amended by article 41 (2, b), legislative decree n. 39 of 27 January 2010, as last replaced by article 1 (106, a) of legislative decree n. 74 of 12 May 2015. The previous version laid down "1. *The financial statements of insurance and reinsurance undertakings with head office in the territory of the Italian Republic and of the branches of insurance and reinsurance undertakings with head office in a third State shall be accompanied by a report by a statutory auditor or by a statutory auditing firm registered in the relevant register. If the duty of statutory auditing is entrusted to a statutory auditing firm, at least one of its partners is an actuary registered in the professional register envisaged by law n. 194 of 9 February 1942. If the task of statutory auditing is entrusted to a statutory auditor article 103 shall apply*"

<sup>461</sup> Paragraph amended by article 41 (2, c), legislative decree n. 39 of 27 January 2010, as last replaced by article 1 (106, b) of legislative decree n. 74 of 12 May 2015.

<sup>462</sup> Paragraph amended by article 41 (2, d) of legislative Decree n. 39 of 27 January 2010.

<sup>463</sup> Paragraph repealed by article 41 (2, e) of legislative decree n. 39 of 27 January 2010. Paragraph 5 laid down: "5. *Should ISVAP become aware that no auditing firm has been appointed by the undertaking it shall immediately inform CONSOB, and the latter shall take the measures falling within its province*".

(repealed)<sup>464</sup>

Art. 104

(Checks of the accounting management)

1. IVASS may have the undertaking's balance sheet and profit and loss account periodically audited by the statutory auditor or by the statutory auditing firm once ascertained that the accounting events have been correctly shown in the accounts. To make those checks the statutory auditor or the statutory auditing firm shall use correct actuarial techniques. The costs shall be borne by the undertaking<sup>465</sup>.

Art. 105

(repealed)<sup>466</sup>

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<sup>464</sup> Article amended by article 41 (3), legislative decree n. 39 of 27 January 2010, and then repealed by article 1 (107) of legislative decree n. 74 of 12 May 2015. Article 103 laid down:

"Art. 103

(Actuary appointed by the statutory auditor or by the statutory auditing firm)

1. If the task of the statutory audits of the accounts is entrusted to a statutory auditor or if among the partners of the statutory auditing firm there are no actuaries registered in the professional register referred to under law n. 194 of 9 February 1942 the auditing report pursuant to art. 102 (1) shall be accompanied by the report of an actuary appointed by the statutory auditor or by the statutory auditing firm.

2. The actuary shall be appointed for a nine financial year term, and cannot be renewed or appointed again, even on behalf of another statutory auditing firm, unless at least three financial years have elapsed since date of termination of the previous appointment. Should the statutory auditor or the statutory auditing firm revoke such appointment before the expiry of the period it shall immediately inform ISVAP, specifying the grounds for doing so. The revocation of the appointment shall take effect at the time the appointment of another actuary takes effect.

3. It is not allowed to appoint an actuary who does not comply with the conditions of independence indicated by ISVAP's regulation or who is – with respect to the insurance or reinsurance undertaking or with respect to the actuary who, inside the insurance undertaking, acts as appointed actuary for life assurance or for insurance against civil liability in respect of the use of motor vehicles and craft – in one of the situations of incompatibility indicated by ISVAP's regulation.

4. The actuary and the legal representative of the insurance or reinsurance undertaking within which he/she carries out the task shall send ISVAP, within fifteen days of the appointment, evidence proving compliance with the conditions of independence and stating that there are no causes of incompatibility as those envisaged by paragraph 3, in the manners established by ISVAP's regulation.

<sup>465</sup> Article amended by article 41 (4), legislative decree n. 39 of 27 January 2010, and then by article 1 (108) of legislative decree n. 74 of 12 May 2015.

<sup>466</sup> Article repealed by article 1 (109) of legislative decree n. 74 of 12 May 2015. Article 105 laid down:

"Art. 105

(Revocation of the appointment of the auditing actuary)

1. Should ISVAP find that an actuary does not comply with the duties under article 102 (1) or with the duties as actuary appointed under article 103 (1), or should it find elements that are useful for the purposes of supervision on the activity of the statutory auditor or of the statutory auditing firm, it shall inform CONSOB thereof.

2. Should ISVAP find that the requirements under article 102 (1) are no longer fulfilled, that a situation of incompatibility as that envisaged by article 103 (3) exists or has emerged, that the condition of independence envisaged by article 103 (3) is no longer fulfilled, or that there are serious irregularities in the tasks performed by the actuary under article 103 (1), it may revoke the actuary after hearing him/her.

3. The measure of removal shall be communicated to the actuary, the statutory auditor or the statutory auditing firm and the insurance or reinsurance undertaking. In this case the statutory auditor or the statutory auditing firm shall appoint another actuary within thirty days and at any rate in good time for making the checks necessary for expressing the opinion on the financial statements.

4. Should the auditing company fail to appoint another actuary ISVAP shall do so and define the fees to be paid to him/her, based on the fee-scale of the actuaries' association.

5. ISVAP shall inform CONSOB of the measures taken against the actuary under article 102 (1) and the actuaries' association of the measures taken against the actuaries under articles 102 (1) and 103 (1).

6. The actuaries' association shall inform ISVAP of any measure adopted against the actuaries under articles 102 (1) and 103 (1)".

**TITLE IX**  
**INSURANCE AND REINSURANCE DISTRIBUTION ACTIVITY<sup>467</sup>**

**Chapter I**  
**GENERAL PROVISIONS**

Art. 106  
(Insurance and reinsurance distribution activity)<sup>468</sup>

1. Insurance distribution activities consist of advising pursuant to article 1, (1), m-ter), on insurance contracts, proposing, or carrying out other work preparatory to the conclusion of insurance contracts, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media.

2. Reinsurance distribution activities consist of advising pursuant to article 1, (1), m-ter), on reinsurance contracts, on, proposing, or carrying out other work preparatory to the conclusion of reinsurance contracts, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by a reinsurance undertaking without the intervention of a reinsurance intermediary.

Art. 107  
(Scope)<sup>469</sup>

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<sup>467</sup> Heading replaced by article 1 (5) of legislative decree n. 68 of 21 May 2018. The previous heading laid down: “*Insurance and reinsurance mediation business*”.

<sup>468</sup> Article replaced by article 1 (3) of legislative decree n. 187 of 30 December 2020. The previous version laid down “*Art. 106 (Insurance and reinsurance mediation business)*”.

1. *Insurance and reinsurance distribution consists in proposing insurance and reinsurance products or in assisting, advising on or carrying out other work preparatory to the conclusion of these contracts or in concluding such contracts or in assisting in the administration or performance of such contracts, in particular in the event of a claim. Insurance distribution also includes the provision of information, through a website or other media, concerning one or more insurance contracts, in accordance with criteria selected by customers and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude the contract.”.*

<sup>469</sup> Article replaced by article 1 (7) of legislative decree n. 68 of 21 May 2018. The previous version laid down:

“*Art. 107*  
*(Scope)*”

1. *The provisions under this title lay down the conditions for the taking-up and pursuit of the activities of insurance and reinsurance mediation, for remuneration, within the territory of the Italian Republic and under the right of establishment or the freedom of services in the territory of other member States by natural or legal persons having their residence or head office in the territory of the Italian Republic, as well as the insurance and reinsurance mediation services provided in relation to risks and commitments located outside the European Union, when they are offered by insurance and reinsurance intermediaries registered in Italy.*

2. *The following activities shall not be considered as insurance and reinsurance mediation pursuant to this title:*

- a) the activities directly undertaken by insurance or reinsurance undertakings and their employees;*
- b) the mere provision of information on an incidental basis in the context of another professional activity, provided that the purpose of that activity is not to assist the policyholder in concluding or performing an insurance contract;*
- c) insurance mediation activities if all the following conditions are met:*
  - 1) the insurance contract only requires knowledge of the insurance cover that is provided;*
  - 2) except for the case envisaged under 4), the insurance contract is not a life assurance contract or does not cover any liability risks;*
  - 3) mediation is not the principal professional activity;*
  - 4) the insurance is complementary to a product or service and covers the risks of loss or breakdown or, in the event of booked travels, covers the loss of or damage to baggage or life assurance or liability risks linked to the travel booked;*



1. Without prejudice to Titles II, III and IV for insurance undertakings and V and VI for reinsurance undertakings, the provisions under this title lay down the conditions for the taking-up and pursuit of the activity of insurance and reinsurance distribution within the territory of the Italian Republic, including the activities of insurance and reinsurance mediation, pursued for remuneration by natural or legal persons having their residence or registered office in the territory of the Italian Republic and under the freedom of establishment or the freedom of services in the territory of other member States, as well as insurance and reinsurance distribution activities in relation to risks and commitments located outside the European Union, when they are pursued by intermediaries registered in Italy.

2. The provisions under this title shall also apply to insurance distribution as an ancillary activity, and to reinsurance distribution carried out on the territory of the Italian Republic by natural or legal persons having their residence or registered office in the territory of other EU member States.

3. For the purposes of paragraph 1 the following shall not be considered to constitute insurance distribution or reinsurance distribution:

- a) the provision of information to customers on an incidental basis in the context of another professional activity, provided that the provider does not take any additional steps to assist in concluding or performing an insurance or reinsurance contract and the purpose of that activity is not to assist the customer in concluding or performing an insurance or reinsurance contract;
- b) the management of claims of an insurance or reinsurance undertaking on a professional basis, or loss adjusting and expert appraisal of claims;
- c) the mere provision of data and information on potential policyholders to insurance or reinsurance intermediaries, or to insurance or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
- d) the mere provision of information about insurance or reinsurance products, an insurance or reinsurance intermediary, an insurance or reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of the contract.

4. This Title shall not apply to insurance distribution activities carried out by ancillary insurance intermediaries, where all the following conditions are met:

- a) the insurance is complementary to a good or service and covers:
  - 1) the risk of loss, breakdown of, or damage to, the good or the non-use of the service supplied by the provider; or
  - 2) loss of, or damage to, baggage and other risks linked to travel booked with that provider;
- b) the amount of the premium paid for the insurance contract does not exceed EUR 600 calculated on a pro rata annual basis;
- c) by way of derogation from point b), where the insurance is complementary to a service referred to in point a) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.

5. When carrying out a distribution activity through an ancillary insurance intermediary who is exempted pursuant to paragraph 4, the insurance undertaking or insurance intermediary shall ensure that:

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*5) the amount of the annual premium does not exceed five-hundred euros and the total duration of the insurance contract, including any renewals, does not exceed five years."*

*3. Legal persons referred to in article 109 (2) d), only as regards insurance mediation, shall be subject to IVASS' supervision, which exerts it on the basis of the powers provided for in article 5 (1), also as concerns compliance with the rules of conduct specified in chapter III, and for this purpose it informs and collaborates with the other authorities concerned."*

a) information is made available to the policyholder, prior to the conclusion of the contract, about the items referred to in article 120 (2) a) and c), if the intermediary acts on behalf of the undertaking, or referred to in article 120 (1) a) and c), if the intermediary acts on behalf of another intermediary;

b) appropriate and proportionate contractual relationships are in place to ensure compliance with articles 119-bis and 120-quinquies and to consider the demands and needs of the policyholder before the proposal of the contract;

c) the insurance product information documents referred to in article 185 are provided to the policyholder prior to the conclusion of the contract.

6. Without prejudice to the provisions of the consolidated law on financial mediation, the legal persons referred to in article 109 (2) d), only as regards insurance distribution, shall be subject to IVASS' supervision, which exerts it on the basis of the powers provided for in article 5 (1), also as concerns compliance with the rules of conduct specified in chapter III, and for this purpose it informs and collaborates with the other authorities concerned.

7. IVASS shall monitor the market, including the market for ancillary insurance products which are marketed, distributed or sold in, or from, the territory of the Italian Republic.

#### Art. 107-bis

(Subjects licensed to pursue insurance and reinsurance distribution activity)<sup>470</sup>

1. The activities of insurance or reinsurance distribution may be exercised by the following subjects:

a) the insurance or reinsurance undertakings referred to in article 1 (1) t) and cc), and their employees where they pursue this business directly;

b) the intermediaries registered in sections a) to e) of the register envisaged in article 109 (2);

c) ancillary insurance intermediaries, referred to in article 1 (1) cc-*septies*), recorded in section f) of the register envisaged in article 109 (2);

d) insurance, reinsurance and ancillary insurance intermediaries, having their residence or head office in another Member State and licensed to pursue mediation under the right of establishment or the freedom to provide services in the territory of the Italian Republic pursuant to articles 116-*quater* and 116-*quinquies*.

## Chapter II

### GENERAL PROVISIONS ON DISTRIBUTION<sup>471</sup>

#### Art. 108

(Distribution activity)<sup>472</sup>

1. The activities of insurance and reinsurance distribution shall be reserved to the undertakings referred to in article 107-*bis*, (1) a), to their employees, as well as to insurance, reinsurance and ancillary insurance intermediaries recorded in the register referred to in article 109. The register shall indicate the member States where the insurance, reinsurance or ancillary insurance

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<sup>470</sup> Article inserted by article 1 (7) of legislative decree n. 68 of 21 May 2018.

<sup>471</sup> Heading replaced by article 1 (8) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "*Taking up of mediation business*".

<sup>472</sup> Heading replaced by article 1 (9, a) of legislative Decree n. 68 of 21 May 2018. The previous version laid down: "*Taking up of mediation business*".

intermediary carries on business by way of freedom of establishment or by way of free provision of services<sup>473</sup>.

2. Except where the activities of insurance and reinsurance distribution are pursued, in accordance with paragraph 1, directly by the undertakings and their employees, these activities may not be carried out by persons not recorded in the register, and in case of violation articles 305 (2) and 308 (2) shall apply<sup>474</sup>.

3. Distribution activity may also be conducted by insurance, reinsurance and ancillary insurance intermediaries, having their residence or head office in the territory of another member State pursuing business according to the provisions of article 116<sup>475</sup>.

4. Insurance and reinsurance mediation, also on an ancillary basis, may not be carried out by public bodies, entities or companies controlled by the latter and civil servants under a full-time contract of employment or a part-time contract when the working hours exceed half of the working hours of a full-time contract<sup>476</sup>.

#### Art. 108-bis

(Body for the registration of insurance, reinsurance and ancillary insurance intermediaries)<sup>477</sup>

1. A Body is set up for the registration of the intermediaries referred to in article 109 (2), and for the fulfilment of the obligations relating to the lists referred to in articles 109 (1-*bis*), and to sections I and II of Title IX, Chapter II. The organisation of the Body is regulated by presidential decree issued pursuant to article 17 (2), of law no. 400 of 23 August 1988, upon the proposal of the Minister of Economic Development. The Body shall also promote the dissemination of the principles of fairness and professional diligence among the intermediaries defined in article 109 (2). In particular, the regulation lays down rules, in line with the principles of simplification and proportionality, on:

a) the establishment of the Body having legal personality under private law and with statutory, organisational and financial autonomy, set up in the form of an association, to which the powers and competence regarding the keeping of the register of insurance and reinsurance intermediaries shall be transferred;

b) the procedure for appointing members of the Body in accordance with the principles of impartiality and neutrality;

c) the transfer to the Body of the functions and powers temporarily attributed to IVASS;

d) the arrangements through which the Body collects and manages the fees to be paid by intermediaries included in the register pursuant to article 109 of the Code of private insurance referred to under legislative decree n. 209 of 7 September 2005, pursuant to article 336 of the same Code;

e) IVASS' supervision over the Body referred to under a).

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<sup>473</sup> Paragraph replaced by article 1 (9, b) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "1. *The activities of insurance and reinsurance mediation shall be reserved to the persons recorded in the register referred to in article 109*".

<sup>474</sup> Paragraph replaced by article 1 (9, c) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "2. *The activities of insurance and reinsurance mediation may not be exercised by persons not recorded in the register, and in case of violation articles 305 (2) and 308 (2) shall apply*".

<sup>475</sup> Paragraph amended by article 1 (9, d) of legislative decree n. 68 of 21 May 2018.

<sup>476</sup> Paragraph amended by article 1 (9, e) of legislative decree n. 68 of 21 May 2018.

<sup>477</sup> Article inserted by article 1 (10) of legislative decree no. 68 of 21 May 2018.

2. The Body shall be subject to the supervision of IVASS which, by regulation, determines the terms and procedures for exercising such control, including the information flows and inspection powers, according to the criteria of proportionality and cost-effectiveness of the supervisory action, for the purpose of verifying the adequacy of the internal procedures adopted and effectiveness of the activity pursued in relation to the functions assigned.

3. The Body is financed through a share of the supervisory fee on insurance and reinsurance intermediaries pursuant to article 336 of the Code of private insurance referred to under legislative decree n. 209 of 7 September 2005 paid to IVASS and then transferred to the Body, according to the amount and procedures established by the regulation referred to under paragraph 1.

4. IVASS shall, by regulation, establish how the Body shall exercise its activity and the forms of collaboration with IVASS for the implementation of the provisions contained in this Chapter, including the procedures and the powers with regard to the intermediaries included in the register, taking also account of the need to prevent duplication of costs and requirements for the subjects included in other registers or lists.

#### Art. 109

(Register of insurance, reinsurance and ancillary insurance intermediaries)<sup>478</sup>

1. IVASS shall, by its own regulation<sup>479</sup>, lay down provisions for the formation and updating of the single electronic register of insurance, reinsurance and ancillary insurance intermediaries having their residence or head office in the territory of the Italian Republic.<sup>480</sup>

1-bis. The undertaking carrying out the activity of distributor shall identify the natural person, within the management, who is responsible for the insurance or reinsurance distribution and shall inform IVASS of their name. This person must meet the professional and good repute requirements established by IVASS' regulation<sup>481 482</sup>.

1-ter. The register shall be easily accessible and allow the complete and direct registration, in line with the provisions set out by IVASS' regulation referred to in paragraph 1<sup>483</sup>.

2. The register shall be subdivided into separate sections listing:

- a) insurance agents, in their capacity as intermediaries acting in the name or on behalf of one or more insurance or reinsurance undertakings<sup>484</sup>;
- b) insurance or reinsurance brokers in their capacity as intermediaries acting on behalf of their client without the power to represent insurance or reinsurance undertakings;
- c) direct canvassers who, also as an ancillary activity to the main business, pursue insurance mediation in life assurance and in accident and sickness insurance on behalf of and under the full responsibility of an insurance undertaking and work exclusively for said undertaking without fixed working hours or without obligations as to the result to be achieved;
- d) banks authorized as per article 14 of the Consolidated Banking Law, financial intermediaries included in the special list as defined in article 106 and 114-*septies* of the Consolidated Banking Law, stock brokerage companies authorized as per article 19 of the Consolidated Finance Law,

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<sup>478</sup> Heading replaced by article 1 (11, a) of legislative Decree n. 68 of 21 May 2018. The previous version laid down: "*Register of insurance and reinsurance intermediaries*".

<sup>479</sup> IVASS Regulation n. 40 of 2 August 2018, in particular Part II, Title I, Chapter I.

<sup>480</sup> Paragraph amended by article 1 (11, b) of legislative decree n. 68 of 21 May 2018.

<sup>481</sup> Paragraph inserted by article 1 (11, c) of legislative decree n. 68 of 21 May 2018.

<sup>482</sup> IVASS regulation n. 40 of 2 August 2018, in particular article 41.

<sup>483</sup> Paragraph inserted by article 1 (11, c) of legislative decree n. 68 of 21 May 2018.

<sup>484</sup> See art. 12 (1-ter) of legislative decree n. 141 of 13 August 2010, as amended by art. 22 (9-bis) of decree-law n. 179 of 18 October 2012 converted, after amendment, by law n. 221 of 17 December 2012.

the company Poste Italiane - Divisione servizi di bancoposta (Italian Mail - BancoPosta services department), authorized as per art. 2 of presidential decree n. 144 of 14 March 2001<sup>485</sup>;

e) any other persons dealing with mediation, such as employees, collaborators, canvassers and the other subjects charged by the intermediaries registered under the sections referred to in a), b), d), e) and f)<sup>486</sup>, for mediation outside the premises where the intermediary conducts business;

f) ancillary insurance intermediaries as defined in article 1 (1) cc-septies<sup>487</sup>.

The same intermediary may not be recorded in more than one section of the register.

2-bis. In relation to the internet sites through which it is possible to pursue the activity of insurance distribution, pursuant to article 106, the holder of the domain name must be recorded in the register<sup>488</sup>.

3. The register also contains the list of natural persons acting as intermediaries, referred to in paragraphs 2 a) and b), licensed but temporarily not operating, for whom compliance with the requirement of professional indemnity cover as per article 110 (3) is suspended until the starting of the activity, which must immediately be notified to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries<sup>489</sup>.

4. The intermediary referred to in paragraph 2 a), b) and d), which uses employees, collaborators, canvassers and other subjects providing mediation services will, on their behalf, take the necessary steps to register them in the section of the register indicated in e) of the same paragraph. The intermediary referred to in paragraph 2, a), which uses employees, collaborators, canvassers and other subjects providing mediation services is required to promptly inform the principal undertaking of the application for registration of the subjects operating on his/her behalf without prejudice to the provisions in the agency contract. The insurance undertaking which makes use of direct canvassers, shall make the necessary notification to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries for their registration in the section of the register indicated in paragraph 2 c)<sup>490</sup>.

4-bis. In the application for registration the intermediary using persons registered in the section of the register referred to in paragraph 2, e), for the pursuit of the distribution activity, shall, in compliance with paragraph 4, state that it has verified that the persons to be registered meet the requirements envisaged under this Chapter and the relevant implementing provisions on registration, including the provisions under letter c) of paragraph 4-sexies, and the professional training requirements in line with the criteria established by article 111 and the relevant implementing provisions<sup>491, 492</sup>.

4-ter. In the application for registration the undertaking using persons registered in the section referred to in paragraph 2, c), for the pursuit of the distribution activity, shall, in compliance with paragraph 4, state that it has verified that the persons to be registered meet the requirements envisaged under this Chapter and the relevant implementing provisions on registration, including

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<sup>485</sup> Letter amended by article 1 (11, d) of legislative decree n. 68 of 21 May 2018.

<sup>486</sup> Letter amended by article 1 (4) of legislative decree n. 187 of 30 December 2020.

<sup>487</sup> Letter inserted by article 1 (11, d) of legislative decree n. 68 of 21 May 2018.

<sup>488</sup> Paragraph inserted by article 1 (11, e) of legislative decree n. 68 of 21 May 2018.

<sup>489</sup> Paragraph amended by article 1 (11, f) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "3. *The register also contains the list of natural persons acting as intermediaries, referred to in paragraphs 2 a) and b), licensed but temporarily not operating, for whom compliance with the requirement of professional indemnity cover as per article 110 (3) is suspended until the starting of the activity, which must immediately be notified to IVASS, failing which the intermediary is struck off the register*".

<sup>490</sup> Paragraph amended by article 1 (11, f) of legislative decree n. 68 of 21 May 2018.

<sup>491</sup> Paragraph inserted by article 1 (11, g) of legislative decree n. 68 of 21 May 2018.

<sup>492</sup> IVASS Regulation n. 40 of 02 August 2018.

the provisions under letter c) of paragraph 4-sexies, and the professional training requirements in line with the criteria established by article 111 and the relevant implementing provisions<sup>493494</sup>.

4-quater. IVASS shall promptly provide EIOPA, in compliance with the instructions given, with relevant information for the feeding of the European single register of insurance, reinsurance and ancillary insurance intermediaries referred to in paragraph 4 of article 3 of directive 2016/97 and shall have the right to modify such data<sup>495</sup>.

4-quinquies. Applications for inclusion in the register referred to in paragraph 2 are dealt with within the deadline established in IVASS regulation referred to in paragraph 1 and no later than 90 days of the submission of the application. Inclusion in the register shall be promptly notified to the subjects concerned in the manner indicated in the implementing provisions issued by IVASS<sup>496497</sup>.

4-sexies. As a condition of registration of intermediaries pursuant to paragraph 2, the following information shall be sent to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries in accordance with the terms and arrangements established in the implementing provisions referred to in paragraph 1<sup>498</sup>:

- a) the identities of shareholders or members, whether natural or legal persons, that have a holding in the intermediary that exceeds 10 %, and the amount of that holding;
- b) the identities of persons who have close links with the intermediary;
- c) information showing that those holdings or close links do not prevent the exercise of the supervisory functions of IVASS.

4-septies. Any change in the information referred to in paragraph 4-sexies shall be notified without delay<sup>499</sup>.

4-octies. Inclusion in the register pursuant to article 109 (2) shall be refused if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the intermediary has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of the supervisory functions<sup>500</sup>.

## 5. The Body for the registration of insurance, reinsurance and

ancillary insurance intermediaries shall, upon request by the undertaking or intermediary concerned, provide a document attesting that they have been duly registered, without prejudice to the conditions required for verifying and reviewing registrations made<sup>501</sup>.

6. IVASS shall, by its own regulation<sup>502</sup>, establish the duties of notification imposed on undertakings and intermediaries, as well as the forms of publicity which can better ensure public access to the register.

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<sup>493</sup> Paragraph inserted by article 1 (11, g) of legislative decree n. 68 of 21 May 2018.

<sup>494</sup> IVASS Regulation n. 40 of 2 August 2018.

<sup>495</sup> Paragraph inserted by article 1 (11, g) of legislative decree n. 68 of 21 May 2018.

<sup>496</sup> Paragraph inserted by article 1 (11, g) of legislative decree n. 68 of 21 May 2015.

<sup>497</sup> IVASS Regulation n. 40 of 2 August 2018.

<sup>498</sup> Paragraph inserted by article 1 (11, g) of legislative decree n. 68 of 21 May 2018.

<sup>499</sup> Paragraph inserted by article 1 (11, g) of legislative decree n. 68 of 21 May 2018.

<sup>500</sup> Paragraph inserted by article 1 (11, g) of legislative decree n. 68 of 21 May 2018.

<sup>501</sup> Paragraph amended by article 1 (11, h) of legislative decree n. 68 of 21 May 2018. The words: "*The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries*" shall replace the word "IVASS".

<sup>502</sup> IVASS Regulation n. 40 of 02 August 2018.

Art. 109-bis  
(Rules applicable to ancillary insurance intermediaries)<sup>503</sup>

1. The ancillary insurance intermediary included in the section of the register envisaged in article 109 (2) f), shall act on behalf of one or more insurance undertakings. Ancillary insurance intermediaries who are natural persons shall be required to comply with the requirements laid down in article 110 (1) and (3). Where they are legal persons they shall comply with the requirements laid down in article 112, (1, 2 and 3).
2. To be included in the section of the register indicated in article 109 (2) f), the intermediary referred to in paragraph 1 who is a natural person shall also possess, taking into account the nature of the products distributed, appropriate professional knowledge and ability identified and verified on the basis of the procedures indicated in the regulation<sup>504</sup> adopted by IVASS, which shall also establish the professional updating requirements and the relevant registration arrangements.<sup>505</sup>
3. The ancillary insurance intermediary as defined in paragraph 1 shall adopt arrangements for the segregation of assets in accordance with article 117. Compliance with the financial obligations undertaken through ancillary insurance intermediaries shall be in line with the provisions of article 118 (1). The provision in paragraph 3 of article 119 shall also apply.<sup>506</sup>
4. The provisions envisaged in article 109, paragraphs 3, 4, 4-quinquies, 4-sexies, 4-septies, 4-octies, 5 and 6, and in articles 111 (5) and 113 (2), shall also apply to any subject involved in mediation inside the premises of the ancillary insurance intermediary as defined in paragraph 1. These intermediaries are also licensed to carry on business in other Member States by way of freedom of establishment or of free provision of services, in line with the provisions established by article 116 et seq.
5. Ancillary insurance intermediaries acting on behalf of another intermediary included in the sections of the register indicated in article 109 (2) a), b) or d), shall be subject to the rules applicable to any subject involved in mediation included in the section of the register referred to in paragraph 2, e) of the above-mentioned article 109.
6. IVASS shall, by its own regulation<sup>507</sup>, determine the rules for implementing this article.

Art. 110  
(Registration requirements for natural persons)

1. In order to be registered in the section of the register indicated in article 109 (2), a) or b), natural persons must fulfil the following requirements:
  - a) they must enjoy full rights as a citizen;
  - b) they must not have been convicted by final judgement or final judgement enforcing the penalty specified in article 444 (2) of the code of criminal procedure, of crimes against the public

<sup>503</sup> Article inserted by article 1 (12) of legislative decree n. 68 of 21 May 2018.

<sup>504</sup> IVASS Regulation n. 40 of 02 August 2018, in particular Part IV.

<sup>505</sup> Paragraph replaced by article 1 (5, a) of legislative decree n. 187 of 30 December 2020. The previous version laid down: "2. To be included in the section of the register indicated in article 109 (2) f), the intermediary referred to in paragraph 1 who is a natural person shall also possess, taking into account the nature of the products distributed, appropriate professional knowledge and ability identified and verified on the basis of the procedures indicated in the regulation adopted by IVASS, which shall also establish the relevant registration arrangements."

<sup>506</sup> Paragraph replaced by article 1 (5, b) of legislative decree n. 187 of 30 December 2020. The previous version laid down: "3. The ancillary insurance intermediary as defined in paragraph 1 shall adopt arrangements for the segregation of assets in accordance with article 117. Compliance with the financial obligations undertaken through ancillary insurance intermediaries shall be in line with the provisions of article 118 (1)."

<sup>507</sup> IVASS Regulation n. 40 of 02 August 2018.

administration, the administration of justice, public good faith, public economy, industry and trade, property for which the law prescribes imprisonment for a minimum term of one year up to a maximum term of three years, or for any intentional offence for which the law prescribes imprisonment for a minimum term of two years up to a maximum term of five years, or have been convicted by final judgement enforcing the additional penalty of disqualification from holding public office, for life or for more than three years, unless they have been rehabilitated, and without prejudice to the provisions of article 166 of the penal code<sup>508</sup>;

c) they must neither have previously been declared bankrupt, nor have been president, manager with delegated powers, general manager, auditor of companies or bodies which were subject to judicial liquidation proceedings<sup>509</sup>, composition to avoid bankruptcy or administrative compulsory winding-up, at least in the three years preceding the adoption of these measures, it being understood that this impediment lasts for five years following the adoption of these measures<sup>510</sup>;

d) they must not be affected by lapse of entitlement, prohibition or suspension envisaged by article 10 of Law n. 575 of 31 May 1965, and subsequent modifications;

e) they must not be registered in the register of loss adjusters.

2. To be included in the section of the register indicated in article 109 (2) a) or b), natural persons shall also possess appropriate professional knowledge and ability on the subjects indicated by IVASS' regulation<sup>511</sup>, which shall be determined through a qualifying examination, consisting in a test on these subjects. IVASS shall, by its own regulation, lay down detailed provisions on the requirements for registration and set out the arrangements for the holding of the qualifying examination<sup>512513514</sup>.

3. Notwithstanding the provisions of article 109 (3) and article 112 (3), natural persons, in order to be registered in the section of the register envisaged in article 109 (2), a) or b), must also take out professional indemnity insurance for the activity carried out pursuant to their registration for an amount of cover of at least one million two hundred fifty thousand euros applying to each claim and in aggregate one million eight hundred fifty thousand euros per year for all claims, covering the whole territory of the European Union, for damage arising from their own professional negligence and misconduct or from the professional negligence, misconduct and infidelity on the part of employees, collaborators or any other persons for whom the intermediary is liable under the law<sup>515</sup>.

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<sup>508</sup> Letter amended by article 1 (6, a) of legislative decree n. 187 of 30 December 2020.

<sup>509</sup> Words amended by article 349 of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>510</sup> The words: "*unless they have been rehabilitated*" have been deleted by article 1 (13) a) of legislative Decree n. 68 of 21 May 2018.

<sup>511</sup> IVASS Regulation n. 40 of 2 August 2018, Part II, Title I, Chapter I, Section II and Part IV.

<sup>512</sup> Paragraph amended by article 1 (6, b) of legislative decree n. 187 of 30 December 2020-

<sup>513</sup> Paragraph replaced by article 1 (13, b) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "2. *To be registered in the section of the register indicated in article 109 (2) a) or b), natural persons shall also possess appropriate professional knowledge and ability, which shall be determined by IVASS through a qualifying examination, consisting in a test on technical, legal and economic subjects which are essential to the exercise of their activity. IVASS shall, by its own regulation, set out the arrangements for the holding of the qualifying examination, and oversee its organization and conduct.*"

<sup>514</sup> IVASS Regulation n. 40 of 2 August 2018, Part II, Title I, Chapter I, Section II and Part IV.

<sup>515</sup> Paragraph replaced by article 1 (13, c) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "3. *Notwithstanding the provisions of article 109 (3) and article 112 (3), natural persons, in order to be registered in the section of the register envisaged in article 109 (2), a) or b), must also take out professional indemnity insurance for the activity carried out pursuant to their registration for an amount of cover of at least one million euros applying to each claim and in aggregate one million five hundred euros per year for all claims, covering the whole territory of the European Union, for damage arising from their own professional negligence and misconduct or from the professional negligence, misconduct and infidelity on the part of employees, collaborators or any other persons for whom the intermediary is liable under the law. The above amounts may be raised by IVASS, by regulation, taking account of changes in the European Index of Consumer Prices.*"



3-bis. The amounts under paragraph 3 shall be reviewed under directly applicable provisions of the European Union in order to take account of changes in the index of consumer prices published by Eurostat<sup>516</sup>.

#### Art. 111

(Special registration requirements for direct canvassers, intermediaries' collaborators and undertakings' employees)<sup>517 518</sup>

1. Direct canvassers and undertakings' employees directly involved in distribution activities must fulfil the good repute requirements prescribed in article 110 (1), and compliance with these requirements shall be verified by the undertaking on whose behalf they pursue business.<sup>519</sup>

2. Undertakings acting as distributors and undertakings on whose behalf direct canvassers pursue business shall provide the subjects referred to under paragraph 1<sup>520</sup> with adequate professional training and update on the products offered and the overall activity carried out<sup>521</sup>.

3. The persons registered in the section of the register envisaged in article 109 (2) e) must fulfil the good repute requirements prescribed in article 110 (1), and compliance with these requirements is verified by the intermediary on whose behalf they pursue business.

4. The persons registered in the section of the register envisaged in article 109 (2) e) shall possess appropriate professional knowledge and ability in line with the activity pursued and the products distributed, verified by a certificate attesting that they have successfully attended professional training and update courses organised by the undertaking or insurance intermediary on whose behalf they pursue business<sup>522</sup>.

5. The provisions envisaged in paragraphs 3 and 4 shall also apply to any subject directly involved in distribution activities, including the activity carried out inside the premises where the intermediary included in the sections of the register referred to in article 109 (2), a), b), d), e) and f) conducts business or through distance selling techniques<sup>523</sup>.

5-bis. IVASS shall, by regulation<sup>524</sup>, determine the rules for implementing this article<sup>525</sup>.

#### Art. 112

(Registration requirements for companies)

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<sup>516</sup> Paragraph inserted by article 1 (13, c) of legislative decree n. 68 of 21 May 2018. From 12 June 2020 the amounts are at least EUR 1 300 380 applying to each claim and in aggregate EUR 1 924 560 per year for all claims, under Delegated Regulation (EU) 2019/1935.

<sup>517</sup> Heading replaced by article 1 (7, a) of legislative decree n. 187 of 30 December 2020.

<sup>518</sup> Heading replaced by article 1 (14, a) of legislative Decree n. 68 of 21 May 2018. The previous version laid down: "*Special registration requirements for direct canvassers and intermediaries' collaborators*".

<sup>519</sup> Paragraph replaced by article 1 (14, b) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "*2. Undertakings on whose behalf direct canvassers pursue business shall provide them with adequate training on the products offered and the overall activity carried out*".

<sup>520</sup> The words "*the subjects referred to under paragraph 1 with adequate training*" are replaced by "*the subjects referred to under paragraph 1 with adequate professional training and update*" pursuant to article 1 (7, b) of legislative decree n. 187 of 30 December 2020.

<sup>521</sup> Paragraph amended by article 1 (14, c) of legislative decree n. 68 of 21 May 2018 by adding the following words: "*acting as distributors and undertakings*" and "*the subjects referred to under paragraph 1*".

<sup>522</sup> Paragraph amended by article 1 (14, a) of legislative Decree n. 68 of 21 May 2018 and by article 1 (7, c) of legislative Decree n. 187 of 30 December 2020.

<sup>523</sup> Paragraph replaced by article 1 (14, e) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "*5. The provisions envisaged in paragraphs 3 and 4 shall also apply to any subject involved in mediation inside the premises where the intermediary conducts business*".

<sup>524</sup> IVASS Regulation n. 40 of 02 August 2018.

<sup>525</sup> Paragraph inserted by article 1 (14, e) of legislative decree n. 68 of 21 May 2018.

1. In order to be registered in the section of the register indicated in article 109 (2) a), b) and e), the company must fulfil the following requirements:

- a) have its head office in Italy;
- b) not have been subject to judicial winding up<sup>526</sup> proceedings, composition to avoid bankruptcy, extraordinary administration or administrative compulsory winding-up;
- c) not to be affected by prohibition or lapse of entitlement envisaged by article 10 (4) of Law n. 575 of 31 May 1965, and subsequent modifications.

2. In order to be registered in the section of the register envisaged in article 109 (2) a), b) and e), the company must have entrusted responsibility for distribution activity to at least one natural person registered in the section of the register in which registration is sought. For companies registered in the section of the register envisaged in article 109 (2) b), the legal representative and, where appointed, the managing director and the general manager must be registered in the same section of the register<sup>527</sup>.

3. In order to be registered, the company must also take out professional indemnity insurance envisaged in article 110 (3) for the distribution activity pursued by the company itself, by the natural persons under paragraph 2 as well as for damage arising from the professional negligence, misconduct and infidelity on the part of employees, collaborators or any other persons for whom it is liable under the law<sup>528</sup>.

4. If the company pursues reinsurance distribution, it must possess a corporate capital not lower than the amount established by IVASS regulation<sup>529</sup>. The company that simultaneously carries on insurance and reinsurance distribution must entrust the two activities to distinct natural persons registered in the same section and establish an adequate organization<sup>530</sup>.

5. The requirements referred to in article 111 (3) and (4) shall also be complied with by the natural person involved in mediation on behalf of the company included in section e) of the register referred to in article 109 (2). However a company directly or indirectly operating through another company shall be barred from registration in the section of the register envisaged in article 109 (2) e)<sup>531</sup>.

5-bis. For the purposes of their inclusion in the section of the register envisaged in article 109 (2) d), the company shall provide the identification details of the natural person within the management who is responsible for the insurance distribution. This person must meet the professional and good repute requirements established by IVASS' regulation<sup>532 533</sup>.

#### Art. 113 (Removal)

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<sup>526</sup> Words amended by article 349 of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>527</sup> Paragraph amended by article 1 (15, a) of legislative decree n. 68 of 21 May 2018.

<sup>528</sup> Paragraph amended by article 1 (15, a) of legislative decree n. 68 of 21 May 2018.

<sup>529</sup> IVASS regulation n. 40 of 2 August 2018, in particular article 14.

<sup>530</sup> Paragraph amended by article 1 (15, b) of legislative decree n. 68 of 21 May 2018.

<sup>531</sup> Paragraph replaced by article 1 (15, c) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "*If the company seeks registration in the section of the register envisaged in article 109 (2) e), the natural persons involved in mediation must also be registered. However a company directly or indirectly operating through another company shall be barred from registration in the section of the register envisaged in article 109 (2) e).*".

<sup>532</sup> IVASS regulation n. 40 of 2 August 2018, in particular article 20.

<sup>533</sup> Paragraph inserted by article 1 (15, d), legislative decree n. 68 of 21 May 2018, and replaced by article 1 (8) of legislative decree n. 187 of 30 December 2020. The previous version laid down: "*5-bis. For the purposes of their inclusion in the section of the register envisaged in article 109 (2) d), the company shall provide the identification details of the natural person within the management who is responsible for the insurance distribution.*".

1. The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries shall adopt the following measures<sup>534</sup>:

- a) striking off;
- b) renunciation of registration;
- c) failure to carry on business, without good reason, for more than three years;
- d) loss of at least one of the requirements envisaged in articles 110 (1), 111 (1 and 3) and 112;
- e) failure to pay the supervisory fee provided for in article 336, despite the formal notice given by IVASS;
- f) only as regards intermediaries registered in the sections of the register indicated in article 109 (2) a), b) and f), loss of effectiveness of the insurance covers envisaged in articles 110 (3) and 112 (3)<sup>535</sup>;
- g) only as regards intermediaries registered in the section of the register indicated in article 109 (2) b), failure to pay the contribution to the guarantee fund provided for in article 115;
- g-bis) only as regards intermediaries referred to in article 274-ter (1), failure to join the Life insurance guarantee fund or exclusion from it.<sup>536</sup>

2. In the cases provided for under paragraph 1, b) and c), the application for the removal of the undertaking's direct canvassers or persons registered in the section of the register indicated in article 109 (2) e), shall be submitted respectively by the undertaking or by the intermediary registered in the section of the register indicated in article 109 (2) a), b) and d). In case of termination of the relationship with the direct canvasser or person included in the section of the register indicated in article 109 (2) e), the undertaking or, as the case may be, the intermediary shall be required to inform the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries thereof. The intermediary registered in the section of the register indicated in article 109 (2) a) shall inform the principal undertaking of any change regarding the persons registered as per article 109 (2) e)<sup>537</sup>.

3. *(repealed)*<sup>538</sup>

#### Art. 114 (Reinstatement)

1. Intermediaries who have been removed from the register further to the striking off, may upon request, be reinstated, provided that at least five years have elapsed from their removal and that the requirements respectively envisaged in articles 110, 111 and 112 are met. In case of removal due to final sentence or judicial winding up<sup>539</sup>, natural persons may be reinstated in the register:

- a) in case of removal due to final sentence, only after they have been rehabilitated;

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<sup>534</sup> Paragraph amended by article 1 (16, a) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "1. *IVASS shall order the removal of the intermediary from the relevant section of the register in case of*".

<sup>535</sup> Letter amended by article 1 (16, b) of legislative decree n. 68 of 21 May 2018.

<sup>536</sup> Letter added by article 1 (114) of law no. 213 of 30 December 2023.

<sup>537</sup> Paragraph amended by article 1 (16, c) of legislative decree n. 68 of 21 May 2018.

<sup>538</sup> Paragraph amended by article 1 (16, d) of legislative Decree n. 68 of 21 May 2018 and repealed by article 1 (9) of legislative Decree n. 187 of 30 December 2020. Paragraph 3 laid down: "3. *No removal from the register may be effected, even upon the request of the intermediary or the undertaking, as long as sanctioning proceedings or investigations preliminary to such proceedings are under way.*".

<sup>539</sup> Words amended by article 349 of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

b) in case of removal due to judicial winding up, when the personal inability resulting from the declaration of judicial winding up no longer exists<sup>540541</sup>.

2. Intermediaries who have been removed for failure to pay the supervisory fee, may be reinstated in the register provided that they effect the payment of the amounts due until their removal.

3. Intermediaries registered in the section of the register indicated in article 109 (2) b), who have been removed for failure to pay the contribution to the guarantee fund, may be reinstated in the register provided that they effect the payment of the amounts due until their removal may be reinstated in the register provided that they effect the payment of the amounts due until their removal, together with interest for late payment.

4. If intermediaries, after being removed from the register, apply to be reinstated, they may be reinstated after verifying that the requirements envisaged in articles 110, 111 and 112 are met, it being understood that natural persons must have adequate knowledge and ability as per article 110 (2), or professional training as per article 111 (2 and 4).

#### Art. 114-bis

(Organisational requirements of the insurance or reinsurance undertaking, aimed at compliance with professional and organisational requirements referred to in articles 109, 109-bis, 110, 111, 112)<sup>542</sup>

1. To ensure compliance with professional and organisational requirements referred to in articles 109, 109-bis, 110, 111, 112 by the persons defined in those provisions, undertakings shall have in place internal policies and procedures subject to approval, implementation and review at least on an annual basis, and shall identify a function to ensure their proper implementation.

2. Undertakings shall establish, maintain and keep up-to-date procedures for the keeping of all the relevant documentation regarding compliance with articles 109-bis, 110, 111, 112 and shall, upon request, make available to IVASS the name of the person responsible for the function as defined in paragraph 1.

3. IVASS may, by regulation<sup>543</sup>, lay down detailed provisions regarding the undertaking's internal safeguards required to ensure compliance with paragraphs 1 and 2.

#### Art. 115

(Guarantee fund for insurance and reinsurance brokers)

1. An intermediary registered in the section of the register indicated in article 109 (2) b) must become member of the guarantee fund set up within CONSAP to pay compensation for financial damage to policyholders and insurance or reinsurance undertakings arising from the exercise of the activity of insurance or reinsurance broker, or damage which has not been paid by the intermediary or through the policy envisaged, respectively, in article 110 (3) and article 112 (3).

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<sup>540</sup> Words amended by article 349 of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>541</sup> Paragraph replaced by article 1 (10) of legislative decree n. 187 of 30 December 2020. The previous version laid down: *1. Intermediaries who have been removed from the register further to the striking off, may upon request, be reinstated, provided that at least five years have elapsed from their removal and that the requirements respectively envisaged in articles 110, 111 and 112 are met. In case of removal due to final sentence or bankruptcy, natural persons may be reinstated in the register only after they have been rehabilitated.*

Words amended by article 349 of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>542</sup> Article inserted by article 1 (17) of legislative decree n. 68 of 21 May 2018.

<sup>543</sup> IVASS Regulation n. 40 of 2 August 2018, in particular articles 41 and 46.

2. The administration of the fund shall be entrusted to a committee appointed by decree of the Minister of Economic Development, made up of a senior manager at the Ministry of Economic Development acting as chairman, a senior manager at the Ministry of Economic and Financial Affairs, an IVASS officer, a CONSAP officer, two representatives of the intermediaries registered in the corresponding section of the register, and a representative of insurance and reinsurance undertakings.

3. The provisions relating to administration, contribution and intervention thresholds shall be established with regulation of the Minister of Economic Development, after hearing the opinion of IVASS<sup>544</sup>. The amount of this contribution shall be established each year by decree of the Minister of Economic Development<sup>545</sup>, after hearing the opinion of IVASS and of the management committee, and must not exceed 0.50 per cent of annual commissions, also for the purpose of guaranteeing coverage of operating costs of the committee under paragraph 2.

4. The assets of the fund shall be segregated from the assets held by the entity within which it is set up and from any other funds. No actions, seizure or distraint of the fund may be carried out by creditors of the subject that administers it or by creditors of the single intermediaries, or in the interest of such creditors, other than policyholders or insurance undertakings. The fund may not be included in insolvency proceedings involving the subject that administers it or the single intermediaries which are members of the fund.

5. The fund shall be subrogated to the policyholders and insurance and reinsurance undertakings in their rights up to the amount of the payments made to them.

## **Section I** **Intermediaries having their registered office or residence in the territory of the Republic<sup>546</sup>**

### **Art. 116**

(Business under the freedom of establishment and the freedom to provide services)

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<sup>544</sup> Regulation by the Minister of Economic Development n. 19 of 30 January 2009.

<sup>545</sup> For the year 2022 the contribution was established by the decree of the Minister of Economic Development of 12 August 2022.

<sup>546</sup> Article 116 is replaced by Sections I, II, III and IV, article 1 (18) of legislative decree n. 68 of 21 May 2018. The previous version of article 116 laid down:

**“Art. 116**

*(Business under the right of establishment and the freedom to provide services)*

*1. Registration shall allow insurance and reinsurance intermediaries, registered under the sections indicated in article 109 (2) a), b) and d), having their residence or head office within the territory of the Italian Republic, to operate in other member States, under the right of establishment and the freedom to provide services, provided that an appropriate notification has been sent to IVASS. IVASS shall inform the supervisory authorities of the other member States of the application for extending business to their territories filed by intermediaries recorded in the Italian register and disclose, by means of an additional note to the registration in the register, the list of the other member States where such intermediaries operate under the right of establishment or the freedom to provide services.*

*2. Insurance and reinsurance intermediaries having their residence or head office in the territory of another member State may start business, under the right of establishment or the freedom to provide services within the territory of the Italian Republic, thirty days after the date on which IVASS receives the notification by the supervisory authority of the home member State. IVASS shall, by its own regulation, lay down rules on the disclosure of the notifications received by the supervisory authorities of other member States concerning the activity pursued by the intermediaries from these States within the territory of the Italian Republic by means of a note to the list attached to the register referred to in article 109 (2).*

*3. IVASS shall disclose the provisions regulating the exercise of mediation activities which, in the interest of the general good, must be observed when conducting business in the Italian territory.*

*4. IVASS may adopt measures under which intermediaries not complying with general good provisions shall be suspended from business for a period not exceeding ninety days, or shall be prevented from continuing to pursue business in the Italian territory in the event of an ascertained violation”.*

1. Registration shall allow insurance, reinsurance and ancillary insurance intermediaries, registered under the sections indicated in article 109 (2) a), b), d) and f), having their residence or head office within the territory of the Italian Republic, to operate in other member States, under the freedom of establishment and the freedom to provide services, provided that the procedures referred to in articles 116-bis and 116-ter have been complied with.

2. Where the intermediaries referred to in paragraph 1, in the pursuit of mediation under the freedom of establishment or the freedom to provide services in another Member State, intend to use the subjects included in the section of the register referred to in article 109 (2) e), they shall indicate, in relation to the procedures referred to in articles 116-bis and 116-ter, the identification data of such intermediary, when requesting, on behalf of these subjects, the extension of business in the Member State where the intermediary using them intends to carry on business.

3. The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries shall disclose, by means of an additional note to the registration, the list of the other member States where such intermediaries operate under the freedom of establishment or the freedom to provide services, in accordance with the provisions of article 108 (1).

#### Art. 116-bis

(Business pursued by way of freedom of services in another member State)

1. The intermediary referred to in article 116 (1), who intends to carry on business in another member State for the first time, under the freedom to provide services, shall communicate the following information to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries:

- a) the name or corporate name of the intermediary, its address or the address of the registered office and the registration data as provided for in article 109;
- b) the member State or States in which it intends to carry on business;
- c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented, as well as the identification details of the subjects included in section e) of the Register that the intermediary intends to use to carry on mediation business in another member State;
- d) the relevant classes of insurance, if applicable.

2. The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries shall, within thirty days of receiving the information referred to in paragraph 1, communicate that information to the competent authority of the host member State. The intermediary can commence its business in the host member State as soon as the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries informs it that the authority of the host member State has acknowledged receipt of the information sent pursuant to paragraph 1. The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries shall give notice of this business in the register.

3. The intermediary shall be required to comply with the provisions protecting the general good applicable in the host member State, accessible from the website of the competent authority and from EIOPA's website, through specific hyperlinks indicated in the communication referred to in paragraph 2.

4. The intermediary shall notify any change in the information communicated in accordance with paragraph 1 to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries at least thirty days before implementing the change. The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries, no later than thirty days from the date of receipt of the change in the information referred to in paragraph 1, shall also inform the competent authority of the host member State.

Art. 116-ter

(Business pursued by way of establishment in another member State)

1. The intermediary referred to in article 116, who intends to carry on business in another member State for the first time, under the freedom of establishment, by establishing a branch or permanent presence, shall communicate that to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries and provide the following information:

- a) the name or corporate name of the intermediary, its address or the address of the registered office and the registration data of the intermediary as provided for in article 109;
- b) the member State or States in which it intends to carry on business;
- c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented, as well as the identification details of the subjects included in section e) of the Register that the intermediary intends to use to carry on mediation business in another member State;
- d) the relevant classes of insurance, if applicable;
- e) the address in the host member State of the branch from which documents may be obtained;
- f) the name of the person responsible for the management of the branch or permanent presence.

2. Unless IVASS has reason to doubt the adequacy of the organisational structure or the financial situation of the intermediary, taking into account the distribution activities envisaged, the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries shall, within thirty days of receiving the communication referred to in paragraph 1, communicate the information referred to in paragraph 1 to the competent authority of the host member State.

3. The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries shall inform the intermediary that the information has been received by the competent authority of the host member State, and that the provisions protecting the general good applicable in the host member State, which the intermediary is required to comply with when pursuing business in that member State, are available on the website of the competent authority and, through specific hyperlinks, on EIOPA's website.

4. Where no communication pursuant to paragraph 3 is received within the period of thirty days of receiving the information referred to in paragraph 1, the intermediary may commence its business in the host member State.

5. The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries shall, within thirty days of receiving the information referred to in paragraph 1, inform the intermediary of the reasons for its refusal to send the communication to the competent authority of the host member State.

6. The intermediary shall notify any change in the information communicated in accordance with paragraph 1 to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries at least thirty days before implementing the change. The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries, no later than thirty days from the date of receipt of the change in the information referred to in paragraph 1, shall also inform the competent authority of the host member State.

**Section II**

**INTERMEDIARIES HAVING THEIR RESIDENCE OR HEAD OFFICE IN ANOTHER MEMBER STATE<sup>547</sup>**

Art. 116-quater

(Business pursued by way of freedom of services in the territory of the Italian Republic)

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<sup>547</sup> Section inserted by article 1 (18) of legislative decree n. 68 of 21 May 2018.

1. The taking up of mediation business under the freedom to provide services in the territory of the Italian Republic by insurance, reinsurance and ancillary insurance intermediaries having their residence or head office in the territory of another member State, shall be subject to the communication by the authority of that State of the information referred to in article 116-bis to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries.

2. The intermediary referred to under paragraph 1 can commence its business in the territory of the Italian Republic as soon as the authority of the home member State informs it that it has notified the information sent pursuant to paragraph 1 to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries.

#### Art. 116-quinquies

(Business pursued by way of establishment in the territory of the Italian Republic)

1. The taking up of mediation business under the freedom of establishment in the territory of the Italian Republic by insurance, reinsurance and ancillary insurance intermediaries having their residence or head office in another member State, shall be subject to the communication by the authority of that State of the information referred to in article 116-ter to the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries.

2. The Body for the registration of insurance, reinsurance and ancillary insurance intermediaries shall, within thirty days of receiving the information referred to in paragraph 1, communicate to the competent authority of the home member State the applicable provisions protecting the general good which the intermediary is required to comply with when pursuing business in the territory of the Italian Republic, available on the website of the competent authority and, through specific hyperlinks, on EIOPA's website.

3. The intermediary can commence mediation business under the freedom of establishment in the territory of the Italian Republic as soon as it receives, from the authority of the home member State, the notification by the Body for the registration of insurance, reinsurance and ancillary insurance intermediaries or, if no notification is received, upon expiry of the deadline set under paragraph 2.

4. IVASS verifies that the mediation business pursued by way of establishment in the territory of the Italian Republic is consistent with the provisions in articles 30-decies, Chapters III, III-bis, III-ter of Title IX, and articles 185, 185-bis and 185-ter, as well as with the relevant implementing measures. For this purpose IVASS may examine the terms and arrangements for the establishment and request such changes as are strictly needed to enable the authority of the home member State to enforce the obligations envisaged in these provisions.

5. IVASS shall, by its own regulation<sup>548</sup>, lay down rules on the disclosure of the notifications received by the supervisory authorities of other member States concerning the activity pursued under the freedom of establishment or the freedom to provide services by the intermediaries from these States within the territory of the Italian Republic by means of a note to the list attached to the register referred to in article 109 (2).

### **Section III**

#### **DIVISION OF COMPETENCE: AGREEMENTS BETWEEN AUTHORITIES FOR THE PURSUIT OF SUPERVISION<sup>549</sup>**

#### Art. 116-sexies

(Agreements on the division of competence between home and host member States)

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<sup>548</sup> IVASS Regulation n. 40 of 2 August 2018.

<sup>549</sup> Section inserted by article 1 (18) of legislative decree n. 68 of 21 May 2018.



1. If an insurance, reinsurance or ancillary insurance intermediary's main business is pursued in a member State other than the home member State, the competent authorities of the home and host member States may agree that the supervisory functions shall be exercised by the host member State competent authority with regard to the provisions of articles 6, 7, 30-decies, 185, 185-bis, 185-ter, 187-ter and 205-ter, of Title IX, except for the provisions on registration requirements, and of Title XVIII.

2. In the event of the agreement referred to in paragraph 1, IVASS, when acting as the home Member State competent authority, shall notify the intermediary concerned and EIOPA without delay.

**Section IV**  
**BREACHES WHEN EXERCISING THE FREEDOM TO PROVIDE SERVICES OR THE FREEDOM OF ESTABLISHMENT<sup>550</sup>**

Art. 116-septies

(Breach of obligations when exercising the freedom to provide services)

1. Where IVASS, in its capacity as the competent authority of the host member State, has reason to consider that the insurance, reinsurance or ancillary insurance intermediary acting within the territory of the Italian Republic under the freedom to provide services is in breach of any provisions regulating such activity, it shall inform the competent authority of the home member State.

2. Where, despite the measures taken by the competent authority of the home member State or because those measures prove to be inadequate or are lacking, the intermediary persists in acting within the territory of the Italian Republic in a manner that is detrimental to the general good of policyholders and those entitled to insurance benefits, or to the orderly functioning of Italian insurance and reinsurance market, IVASS may, after informing the competent authority of the home member State, take appropriate measures to prevent further irregularities, including preventing that intermediary from continuing to carry on new business within the territory of the Italian Republic.

3. IVASS may refer the matter to EIOPA and request its assistance in accordance with article 19 of Regulation (EU) no. 1094/2010.

4. In situations where immediate action is necessary, in order to protect the rights of policyholders and those entitled to insurance benefits, IVASS may take any appropriate and non-discriminatory measure to prevent or to put an end to irregularities committed within its territory, including the adoption of a measure preventing the pursuit of insurance or reinsurance mediation activities by way of freedom to provide services in the territory of the Italian Republic.

5. The measures adopted by IVASS in accordance with the provisions under this article shall be communicated to the intermediary concerned in a well-reasoned document and notified to the competent authority of the home member State, to EIOPA and to the European Commission without undue delay.

Art. 116-octies

(Breach of obligations when exercising the freedom of establishment)

1. Where IVASS, in its capacity as the competent authority of the host member State, ascertains that an insurance, reinsurance or ancillary insurance intermediary acting within the territory of the Italian Republic under the freedom of establishment is in breach of the provisions referred to in

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<sup>550</sup> Section inserted by article 1 (18) of legislative decree n. 68 of 21 May 2018.

articles 30-decies, Chapters III, III-bis, III-ter of Title IX and articles 185, 185-bis and 185-ter and the relevant implementing provisions<sup>551</sup>, it may take appropriate measures.

2. Where IVASS has reason to consider that an insurance, reinsurance or ancillary insurance intermediary of another member State acting within its territory through an establishment is in breach of the provisions on insurance and reinsurance distribution referred to in this Code and for which IVASS, in its capacity as the competent authority of the host member State, does not have responsibility for supervision in accordance with paragraph 1, it shall refer those findings to the competent authority of the home member State, so that appropriate measures to remedy the irregularities committed are taken.

3. Where, despite the measures taken pursuant to paragraph 2 or because those measures prove to be inadequate or are lacking, the intermediary persists in acting within the territory of the Italian Republic in a manner that is detrimental to the general good of policyholders and those entitled to insurance benefits, or to the orderly functioning of Italian insurance and reinsurance market, IVASS may, after informing the competent authority of the home member State, take appropriate measures to prevent further irregularities, including the adoption of a reasoned measure preventing the intermediary from another member State from continuing to carry on business within the territory of the Italian Republic, under the freedom of establishment.

4. IVASS may refer the matter to EIOPA and request its assistance in accordance with article 19 of Regulation (EU) no. 1094/2010.

5. In situations where immediate action is strictly necessary, in order to protect the rights of policyholders and those entitled to insurance benefits, and where equivalent measures of the home member State are inadequate or lacking, without prejudice to the provisions of paragraphs 2, 3 and 4, IVASS may take appropriate and non-discriminatory measures to prevent or to put an end to irregularities committed within the Italian territory, including the adoption of a measure preventing an intermediary or ancillary intermediary from carrying out mediation activities by way of establishment in the territory of the Italian Republic.

6. The measures adopted by IVASS in accordance with this article shall be communicated to the intermediary concerned in a well-reasoned document and notified to the competent authority of the home member State, to EIOPA and to the European Commission without undue delay.

#### Art. 116-novies

(Breach of obligations when exercising the freedom to provide services or the freedom of establishment by Italian intermediaries)

1. IVASS may, in respect of the intermediaries having their residence or head office in Italy, also based on the reporting by the competent authority of the host member State, adopt appropriate measures to put an end to the irregularities committed when carrying on business in other member States under the right of establishment or the freedom to provide services. IVASS shall inform the competent authority of the host member State of any such measures taken.

#### Art. 116-decies

(Powers in relation to national provisions adopted in the interest of the general good)

1. IVASS, in its capacity as the competent authority of the host member State, may take appropriate and non-discriminatory measures to penalise irregularities committed within the territory of the Italian Republic, in case of non compliance with the provisions protecting the general good referred to in article 116-*undecies*, including the adoption of measures preventing the insurance, reinsurance or ancillary insurance intermediary from carrying out business by way of establishment or of freedom to provide services in the territory of the Italian Republic.

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<sup>551</sup> IVASS Regulation n. 41 of 2 August 2018.

2. IVASS, in its capacity as the competent authority of the host member State, may take appropriate measures to prevent an insurance distributor established in another member State from carrying out activity within the territory of the Italian Republic, under the freedom to provide services or under the freedom of establishment, where the relevant activity is entirely or principally directed towards the territory of the Italian Republic with the purpose of avoiding the provisions which are applicable to the Italian distributors and, in addition, where this activity endangers the proper functioning of Italian insurance and reinsurance markets with respect to the protection of policyholders and those entitled to insurance benefits.

3. In the case envisaged in paragraph 2 IVASS, after informing the competent authority of the home Member State, may take, in respect of that insurance distributor, appropriate measures aimed to protect the rights of policyholders and those entitled to insurance benefits.

4. IVASS may refer the matter to EIOPA and request its assistance in accordance with article 19 of Regulation (EU) no. 1094/2010.

Art. 116-undecies  
(Publication of general good provisions)

1. IVASS shall disclose the provisions regulating the exercise of distribution activities which, in the interest of the general good, must be observed on the Italian territory, including information about the application of stricter provisions to distributors in the carrying on of insurance and reinsurance distribution on the territory of the Italian Republic.

**Chapter III**  
**RULES OF CONDUCT**

Art. 117  
(Segregation of assets)

1. If the premiums paid to the intermediary and the amounts to be used for the payment of claims or due by insurance undertakings are managed through the intermediary they shall be kept in a segregated account whose holder may also be the intermediary expressly as such, and shall represent independent assets from those of the intermediary.

2. No actions, seizure or distraint of the segregated account may be carried out by creditors other than policyholders and insurance undertakings. Actions by their creditors are allowed, up to the limits of the amount owed to the single policyholder or the single insurance undertaking respectively.

3. Statutory and judicial offsetting shall not apply to the segregate account, neither shall contractual offsetting of the claims of the depositary on the intermediary.

3-bis. The intermediaries referred to in article 109 (2 a, b and d) who can permanently prove, by means of a bank guarantee, that their financial capacity is equal to 4% of the premiums collected, with a minimum 18,750 euros, shall be exempted from the obligations envisaged in paragraph 1.<sup>552</sup> The minimum amounts shall be reviewed under directly applicable provisions of the European Union in order to take account of changes in the European index of consumer prices published by Eurostat<sup>553</sup>.

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<sup>552</sup> Amount raised to 19,510 by Delegated Regulation (EU) 2019/1935 from 12 June 2020.

<sup>553</sup> Paragraph replaced by article 1 (19, b) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "3-bis. *The intermediaries referred to in article 109 (2 a, b and d) who can permanently prove, by means of a bank guarantee,*

#### Art. 118

##### (Compliance with financial obligations through insurance intermediaries)

1. The premium payment made in good faith to intermediaries or their collaborators is regarded as made directly to the insurance undertaking. Unless proved otherwise by the undertaking or the intermediary the amounts due to policyholders and to the other beneficiaries are regarded as actually received by the person entitled only upon issue of a written acquittance.

2. The provision under paragraph 1 shall apply to intermediaries recorded under the section of the register as per article 109 (2) b, exclusively if those activities are expressly envisaged in the agreement concluded with the undertaking. To this end the intermediary shall provide specific notice to the customer as part of the pre-contractual information as per article 120.

3. The provision under paragraph 1 shall apply to intermediaries recorded under the section of the register as per article 109 (2) b also in case of policies taken out by way of co-insurance and shall have effect with regard to any co-insurer if the activities under paragraph 1 are included in the agreement concluded with the leading insurer.

4. *(repealed)*<sup>554</sup>.

#### Art. 119

##### (Duties and liabilities to policyholders)

1. The insurance undertaking on whose behalf direct canvassers pursue business shall be jointly and severally liable for the losses caused by the latter, also where such losses are the consequence of a criminal offence which has resulted in conviction.

2. The insurance undertaking or an intermediary recorded under the section of the register as per article 109 (2) a) or b) shall be jointly and severally liable for the losses caused by an intermediary recorded under the section of the register as per article 109 (2) d) to whom it has given a mandate, including the losses caused by the subjects recorded under the section of the register as per article 109 (2) e), also where such losses are the consequence of a criminal offence which has resulted in conviction. Unless they are recorded in another section of the register intermediaries under article 109 (2) d) may market exclusively the insurance products containing standard covers or terms that may be freely chosen by the policyholder and cannot be modified by the subject who markets them.

3. Intermediaries registered in the section of the register referred to in article 109 (2) a), b) or d) are responsible for the insurance mediation business carried on by the subjects registered in the section of the register indicated in article 109 (2) e).

#### Art. 119-bis

##### (Rules of conduct and conflicts of interests)<sup>555</sup>

1. Insurance distributors shall act honestly, fairly, professionally and with transparency in accordance with the best interests of policyholders.

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*that their financial capacity is equal to 4% of the premiums collected, with a minimum 15,000 euros, shall be exempted from the obligations envisaged in paragraph 1. The minimum amount may be raised by IVASS, by regulation, taking account of the changes in the European Index of Consumer Prices".*

<sup>554</sup> Paragraph repealed by article 1 (20) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "4. In the cases envisaged under paragraphs 2 and 3 the omission or the untruthful communication shall be punished with the administrative pecuniary sanction provided for by article 324 and with the disciplinary sanction as per article 329".

<sup>555</sup> Article inserted by article 1 (21) of legislative decree n. 68 of 21 May 2018.

2. All information related to insurance distribution, including marketing communications relating to the products distributed, addressed by the insurance distributor to policyholders or potential policyholders shall be fair, clear and not misleading, impartial and complete, Marketing communications shall always be clearly identifiable as such. The provisions under article 182 shall apply<sup>556</sup>.

3. IVASS may require, on a non-systematic basis, that the various publicity material used by distributors be sent to it.

4. Insurance distributors are not remunerated and do not remunerate their employees on the basis of criteria that conflict with their duty to act in accordance with the best interests of their policyholders, as referred to in paragraph 1<sup>557</sup>.

5. For the purposes referred to in paragraph 4, the distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a policyholder whenever the distributor could offer a different insurance product which would better meet the policyholder's needs<sup>558</sup>.

6. Without prejudice to paragraph 1, insurance distributors shall:

a) maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as determined under b) from adversely affecting the interests of its policyholders. Those arrangements shall be proportionate to the activities performed, the insurance products sold and the type of the distributor;

b) take appropriate steps to identify conflicts of interest between themselves, including their managers and employees, or any person directly or indirectly linked to them by control, and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.

7. Where the arrangements made pursuant to paragraph 6 a) are not sufficient to ensure, with reasonable confidence, that risks of damage to policyholder interests will be prevented, the distributor<sup>559</sup> shall clearly disclose to the policyholder the general nature or sources of the conflicts of interest, before the conclusion of an insurance contract, when providing the information referred to in article 120-ter.

8. Distributors may collect premiums only using the means of payment which ensure the traceability of the operation according to thresholds and type of contracts identified by IVASS' regulation.

9. IVASS shall, by regulation<sup>560</sup>, determine the rules for implementing this article.

#### Art. 119-ter

(Advice, and standards for sales where no advice is given)<sup>561</sup>

1. Prior to the conclusion of an insurance contract, the insurance distributor shall:

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<sup>556</sup> Paragraph amended by article 1 (11, a) of legislative decree n. 187 of 30 December 2020.

<sup>557</sup> Paragraph replaced by article 1 (11, b) of legislative decree n. 187 of 30 December 2020. The previous version laid down: "4. Insurance distributors are not remunerated and do not remunerate and assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their policyholders, as referred to in paragraph 1".

<sup>558</sup> Paragraph replaced by article 1 (11, c) of legislative decree n. 187 of 30 December 2020. The previous version laid down: "5. The distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a policyholder when the distributor could offer a different insurance product which would better meet the policyholder's needs.".

<sup>559</sup> Paragraph amended by article 1 (11, d) of legislative decree n. 187 of 30 December 2020.

<sup>560</sup> Regulation n. 40 of 2 August 2018, in particular Part III, Title II, Chapter II.

<sup>561</sup> Article inserted by article 1 (21) of legislative decree n. 68 of 21 May 2018.

- a) obtain from the policyholder any information useful to identify the demands and the needs of that policyholder, in order to evaluate the adequacy of the contractual proposal; and
- b) provide the policyholder with objective information about the insurance product in a comprehensible form to allow that policyholder to make an informed decision.

2. Any contract proposed shall be consistent with the policyholder's insurance demands and needs.

3. Where advice is provided prior to the conclusion of the contract, the insurance distributor shall provide the policyholder with a personalised recommendation explaining why a particular contract would best meet the policyholder's demands and needs.

4. Where an insurance intermediary gives its advice on the basis of a fair and personal analysis, it shall give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the policyholder's needs.

5. IVASS shall, by regulation<sup>562</sup>, determine the rules for implementing this article, taking account of the different policyholders' protection needs and of the different types of policyholders, of the different types of risks, the features and complexity of the contract offered as well as of the knowledge and ability of the staff involved in distribution activities. IVASS shall also, by regulation<sup>563</sup>, determine how records shall be kept of the activity pursued.

#### Art. 120 (Pre-contractual information)<sup>564</sup>

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<sup>562</sup> IVASS Regulation n. 40 of 2 August 2018, in particular Part III, Title II, Chapter II.

<sup>563</sup> IVASS Regulation n. 40 of 2 August 2018, in particular Part III, Title II, Chapter II.

<sup>564</sup> Article repealed and replaced by article 1 (22) of legislative decree n. 68 of 21 May 2018. The previous version laid down:

*"Art. 120*

*(Pre-contractual information and rules of conduct)*

*1. Insurance intermediaries recorded in the register referred to in article 109 (2) and those under article 116 shall furnish policyholders with the information laid down by IVASS regulation, before concluding the contract and in case of subsequent significant changes or renewal, in compliance with the provisions of this article.*

*2. In relation to the contract offered insurance intermediaries shall declare to the policyholder:*

- a) whether they give their advice on the basis of a fair analysis – in that case they are obliged to give that advice on the basis of an analysis of a sufficiently large number of contracts available on the market, so that they recommend an adequate product to meet the policyholder's needs;*
- b) whether they offer certain products under a contractual obligation with one or more insurance undertakings - in that case they shall provide the names of those undertakings;*
- c) whether they offer certain products under no contractual obligation with any insurance undertakings – in that case they shall, at the customer's request, provide the names of the insurance undertakings with which they do or may conduct business, without prejudice to the obligation to inform policyholders of their right to request such information.*

*3. In any case prior to the conclusion of the contract the insurance intermediary referred to in paragraph 1 shall offer or recommend a product which is adequate to meet the policyholder's needs, in particular on the basis of information provided by the latter, and shall priorly illustrate the main features of the contract as well as the benefits that the insurance undertaking is obliged to provide.*

*4. On account of the different policyholders' protection needs, of the different types of risks, as well as of the knowledge and ability of the staff involved in mediation IVASS shall, by its own regulation, lay down:*

- a) the rules on the way intermediaries shall introduce themselves and behave in relation to policyholders, with regard to the information requirements relating to intermediaries themselves and their relations, also of corporate nature, with the insurance undertaking, and to the features of the contract offered in relation to the advice they could possibly give on the basis of a fair analysis or to the existence of an obligation, involving promotion and mediation, with one or more insurance undertakings.*

1. Insurance intermediaries included in the register referred to in article 109 (2) shall furnish policyholders with the following information, before concluding the contract and in case of subsequent significant changes or renewal:

a) name, surname or corporate name, address of the place of business and that it is an insurance intermediary;

b) whether it provides the advice referred to in article 119-ter, 3) about the insurance products offered;

c) the procedures referred to in article 7 and relevant implementing provisions enabling policyholders and other interested parties to register complaints about insurance intermediaries and about the out-of-court redress procedures referred to in article 187-ter and relevant implementing provisions;

d) the section of the register in which it has been included and the means for verifying that it has been registered;

e) whether the intermediary is acting on behalf of the customer or is acting in the name and on behalf of the insurance undertaking.

2. Insurance undertakings shall furnish policyholders with the following information, before concluding the contract and in case of subsequent significant changes or renewal:

a) corporate name, address of the head office and that it is an insurance undertaking;

b) whether it provides the advice referred to in article 119-ter, 2) about the insurance products offered;

c) the procedures referred to in article 7 and relevant implementing provisions enabling policyholders and other interested parties to register complaints about insurance undertakings and about the out-of-court redress procedures referred to in article 187-ter and relevant implementing provisions;

3. Distributors shall furnish policyholders with the documentation envisaged in article 185 before concluding the contract and in case of subsequent significant changes or renewal.

4. The provisions laid down in paragraph 1, a), c) and d) shall apply to ancillary intermediaries.

5. Insurance distributors dealing with large risks and reinsurance intermediaries shall be exempted from the information requirements envisaged in this article and in articles 119-ter, 120-bis and 120-ter.

6. IVASS shall, by regulation<sup>565</sup>, determine the rules for implementing this article.

Art. 120-bis  
(Transparency on remuneration)<sup>566</sup>

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*b) the way how information shall be provided to policyholders, and envisage the cases in which it may be provided upon request, it being understood that the need for protection usually calls for the use of the Italian language and the communication on a durable and accessible medium, soon after the contract has been concluded at the latest;*

*c) how records shall be kept of the business activity;*

*d) the violations for which the disciplinary sanctions envisaged by article 5 shall apply. Insurance intermediaries dealing with large risks and reinsurance intermediaries shall be exempted from information requirements”.*

<sup>565</sup> IVASS Regulation n.40 of 2 August 2018, in particular Part III, Title II, Chapters I and II and IVASS Regulation n. 41 of 2 August 2018.

<sup>566</sup> Article inserted by article 1 (22) of legislative decree n. 68 of 21 May 2018.

1. Without prejudice to the provisions of article 131 on transparency on remuneration in relation to the distribution of motor liability contracts, the insurance intermediary and the ancillary insurance intermediary shall inform the policyholder, before concluding the contract, of the nature of the remuneration received in relation to the contract distributed, specifying if such remuneration consists in:

- a) a fee paid directly by the customer;
- b) a commission included in the insurance premium;
- c) any other type of remuneration, including an economic benefit of any kind offered or given in connection with the mediation performed;
- d) a combination of the remuneration set out in a), b) and c).

2. In the case referred to under the above paragraph 1, a), the insurance intermediary and the ancillary insurance intermediary shall inform the policyholder of the amount of the fee. Where that is not possible, they shall provide information to the policyholder on the method for calculating the fee.

3. If any payments, other than the ongoing premiums and scheduled payments, are made by the policyholder under the insurance contract after its conclusion, the insurance intermediary and the ancillary insurance intermediary shall also disclose to the policyholder information in accordance with paragraphs 1 and 2 for each such payment.

4. Before the conclusion of an insurance contract, an insurance undertaking communicates to its policyholder the nature of the remuneration received by its employees directly involved in the distribution of the insurance contract.

5. If any payments, other than the ongoing premiums and scheduled payments, are made by the policyholder under the insurance contract after its conclusion, the insurance undertaking shall also make the disclosures in accordance with paragraph 4 for each such payment.

6. IVASS shall, by its own regulation<sup>567</sup>, establish the arrangements for making those disclosures, in accordance with article 120-quater.

Article 120-ter  
(Transparency on conflicts of interest)<sup>568</sup>

1. Before the conclusion of an insurance contract, an insurance intermediary shall provide the policyholder with at least the following information:

- a) whether it has a holding, direct or indirect, representing 10 % or more of the voting rights or of the capital in a given insurance undertaking;
- b) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing 10 % or more of the voting rights or of the capital in the insurance intermediary;
- c) whether it gives advice on the basis of a fair and personal analysis in accordance with article 119-ter, 4);
- d) without prejudice to the provisions of decree-law no.7 of 31 January 2007 converted, after amendment, by law no. 40 of 2 April 2007, whether it is bound, under a contractual obligation, to

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<sup>567</sup> IVASS Regulation n. 40 of 2 August 2018, in particular article 57.

<sup>568</sup> Article inserted by article 1 (22) of legislative decree n. 68 of 21 May 2018.



distribute certain products exclusively for one or more insurance undertakings; in this case the intermediary provides the policyholder with the names of those undertakings;

e) whether it is not under a contractual obligation to distribute certain products with the insurance undertakings referred to under d) and does not give advice on the basis of a fair and personal analysis; in this case it provides the names of the insurance undertakings with which it does or may conduct business;

f) any other information that may be useful to guarantee compliance with the rules on transparency envisaged by paragraph 5 of article 119-bis.

Article 120-quater  
(Information arrangements)<sup>569</sup>

1. All information to be provided in accordance with articles 119-ter, 120, 120-bis, 120-ter, 121-sexies, 185, 185-bis and 185-ter shall be communicated to the policyholder:

- a) on paper;
- b) in a correct, exhaustive and easy-to-understand manner;
- c) in Italian or in another language agreed by the parties;
- d) free of charge.

2. By way of derogation from paragraph 1 (a), the information referred to in paragraph 1 may be provided to the policyholder on one of the following media:

- a) a durable medium other than paper, where the conditions laid down in paragraph 4 are met;
- b) a website where the conditions laid down in paragraph 5 are met.

3. Where the information referred to in paragraph 1 is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to the customer upon request and free of charge.

4. The information referred to in paragraph 1 may be provided using a durable medium other than paper if the following conditions are met:

- a) the use of the durable medium is appropriate to the insurance distribution arrangements; and
- b) the policyholder has been given the choice between information on paper and on a durable medium, and has chosen the latter medium.

5. The information referred to in paragraph 1 may be provided by means of a website if it is addressed personally to the policyholder or if the following conditions are met:

- a) the provision of that information is appropriate to the insurance distribution arrangements;
- b) the policyholder has consented to the provision of that information by means of a website;
- c) the policyholder has been notified electronically of the address of the website, and the place on the website where that information can be accessed;
- d) it is ensured that that information remains accessible on the website throughout the term of the contract.

6. For the purposes of paragraphs 4 and 5, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate to the insurance distribution arrangements if the policyholder has regular access to the internet, or when it provides an e-mail address for the purposes of that product distribution.

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<sup>569</sup> Article inserted by article 1 (22) of legislative decree n. 68 of 21 May 2018.

7. IVASS shall, by its own regulation<sup>570</sup>, define the layout of the document to be delivered to policyholders, which shall be presented and laid out in a way that is clear and easy to read, using characters of a readable size.

Article 120-quinquies  
(Cross-selling)<sup>571</sup>

1. When offering an insurance product together with an ancillary product or service which is not insurance, as part of a package or the same agreement, the distributor shall inform the policyholder whether it is possible to buy the different components separately and shall provide an adequate description of the different components of the agreement or package as well as separate evidence of the costs and charges of each component<sup>572</sup>.

2. In the circumstances referred to in paragraph 1, and where the risk or the insurance coverage resulting from the agreement or package offered to a policyholder is different from the components taken separately, the insurance distributor shall provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risk or the insurance coverage.

3. Where an insurance product is ancillary to a good or a service which is not insurance, as part of a package or the same agreement, the insurance distributor shall offer the policyholder the possibility of buying the good or service separately. This paragraph shall not apply where an insurance product is ancillary to an investment service or activity as defined in article 1, (5), of the consolidated law on financial mediation, a credit agreement as defined in article 120-quinquies, (1), c), of the consolidated banking law, or a payment account as defined in article 126-decies of the consolidated banking law.

4. In the cases referred to in paragraphs 1 and 3, the insurance distributor explains to the policyholder why the insurance product which forms part of the overall package or the same agreement would meet the policyholder's demands and needs<sup>573</sup>.

5. In the cases referred to in paragraphs 1 and 3, in relation to the objective of policyholder protection and with regard to insurance distribution activities, IVASS may apply the precautionary and prohibitory measures envisaged in this code, including the power to prohibit the sale of insurance, as part of a package or the same agreement, together with an ancillary service or product which is not insurance, regardless of whether it is the service or the product which is not insurance that is ancillary, when such practice is detrimental to consumers. With regard to insurance-based investment products, the above powers shall be exercised by IVASS and CONSOB according to their respective competences<sup>574</sup>.

6. The provisions of this article shall not apply to the distribution of insurance products offering cover for various types of risk.

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<sup>570</sup> IVASS Regulation n 41 of 2 August 2018.

<sup>571</sup> Article inserted by article 1 (22) of legislative decree n. 68 of 21 May 2018.

<sup>572</sup> Paragraph replaced by article 1 (12, a) of legislative decree n. 187 of 30 December 2020. The previous version laid down: "1. When offering an insurance product together with an ancillary product or service which is not insurance, as part of a package or the same agreement, the distributor shall inform the policyholder whether it is possible to buy the different components separately. Where the policyholder has chosen to buy the different components separately, the distributor shall provide an adequate description of the different components of the agreement or package as well as separate evidence of the costs and charges of each component."

<sup>573</sup> Paragraph amended by article 1 (12, b) of legislative decree n. 187 of 30 December 2020.

<sup>574</sup> Paragraph replaced by article 1 (12, c) of legislative decree n. 187 of 30 December 2020. The previous version laid down. "5. In the cases referred to in paragraphs 1 and 3, in relation to the objective of policyholder protection and with regard to insurance distribution activities, IVASS may apply the precautionary and prohibitory measures envisaged in this code, including the power to prohibit the sale of insurance together with an ancillary service or product which is not insurance, as part of a package or the same agreement, when such practice is detrimental to consumers. With regard to insurance-based investment products, the above powers shall be exercised by IVASS and CONSOB according to their respective competences."

7. This is without prejudice to the provisions of the Consumer Code laid down in legislative decree no. 206 of 6 September 2005, where applicable.

#### Art. 121

(Pre-contractual information in case of distance selling)<sup>575</sup>

1. Without prejudice to articles 185, 185-bis and 185-ter, in case of distance selling the distributor shall disclose to the policyholder at least the following preliminary information:

- a) the name of the distributor and the purpose of the call;
- b) the identity of the person in contact with the policyholder and his/her link with the insurance distributor;
- c) a description of the main features of the service or product offered;
- d) the total price, including taxes, to be paid by the policyholder;
- e) information on the remuneration received in relation to the contract distributed, according to the provisions of article 120-bis;
- f) the additional information as referred to in article 67-quater et seq. of legislative decree no. 206 of 6 September 2005.

2. In any case information shall be provided to the policyholder before concluding the insurance contract. Such information may be provided orally only where the policyholder so requests, or where immediate cover is necessary. In the case of telephone selling, if the policyholder so requests, the duty to send documents shall be fulfilled immediately after the conclusion of the distance contract and no later than five working days after the conclusion. In the absence of a specific request, the duty to send documents shall be fulfilled prior to the conclusion of the insurance contract. Even if the policyholder has chosen to obtain prior information on a durable medium other than paper in accordance with article 120-quater (4), information shall be provided by the insurance distributor to the policyholder in accordance with article 120-quater, (1 and 2), immediately after the conclusion of the insurance contract.

3. IVASS shall, by its own regulation<sup>576</sup>, lay down rules on the promotion and distance marketing of insurance contracts, also through telephone selling, and shall establish the information about the distributor and the contract features, which shall be communicated to the policyholder in plain intelligible language, in compliance with the provisions under paragraphs 1 and 2, in accordance with directly applicable EU rules and with the provisions of the Consumer Code laid down in legislative decree no. 206 of 6 September 2005.

### Chapter III-bis

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<sup>575</sup> Article replaced by article 1 (23) of legislative decree no. 68 of 21 May 2018. The previous version laid down:

*"Art. 121*

*(Pre-contractual information in case of distance selling)*

*1. In case of distance selling the intermediary shall disclose to the policyholder at least the following preliminary information:*

- a) the name of the intermediary and the purpose of the call;*
- b) the identity of the person in contact with the policyholder and his/her link with the insurance intermediary;*
- c) a description of the main features of the service or product offered;*
- d) the total price, including taxes, to be paid by the policyholder.*

*2. In any case information shall be provided to the policyholder before concluding the insurance contract. It may be provided orally only where the policyholder so requests, or where immediate cover is necessary. In those cases information shall be provided on a durable medium soon after the contract has been concluded.*

*3. IVASS shall, by its own regulation, establish the information about the intermediary and the contract features, which shall be communicated to the policyholder in plain intelligible language, in compliance with the provisions under paragraphs 1 and 2."*

<sup>576</sup> IVASS Regulation n. 40 of 2 August 2018, in particular Part III, Title II, Chapter III.

**(Product oversight and governance requirements applicable to the distributors of insurance products which they do not manufacture)<sup>577</sup>**

Art. 121-bis

(Obtaining the necessary information concerning insurance products from the manufacturer)

1. Without prejudice to the requirements referred to under this Title<sup>578</sup> and articles 185, 185-bis and 185-ter, the distributors of insurance products which they do not manufacture shall have in place adequate arrangements to obtain from the subjects referred to in article 30-decies (1), the information envisaged in article 30-decies (5) and to understand the characteristics and identified target market of each insurance product.

2. The provisions of this article shall apply in accordance with directly applicable EU rules and with the provisions laid down by IVASS regulation<sup>579</sup>.

Article 121-ter

(Specific provisions in the field of product oversight and governance)

1. The provisions on product oversight and governance envisaged in articles 30-decies and 121-bis shall not apply to insurance products which consist of the insurance of large risks.

2. Without prejudice to the application of the provisions under article 30-decies and the relevant implementing rules to insurance undertakings and intermediaries which manufacture insurance products for sale to customers, whenever insurance products are distributed through the subjects referred to in article 107 (4), the insurance undertaking or intermediary using them shall:

a) establish the arrangements for assessing that the policyholder belongs to the identified target market;

b) adopt adequate procedures ensuring the acquisition of information in those cases when the product is no longer aligned with the interests, objectives and characteristics of the target market, as well as with the other circumstances which are related to the product and increase the risk of customer detriment.

**Chapter III-ter**

**(Additional requirements for the distribution of insurance-based investment products)<sup>580</sup>**

Article 121-quater

(Supervision over the distribution of insurance-based investment products)

1. Without prejudice to the competences established by article 25-ter of legislative decree n. 58 of 24 February 1998<sup>581</sup>, IVASS shall exercise its supervisory powers in relation to the distribution of insurance-based investment products carried out by insurance undertakings or through intermediaries registered in the sections of the Register indicated in article 109 (2) a) and b), and their collaborators under e), as well as intermediaries referred to under c) of the same Register, according to the provisions under this Chapter.

2. The regulations implementing this Chapter shall be adopted by IVASS, after hearing CONSOB, so as to ensure uniformity in the regulations applicable to the sale of insurance-based investment products regardless of the distribution channel and overall consistency and effectiveness of the system of supervision over insurance-based investment products.

<sup>577</sup> Chapter inserted by article 1 (24) of legislative decree n. 68 of 21 May 2018.

<sup>578</sup> Paragraph amended by article 1 (13) of legislative decree n. 187 of 30 December 2020.

<sup>579</sup> IVASS Regulation n. 45 of 4 August 2020

<sup>580</sup> Chapter inserted by article 1 (24) of legislative decree n. 68 of 21 May 2018.

<sup>581</sup> Paragraph amended by article 7 (1), legislative decree n. 165 of 25 November 2019.

3. IVASS and CONSOB shall agree on the means of exercising their supervisory powers according to their respective competence, so as to reduce the burden on supervised entities.

Article 121-quinquies  
(Conflicts of interest)

1. Insurance undertakings and intermediaries which distribute insurance-based investment products shall comply with the provisions of article 119-bis on the rules of conduct and conflicts of interest.

2. By way of derogation from article 120-quater (1), the disclosure referred to in article 119-bis (7) shall:

- a) be made on a durable medium;
- b) include sufficient detail, taking into account the nature of the policyholders, to enable those policyholders to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

Article 121-sexies  
(Information to policyholders and inducements)

1. Without prejudice to articles 120 (1 and 2) and 120-bis (1 and 2), insurance intermediaries and insurance undertakings shall provide appropriate information, prior to the conclusion of a contract, to policyholders with regard to the distribution of insurance-based investment products, and with regard to all costs and related charges. That information shall include at least the following:

- a) when advice is provided, whether the insurance intermediary or insurance undertaking will provide the policyholder with a periodic assessment of the suitability of the insurance-based investment products recommended to that policyholder, as referred to in article 121-septies;
- b) as regards the information on insurance-based investment products and proposed investment strategies, appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products or in respect of particular investment strategies proposed;
- c) as regards the information on all costs and charges to be disclosed to the policyholder, information relating to the distribution of insurance-based investment products, where relevant, the cost of the insurance-based investment product recommended or marketed to the policyholder and how the policyholder may pay for it, also encompassing any third party payments.

2. The information about all costs and charges, including costs and charges in connection with the distribution of the insurance-based investment product, which are not caused by the occurrence of underlying market risk, shall be disclosed in aggregated form to allow the policyholder to understand the overall cost as well as the cumulative effect on the return of the investment. Where the policyholder so requests, an itemised breakdown of the costs and charges shall be provided. Where necessary, such information shall be provided to the policyholder on a regular basis, at least annually, during the life cycle of the investment.

3. The information referred to in paragraphs 1 and 2 shall be provided in a comprehensible form in such a manner that policyholders are reasonably able to understand the nature and risks concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis. The information referred to in paragraphs 1 and 2 shall be provided in a standardised format, established by IVASS, after hearing CONSOB, in its regulation referred to in article 121-quater, so that such information is clear and comprehensible.

4. Without prejudice to article 120-bis, (1 and 3), insurance intermediaries or insurance undertakings fulfil their obligations under articles 119-bis, (1) and 121-quinquies, where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in

connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the policyholder or a person on behalf of the policyholder, only where they act in accordance with directly applicable EU rules and with the provisions established by IVASS in its regulation referred to in article 121-quater.

5. IVASS regulations referred to in article 121-quater, on inducements between insurance intermediaries and financial intermediaries shall be adopted in accordance with the regulations introduced in this field by directive 2014/65/EU and in accordance with directly applicable EU rules.

#### Article 121-septies

(Assessment of suitability and appropriateness of the insurance product and reporting to customers)

1. IVASS shall, by regulation referred to in article 121-quater, determine the cases where insurance undertakings or insurance intermediaries are required to provide advice for the distribution of the insurance-based investment product.

2. Without prejudice to article 119-ter (1 and 2), the insurance intermediary or insurance undertaking, who provides advice on an insurance-based investment product, shall also obtain the necessary information regarding the policyholder's knowledge and experience in relation to the specific type of investment, that person's financial situation including that person's ability to bear losses, and that person's investment objectives, including that person's risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the policyholder the insurance-based investment products that are suitable for that person and, in particular, for that person's risk tolerance and ability to bear losses. The advice given when distributing insurance-based investment products, either when it is compulsory or when it is provided on the initiative of the distributor, shall not economically affect customers.

3. Where the insurance intermediary or insurance undertaking provides investment advice recommending a package of services or products bundled pursuant to article 120-quinquies, the overall recommended package must meet the suitability requirements envisaged in paragraph 2 of this article.

4. Without prejudice to article 119-ter (1, 2 and 3), the insurance intermediary or insurance undertaking, when carrying out insurance distribution activities in relation to sales where no advice is given, asks the policyholder to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the policyholder.

5. Where the insurance intermediary or insurance undertaking distributes a package of services or products bundled pursuant to article 120-quinquies, it shall ascertain that the overall bundled package is appropriate pursuant to paragraph 4.

6. The insurance intermediary or insurance undertaking shall warn the policyholder when it considers, on the basis of the information received under the paragraph 4, that the product is not appropriate for the policyholder. The insurance intermediary or insurance undertaking shall also inform the customer, on the basis of the assessment referred to in article 30-decies, of the target clients to whom the product may not be distributed.

7. Where policyholders do not provide the information referred to in paragraph 4, or where they provide insufficient information regarding their knowledge and experience, the insurance intermediary or insurance undertaking shall warn them that this circumstance undermines the

possibility of the insurance intermediary or insurance undertaking to determine whether the product envisaged is appropriate for them<sup>582</sup>.

8. The insurance intermediary or insurance undertaking shall keep a record of the documents that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the policyholder. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

9. The insurance intermediary or insurance undertaking shall provide policyholders with adequate reports on the service provided on a durable medium; those reports shall include periodic communications, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the policyholders.

10. When providing advice on an insurance-based investment product, the insurance intermediary or the insurance undertaking shall, prior to the conclusion of the contract, provide the policyholder with a suitability statement on a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the policyholder. The provisions under article 120-quater, (1) to (4) shall apply.

11. Where the contract is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, the insurance intermediary or the insurance undertaking may provide the suitability statement on a durable medium immediately after the conclusion of the contract, provided that:

- a) the policyholder has consented to receiving the suitability statement immediately after the conclusion of the contract;
- b) the insurance intermediary or insurance undertaking has given the policyholder the option of delaying the conclusion of the contract in order to receive the suitability statement in advance of the conclusion of the contract

12. Where the insurance intermediary or the insurance undertaking has informed the policyholder that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the policyholder.

13. The provisions of this article shall also apply in accordance with directly applicable EU rules. IVASS shall, by regulation as referred to in article 121-quater, determine the rules for implementing this article, including the possibility to provide the relevant information in a standardised format.

Art. 121-octies  
(Memorandum of understanding)

1. IVASS and CONSOB shall, by means of a memorandum of understanding, define forms of operational coordination also with a view to ensuring the implementation of rules favouring greater protection for consumers.

**TITLE X**  
**COMPULSORY MOTOR VEHICLE LIABILITY INSURANCE**

**Chapter I**

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<sup>582</sup> Paragraph amended by article 1 (14) of legislative decree n. 187 of 30 December 2020.

## INSURANCE OBLIGATION<sup>583</sup>

### Art. 122 (Motor vehicles)

1. Vehicles referred to in article 1, paragraph 1, letter rrr), when they are used consistently with the vehicle's function as a means of transport at the time of the accident, are subject to the obligation to be insured against motor vehicle liability envisaged by article 2054 of the civil code.<sup>584</sup>

1-bis. The provision under paragraph 1 shall apply irrespective of the vehicle's characteristics, of the terrain on which the motor vehicle is used and of whether it is stationary or in motion.<sup>585</sup>

1-ter. The obligation under paragraph 1 shall also apply to vehicles used exclusively on areas with restricted access. For the purpose of fulfilling the obligation referred to in paragraph 1, the taking out by public or private entities of policies covering the risk of a plurality of vehicles in accordance with current contractual practice shall remain valid, when these vehicles are used for the activities of such entities, provided that they are identified in detail in the policies.<sup>586</sup>

1-quater. The administrative sanctions referred to in Article 193 of legislative decree no. 285 of 30 April 1992 shall apply to the violation of the provision in paragraph 1. The administrative sanctions referred to in Article 193, paragraphs 2 and 3 of legislative decree no. 285 of 30 April 1992 shall apply to the violation of the provision in paragraph 1-ter.

The administrative sanctions referred to in Article 193 of legislative decree no. 285 of 1992 shall apply to the violation of the provisions in article 122-bis, paragraph 2, and the amount of the pecuniary administrative sanction prescribed by paragraph 2 of said article 193 shall be increased by half. The provisions under Title VI of the same legislative decree no. 285 of 1992 shall apply.<sup>587</sup>

2. Insurance shall cover liability for personal injury to passengers, irrespective of the basis on which transport is provided.

3. Insurance shall not have effect in case of use against the will of the owner, usufructuary, the buyer under reservation of title or the lessee of an operating or financial leasing, notwithstanding the provision of article 283 (1) d), starting from the day after the filing of a report to the police authorities. By way of derogation from article 1896 (1), (second sentence) of the civil code, the policyholder is entitled to reimbursement of the part of the premium relating to the remaining period of insurance, net of the taxes paid and of the fee envisaged in article 334.

4. Insurance shall also cover liability for damage caused in the territory of the other member States, under the conditions and within the limits set by the national legislation of each member State, concerning compulsory insurance against civil liability in respect of the use of motor vehicles, without prejudice to any higher guarantees which may be envisaged by the contract or the legislation of the State in which they are normally based.

### Art. 122 – bis

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<sup>583</sup> Decree by the Minister of Economic Development n. 86 of 1 April 2008, introducing the Regulation on the obligation to take out insurance against civil liability in respect of the use of motor vehicles and craft referred to under Title X, Chapter I, and Title XII, Chapter II of legislative decree n. 209 of 7 September 2005 – Code of Private Insurance.

<sup>584</sup> Paragraph replaced by article 2 (1) letter c, number 1) of legislative decree no. 184 of 22 November 2023. The previous version laid down: "1. Motor vehicles not running on rails, including trolley buses and trailers, may not be used on public roads or on equivalent areas if they are not covered by motor vehicle liability insurance (third party liability) envisaged by article 2054 of the civil code and article 91 (2) of the road code. The regulation, adopted by the Minister of Economic Development, upon IVASS' proposal, shall set out the types of vehicles exempted from the insurance obligation and the areas to be treated as public areas"

<sup>585</sup> Paragraph inserted by article 2 (1, c), number 2) of legislative decree no. 184 of 22 November 2023.

<sup>586</sup> Paragraph inserted by article 2 (1, c), number 2) of legislative decree no. 184 of 22 November 2023.

<sup>587</sup> Paragraph inserted by article 2 (1, c), number 2) of legislative decree no. 184 of 22 November 2023.



(Derogations)<sup>588</sup>

1. By derogation from Article 122 (1) of this Code and from article 193 of the road code, referred to in legislative decree no. 285 of 30 April 1992, vehicles that are formally withdrawn from use as well as those which are temporarily or permanently prohibited from use, by virtue of a measure adopted by the competent authority in accordance with the regulations in force, shall not be subject to the obligation to be insured.

2. The exemption referred to in paragraph 1 shall also apply when the vehicle is not fit for use as a means of transport, as well as when its use has been voluntarily suspended at the request of the entities referred to in Article 122, paragraph 3, as a result of a formal communication to the insurance company made pursuant to Article 47 of Presidential Decree no. 445 of 28 December 2000. The suspension period, initially communicated by the entitled person, may be extended several times, upon formal communication to the insurance company to be made within ten days prior to the expiration of the current suspension period, and may not have a duration of more than ten months, with respect to the yearly period. For the vehicles referred to in Article 60 of legislative decree no. 285 of 30 April 1992, the suspension period, initially communicated by the entitled person, may be extended several times, upon formal notification to the insurance company to be made within five days prior to the expiration of the current suspension period and may not have a duration of more than eleven months, with respect to the yearly period. By decree of the Minister of Enterprises and Made in Italy and the Minister of Infrastructure and Transport, after hearing IVASS, additional cases and methods for suspension of the insurance obligation may be regulated taking into account the significant value to collectors of the vehicles referred to in the same Article 60.

3. The suspension in paragraph 2 is activated from the moment of registration in the database referred to in Article 1, paragraph 1, letter c), of the regulation approved with the Decree of the Minister of Economic Development no. 110 of 9 August 2013, according to the procedures provided for in Article 3, paragraph 2, of the same regulation. The undertaking shall immediately inform the insured.

4. In the event of an accident caused by a vehicle referred to in paragraphs 1 and 2, the provisions of Article 283 (1, b) shall apply.

5. When the vehicle responsible for the accident is normally based in another Member State, the guarantee fund referred to in Article 283 may have a claim against the guarantee fund in the Member State where the vehicle is normally based.

Art. 123  
(Craft)

1. Recreational craft, excluding craft not fitted with engines, may not be used for navigation on public waters or equivalent areas if they are not covered by insurance against civil liability referred to in article 2054 of the civil code, including that of the buyer under reservation of title and of the leaseholder in case of leasing, for personal injury. The regulation<sup>589</sup>, adopted by the Minister of Economic Development upon IVASS' proposal, shall set out the types of craft exempted from the insurance obligation and the waters to be treated as public waters.

2. Craft of a gross tonnage not exceeding twenty-five tons fitted with an irremovable engine of more than three fiscal horsepower and used for private purposes, other than recreation, or for the public transport of passengers shall also be subject to the insurance obligation.

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<sup>588</sup> Article inserted by article 2 (1, d) of legislative decree n. 184 of 22 November 2023.

<sup>589</sup> Decree by the Minister of Economic Development n. 86 of 1 April 2008.

3. The insurance obligation shall also apply to removable engines, irrespective of their power, independently of the craft where they are fitted, in such case the craft insured is that fitted with the engine.

4. The provisions relating to compulsory insurance against civil liability in respect of the use of motor vehicles shall also apply, *mutatis mutandis*, to recreational craft, craft and removable engines.

Art. 124  
(Races and sporting competitions)

1. Races and sporting competitions relating to any type of motor vehicles, as well as the relevant trials, may not be authorized, even if in closed circuits, if the organizer has not taken out insurance against civil motor vehicle liability<sup>590</sup>.

2. Insurance shall cover liability of the organizer and of the other persons liable for the damage or injury caused to persons, animals and property, excluding damage or injury to participants and their vehicles.

Art. 125  
(Vehicles and craft registered in foreign Countries)

1. Vehicles and craft subject to the insurance obligation and registered in foreign countries as well as removable engines referred to in article 123 (3), with a certificate for foreign use or any other equivalent document issued abroad, temporarily used in the Italian territory or sailing in territorial waters must comply with the insurance obligation during their stay in Italy.

2. The insurance obligation shall be deemed to have been discharged for craft:

- a) when an insurance contract has been underwritten according to the rules established by regulation adopted by the Minister of Economic Development<sup>591</sup>, upon IVASS' proposal, or
- b) when the driver has an international certificate of insurance issued on behalf of the foreign national insurers' bureau and accepted by Ufficio centrale italiano.

3. In case of motor vehicles bearing a registration plate issued by a third State the insurance obligation shall be:

- a) fulfilled by taking out a «frontier» insurance contract as provided for in the regulation envisaged in article 126 (2) a), concerning civil liability in respect of the use of the motor vehicle in the territory of the Italian Republic and of the other member States, under the terms and up to the maximum amounts established by the legislation in force in each State;
- b) regarded as being fulfilled when the Ufficio centrale italiano has accepted to guarantee the compensation for damage caused by the use of these vehicles in Italy and when by act of the European Union member States are no longer required to check insurance against civil liability in respect of vehicles bearing a registration plate issued by a third State;
- c) regarded as being fulfilled when the driver is in possession of a green card issued by the foreign national insurers' bureau and accepted by the Ufficio centrale italiano.

4. In case of motor vehicles bearing a registration plate issued by a member State other than the Italian Republic, the insurance obligation shall be regarded as being fulfilled when the Ufficio centrale italiano has accepted to guarantee the compensation for damage caused by the use of

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<sup>590</sup> Words added by article 2 (1, e) of legislative decree no. 184 of 22 November 2023.

<sup>591</sup> Decree by the Minister of Economic Development n. 86 of 1 April 2008.

these vehicles in Italy, on the basis of agreements concluded with the corresponding national insurers' bureaux, and the European Union has recognised these agreements.

5. In the case referred to in paragraph 3 c), the Ufficio centrale italiano shall settle claims, and guarantee payment to those entitled, within the limits of the minimum amounts of cover established by law or, if higher, of those established by the insurance policy to which the green card refers. In the cases referred to in paragraph 3 b), and in those referred to in paragraph 4, the Ufficio centrale italiano shall settle claims occurred in Italy, and guarantee payment to those entitled, within the limits of the minimum amounts of cover established by law or, if higher, of those established by the insurance policy.

5-bis. Within three months of receiving a claim for compensation Ufficio centrale italiano (the national bureau) shall make a reasoned offer of compensation to those entitled or specify the reasons for not making an offer<sup>592</sup>.

6. The provisions referred to in paragraphs 3 and 4 shall also apply to vehicles owned by diplomatic and consular agents or international officials, or owned by foreign States or international organizations.

7. The provisions referred to in paragraph 3 b) and 4 shall not apply to insurance against civil liability in respect of loss or injury caused by the use of vehicles bearing a registration plate issued by a foreign State and defined in the regulation adopted by the Minister of Economic Development, upon IVASS' proposal<sup>593</sup>.

Art. 126  
(Ufficio centrale italiano)

1. Ufficio centrale italiano shall be authorised to perform the functions of national insurers' bureau and the other tasks specified in Community law and this code after the recognition by the Minister of Economic Development<sup>594</sup>.

2. Ufficio centrale italiano, apart from the tasks envisaged in article 125, shall carry out the following functions:

a) take out and manage frontier insurance, in the name and on behalf of member undertakings, as provided for in the regulation<sup>595</sup> adopted by the Minister of Economic Development upon IVASS' proposal, and provides settlement and payment of compensation;

b) in the cases referred to in paragraph 2 b), paragraph 3 b) and c), and paragraph 4 of article 125, for the purposes of paying damages resulting from accidents caused by motor vehicles and craft in Italy, act as person authorized to accept service for the insured party, the party civilly liable and their insurance undertaking;

c) be entitled to appear in court, in the cases referred to in paragraph 2 b), paragraph 3 and paragraph 4 of article 125, in the name and on behalf of member undertakings, in the actions for damages that victims of accidents occurred in Italy and caused by motor vehicles and craft registered abroad may start directly against it in accordance with the provisions of articles 145 (1), 146 and 147. The provisions regulating direct action against the insurance undertaking of the party civilly liable shall also apply to the Ufficio centrale italiano according to article 144.

3. For the purposes of bringing direct action for damages against the Ufficio centrale italiano the time limits set in article 163-bis (1) and 318 (2) of the code of civil procedure shall be doubled, and shall therefore be one hundred eighty days for proceedings brought before the courts and

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<sup>592</sup> Paragraph inserted by article 1 (3) of legislative decree n. 198 of 6 November 2007.

<sup>593</sup> Decree by the Minister of Economic Development n. 86 of 1 April 2008.

<sup>594</sup> Paragraph amended by article 1 (212) of legislative decree n. 74 of 12 May 2015.

<sup>595</sup> Decree by the Minister of Economic Development n. 86 of 1 April 2008.

ninety days for proceedings brought before the justice of the peace. The time limits set in article 163-bis, second paragraph, of the code of civil procedure may not however be shorter than sixty days.

4. The Ufficio centrale italiano shall be authorised to issue the green cards required for using abroad motor vehicles registered in Italy, and guarantee the obligations resulting from the issue of these certificates in respect of the corresponding national insurers' bureaux.

5. In case of awards for damages paid to foreign national insurers' bureaux, which according to the agreements concluded with the Italian bureau had to pay damages caused in the territory of their country by uninsured motor vehicles registered in Italy, the Ufficio centrale italiano shall have a right of recourse against the owner or the driver of the vehicle for the amounts paid and the relevant expenses.

6. In case of accident occurred in the territory of the Italian Republic and caused by motor vehicles or craft registered abroad, the Ufficio centrale italiano may ask the competent police bodies information on the accident, the residence and domicile of the parties, the registration plate or any other distinguishing element.

Art. 127  
(Insurance certificate and sticker)

1. Compliance with the insurance obligation for motor vehicles shall be proved by an ad-hoc certificate issued by the insurance undertaking or the leading insurer in case of coinsurance, indicating the insurance period for which premiums or premium instalments have been paid.

2. The insurance undertaking shall be obliged towards third parties for the period of time indicated in the certificate, except for the provisions in article 1901, second paragraph, of the civil code and article 122 (3), first sentence.

3. When issuing the insurance certificate the undertaking shall also deliver a sticker indicating the number plate of the vehicle and the day, month and year of expiry of the period of validity of the certificate. The insurance sticker shall be shown on the vehicle to which the insurance refers within five days of the payment of the premium or premium instalment.

4. IVASS shall, by its own regulation<sup>596</sup>, lay down the terms and conditions for the issue, as well as the characteristics of the insurance certificate, sticker and any other provisionally equivalent documents and the arrangements for issuing duplicates in case of theft, loss or destruction of the document<sup>597</sup>.

Art. 128  
(Minimum amounts of cover) <sup>598</sup>

1. The obligation to take out insurance against civil liability in respect of the use of motor vehicles and craft shall be regarded as fulfilled when the contract is taken out for amounts not lower than the following:

a) in case of personal injury, an amount of cover equal to 6,450,000 euros per claim, regardless of the number of victims;

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<sup>596</sup> ISVAP Regulation n. 13 of 06 February 2008.

<sup>597</sup> See also the interministerial decree n. 110 of 9 August 2013, issued by the Minister of Economic Development in agreement with the Minister of Infrastructure and Transport, laying down rules for the progressive dematerialisation of stickers relating to contracts covering insurance against third party liability for any loss or damage resulting from the use of motor vehicles on the road, through their replacement by electronic or online systems, referred to under article 31 of decree-law n. 1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

<sup>598</sup> Article replaced by article 2 (1, f) of legislative decree no. 184 of 22 November 2023.

b) In case of material damage, 1,300,000 euros per claim regardless of the number of victims;

b-bis) for motor vehicles used to carry passengers classified in categories M2 and M3 pursuant to article 47 of the road code, referred to in legislative decree n. 285 of 30 April 1992, a minimum amount of cover equal to 30,000,000 euros per claim in case of personal injury, regardless of the number of victims, and to 2,000,000 euros per claim in case of material damage, regardless of the number of victims.

2. Every five years from the date of 22 December 2021, the amounts referred to in paragraph 1 a) and b), shall be automatically indexed in line with the harmonised index of consumer prices (HICP) established pursuant to Regulation (EU) 2016/792 of the European Parliament and of the Council of 11 May 2016 on harmonised indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/95, as a result of the delegated acts adopted by the European Commission within six months after the end of each five-year period.<sup>599 600</sup>

#### Art. 129

(Subjects excluded from insurance cover)

1. Only the driver of the vehicle responsible for the accident shall not be regarded as a third party and shall not be entitled to the benefits deriving from the compulsory insurance contract.

2. Without prejudice to the provisions of article 122 (2), and to the provision of paragraph 1 of this article, the following subjects shall not be regarded as third parties and shall not be entitled to the benefits deriving from compulsory insurance contracts, only as regards damage to property:

- a) the subjects envisaged by article 2054 (3) of the civil code and article 91 (2) of the road code;
- b) the spouse not legally separated, the cohabiting partner, relatives in the ascending line and descendants, whether legitimate, natural or adopted, of the person under paragraph 1 and those under a), as well as affiliates and relatives by blood or by marriage, to the third degree inclusive, of all the afore-mentioned subjects, provided that they live together with them or are their dependants since the insured party normally provides for their maintenance;
- c) if the insured party is a company, members with unlimited liability and persons having with the former one of the relations described under b).

### Chapter II

#### CARRYING ON OF INSURANCE

#### Art. 130

(Authorised undertakings)

1. Insurance may be taken out with any undertaking authorised to pursue, in the territory of the Italian Republic, insurance against civil liability in respect of the use of motor vehicles and craft, also by way of establishment and of free provision of services.

2. Insurance undertakings with head office in the territory of the Italian Republic and insurance undertakings with head office in a third State authorised to pursue compulsory insurance against

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<sup>599</sup> By decree of the Minister of Economic Development of 31 May 2022, starting from 11 June 2022 the minimum amounts of cover had already been increased to 6,450,000.00 euros per claim, regardless of the number of victims, in case of personal injury pursuant to paragraph 1 a) and to 1,300,000.00 euros per claim, regardless of the number of victims, in case of material damage, pursuant to paragraph 1 b).

<sup>600</sup> The minimum amounts of cover had been increased pursuant to letter b-bis) added to Article 1, paragraph 28, letter a) of Law no.124 of 4 August 2017. The minimum amounts of cover will double as from 1 January 2018 pursuant to article 1 (29) of law n. 124 of 4 August 2017.

civil liability in respect of the use of motor vehicles and craft, excluding carriers' liability, shall appoint a claims representative in the cases referred to in article 151 in each member State.

3. If the insurance undertaking carrying on business under the freedom to provide services has failed to appoint the representative for the handling of claims referred to in article 25, the function shall be assumed by the claims representative appointed according to paragraph 2.

Art. 131  
(Premium and contract term disclosure)

1. To guarantee disclosure and competition in the supply of insurance services as well as adequate information for those who must comply with the obligation to insure motor vehicles and craft, undertakings shall make available to the public the information document and the contract terms applied in the territory of the Italian Republic at any point of sale and on the internet<sup>601</sup>.

2. Advertising of premiums shall be undertaken by means of customised estimates issued at any point of sale of the insurance undertaking and through internet sites from which it shall be possible to receive the same estimate for the vehicles and craft indicated in the implementation regulation.

2-bis. When offering motor liability contracts intermediaries shall previously inform the consumer about the commissions paid to them by the undertaking, or by each undertaking on behalf of which they carry on business. The information shall be displayed at the premises in which the intermediary conducts business and shall be disclosed in the documents issued to the policyholder<sup>602</sup>.

2-ter. Estimates and policies shall show, in highlighted characters, the tariff premium, the commission for the intermediary and the total discount for the policyholder<sup>603</sup>.

3. IVASS shall, by its own regulation<sup>604</sup>, establish the duties imposed on undertakings and intermediaries.

Art. 132  
(Obligation to insure)

1. Insurance undertakings shall establish in advance the policy conditions and tariffs for compulsory insurance, including any risk resulting from the use of motor vehicles and craft.<sup>605</sup>

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<sup>601</sup> Paragraph amended by article 1 (15) of legislative decree n. 187 of 30 December 2020.

<sup>602</sup> Paragraph inserted by article 8, decree-law n. 223 of 4 July 2006, converted into law n. 248 of 4 August 2006.

<sup>603</sup> Paragraph inserted by article 8, decree-law n. 223 of 4 July 2006, converted into law n. 248 of 4 August 2006.

<sup>604</sup> [SVAP Regulation n. 23 of 09 May 2008.

<sup>605</sup> Paragraph replaced by article 1 (2) of law n. 124 of 4 August 2017. The previous version laid down: "1. *Insurance undertakings shall be required, on the basis of the contract terms and insurance rates they must establish in advance for any risk in respect of the use of motor vehicles and craft, to accept the proposals regarding compulsory insurance which are submitted to them, without prejudice to the necessary assessment of correctness of the data shown in the claims history statement, and the identification of the policyholder and the vehicle's owner, if other than the policyholder. Undertakings may require the subjects who submit proposals regarding compulsory insurance to voluntarily have their vehicle inspected before the contract is concluded. In case an assessment is carried out in line with the previous sentence, undertakings shall apply a reduction with respect to the rates established in accordance with the first sentence. In the event that the policyholder consents to the installation of electronic mechanisms that record the activity of the vehicle, called black box or equivalent, or of further devices specified by decree of the Ministry of Infrastructure and Transport in consultation with the Ministry of Economic Development, the costs of installation, removal, replacement, operation and portability shall be imposed on the companies, which shall also apply a significant reduction compared to the rates established under the first sentence, when the contract is concluded or at the subsequent deadlines, provided that the parameters established by contract are complied with*».

1-bis. Insurance undertakings shall be required to accept the proposals submitted to them, based on the policy conditions and tariffs referred to in paragraph 1, without prejudice to the necessary assessment of correctness of the data shown in the claims history statement, and the identification of the policyholder and the vehicle's owner, if other than the policyholder.<sup>606</sup>

1-ter. If the assessment, which can also be performed through consultation of the sectoral databases and of the integrated computer database set up care of IVASS under article 21 of decree-law n. 179 of 18 October 2012, converted with amendments by law n. 221 of 17 December 2012, and subsequent modifications, shows that the information provided by the policyholder is not correct and true, insurance undertakings are not required to accept the proposals submitted to them. Insurance undertakings, in case of rejection of the proposal, shall recalculate the premium and send a new estimate to the potential policyholder.<sup>607</sup>

2. Insurance undertakings may request that the authorisation be limited to fleet business for the purposes of compliance with the obligations arising from paragraph 1.

3. To facilitate the preliminary checks regarding compliance with the obligation to insure referred to in paragraph 1 insurance undertakings shall have the right to have online access to the public motoring register (Pubblico Registro Automobilistico) and to the national vehicle file (Archivio Nazionale dei Veicoli) envisaged by the road code according to economic and technical conditions strictly linked to the costs of the service provided on the basis of the need to consult it, also systematically, with a view to preventing and combating frauds in compulsory insurance. The implementing provisions shall be adopted by decree of the Minister of Economic Development in agreement with the Ministry of Infrastructure and Transport.

3-bis. Where a breach or circumvention of the obligation to insure or to renew the contract is reported, the regulatory deadlines for handling complaints by IVASS shall be reduced by half. After expiry of this deadline, IVASS shall impose the sanctions referred to in article 314<sup>608</sup>.

#### Art. 132.1

(Comparison tool of insurance rates for motor liability insurance)<sup>609</sup>

1. Consumers can compare, free of charge, the prices, rates and contract terms and conditions of insurance companies providing coverage for compulsory motor vehicle liability, through the independent tool called "Preventivass," which can be consulted on the websites of IVASS and of the Ministry of Enterprises and Made in Italy.

2. The comparison tool has the following features:

- a) ensures that service providers are given equal treatment in search results;
- b) clearly discloses the identity of the owners and operators of the comparison tool;
- c) sets out the clear, objective criteria on which the comparison is based;
- d) uses plain language;
- e) provides accurate and up-to-date information and states the time of the last update;
- f) is open to any provider of the compulsory insurance referred to in paragraph 1, makes available the relevant information, includes a broad range of offers covering a significant part of the motor insurance market and, where the information presented is not a complete overview of that market, provides the user with a clear statement to that effect, before displaying the results;
- g) provides an effective procedure to report incorrect information;

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<sup>606</sup> Paragraph inserted by article 1 (2) of law n. 124 of 4 August 2017.

<sup>607</sup> Paragraph inserted by article 1 (2) of law n. 124 of 4 August 2017.

<sup>608</sup> Paragraph inserted by article 1 (3) of law n. 124 of 4 August 2017.

<sup>609</sup> Article inserted by article 2 (1, g) of legislative decree no. 184 of 22 November 2023.

- h) includes a statement that prices are based on the information provided and is without prejudice to any additional discounts applicable when the contract is signed.

Art. 132-bis  
(Obligations on intermediaries to provide information)<sup>610</sup>

1. Before underwriting a compulsory insurance contract against civil liability in respect of the use of motor vehicles and craft, intermediaries shall be required inform the customer in a proper, transparent and comprehensive way, of the premiums offered by all the insurance undertakings they represent in relation to the basic contract envisaged by article 22 of Decree-Law n. 179 of 18 October 2012, converted after amendments by Law n. 221 of 17 December 2012, and subsequent modifications.

2. For the purposes of paragraph 1, intermediaries shall provide the indication of the premiums offered by insurance undertakings via an electronic connection to the comparison tool referred to in article 132.1, available in the websites of IVASS and of the Ministry of Enterprises and Made in Italy without any obligation to issue documents on paper.<sup>611</sup>

3. IVASS shall adopt measures<sup>612</sup> implementing these provisions so that consumers and intermediaries, through online access, can receive replies relating exclusively to the premiums applied by insurance undertakings for the basic contract relating to cars and motorcycles. The same provisions shall define the arrangements for concluding the contract, once the estimate has been obtained on the basis of the information entered into the information service referred to in article 136, (3-bis), with terms that cannot be worse than those indicated in the estimate, either at an agency of the undertaking or, where envisaged by the undertakings, through a direct link to the website of each insurance company.

4. A contract concluded without the customer's statement that he/she has received the information, where required, referred to in paragraph 1 shall be declared void only in favour of the customer.

Art. 132-ter  
(Compulsory discounts)<sup>613</sup>

1. If at least one of the following conditions is met, to be verified beforehand or at the time when the contract is concluded or upon renewal, insurance undertakings shall apply a discount established by them within the limits set out in paragraph 2:

a) where, upon the proposal of the insurance undertaking, the subjects who submit proposals regarding compulsory insurance accept to have their vehicle inspected at the expense of the insurance undertaking;

b) where, upon the proposal of the insurance undertaking, portable electronic mechanisms are installed, or are already in place, that record the activity of the vehicle, called "black box" or equivalent, or further devices, designed only with the minimum functional requirements necessary to guarantee the use of the data collected, in particular, for calculating the premium rate and determining liability in case of accident, by decree of the Ministry of Infrastructure and Transport,

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<sup>610</sup> Article inserted by article 1 (6) of law n. 124 of 4 August 2017.

<sup>611</sup> Paragraph replaced by article 2 (1, h) of legislative decree no. 184 of 22 November 2023. The previous version laid down: "2. *For the purposes of paragraph 1, intermediaries shall provide the indication of the premiums offered by insurance undertakings via an electronic connection to the comparison tool available in the websites of IVASS and of the Ministry of Economic Development without any obligation to issue documents on paper.*"

<sup>612</sup> IVASS Regulation no. 51 of 21 June 2022.

<sup>613</sup> Article inserted by article 1 (6) of law n. 124 of 4 August 2017.



in consultation with the Ministry of Economic Development, to be adopted within ninety days of the entry into force of this provision;

c) where, upon the proposal of the insurance undertaking, electronic mechanisms are installed, or are already in place, that prevent the starting of the engine when the driver's blood-alcohol level exceeds the legal limits permitted for driving.

2. IVASS shall, by its own regulation<sup>614</sup>, establish the criteria and arrangements for determining the discount to be applied by insurance undertakings pursuant to paragraph 1, as part of the process for the calculation and recalculation of the premium rate. Insurance undertakings, when implementing the criteria set out by IVASS, shall define a significant discount to be applied to customers for the reduction of the risk as a result of one or more of the conditions referred to under paragraph 1 and highlight both in the estimate and in the contract, if the policyholder accepts it, the discount applied for each of the conditions referred to in paragraph 1, in absolute value and as a percentage, compared to the price of the policy otherwise calculated.

3. IVASS shall, on the basis of the data at its disposal and of statistical surveys, identify the list of provinces with more claims and with the highest average premium. This list is updated at least every two years.

4. By the regulation referred to in paragraph 2, IVASS, taking account of the higher premiums applied in the provinces identified pursuant to paragraph 3 and of those applied in other provinces with fewer claims to policyholders having the same risk profile and assigned to the same bonus class, shall also define the criteria and methods to be used by undertakings for calculating a significant discount, additional to that applied pursuant to paragraph 2, applicable to the subjects resident in the provinces envisaged in paragraph 3, who in the last four years have not been involved in accidents where liability has been apportioned fully, mainly or equally to the policyholder as shown in the claims history statement, and who, after the conclusion of the contract, install, or have already in place, the device referred to in paragraph 1, b).

5. In particular, the regulation referred to under paragraph 2 shall:

a) define objective parameters, such as the frequency and the average cost of claims, for the calculation of the additional discount referred to in paragraph 4;

b) establish, as part of the methods referred to in paragraph 4, that there can be no premium differentials which are not justified by specific evidence of risk differentials.

6. The above-mentioned tasks shall be performed using the human and material resources available under the current legislation and without any new or incremental charges for the State budget.

7. When implementing the criteria set out by IVASS, as at the date of entry into force of this provision, insurance undertakings shall apply the discount to anyone complying with the conditions referred to in paragraph 4, of a significant amount, additional to that applied pursuant to paragraph 2, and highlight both in the estimate and in the contract, if the policyholder accepts it, the discount applied, in absolute value and as a percentage, compared to the price of the policy otherwise calculated. The discount envisaged in this paragraph shall apply to new contracts or renewals of existing contracts.

8. In the cases referred to in paragraphs 2 and 4, this is without prejudice to the obligation to comply with the parameters established by the insurance contract. To ensure maximum transparency, insurance undertakings shall publish in their website the amount of the discounts applied in implementation of the provisions of paragraphs 1, 2, 4 and 7, using forms of publicity that make their application clear and effective.

9. By means of periodic spot checks, including inspections or on the basis of a detailed report by third parties, IVASS shall verify that, in implementation of the provisions of paragraphs 1, 2, 4 and

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<sup>614</sup> IVASS Regulation n. 37 of 27 March 2018.

7 and as part of the process for the calculation and recalculation of the premium rate, insurance undertakings actually take account of the criteria set out in the regulation referred to in paragraph 2 and of compliance with the criteria and methods for calculating the discount envisaged in paragraph 4.

10. IVASS shall also verify that the additional discount referred to in paragraph 4 shall ensure the progressive reduction of the differences in premiums applied on the Italian territory to policyholders having the same risk profile and assigned to the same bonus class.

11. (repealed)<sup>615</sup>.

12. In the cases set out in paragraph 1, *b*) and *c*), the costs of installation, removal, operation, replacement and portability shall be imposed on the company. The policyholder is the owner of the devices mentioned under *b*) and *c*). The premium reduction applied by the insurance undertaking under paragraph 1 shall also apply to contracts concluded with a new policyholder and in case of expiry of a contract or of conclusion of a new insurance contract between the same parties. This is without prejudice to the obligation to comply with the parameters established by the insurance contract.

#### Art. 133 (Insurance rates)

1. For mopeds, motorcycles, cars and other categories of motor vehicles which can be specified by IVASS' regulation, insurance contracts shall be underwritten on the basis of policy conditions which envisage, on each annual expiry date, an increase or decrease in the premium applied when the contract is concluded or renewed following the occurrence of accidents during a certain time period, or according to deductible clauses providing for the policyholder's contribution to compensation, or according to a mix of the two approaches. Vehicles shall be classified according to prevention needs. The above-mentioned increase or decrease in the premium, to be disclosed both in absolute value and as a percentage compared to the current premium rate applied by the undertaking when submitting an estimate for the conclusion or renewal of the contract, shall automatically apply, subject to better conditions, and to the extent previously quantified in relation to the bonus class attributed to the policy and explicitly stated in the contract.<sup>616</sup>

1-bis. Insurance undertakings shall be prevented from differentiating the shift and assignment of the internal bonus class on the basis of the duration of the contractual relationship between the policyholder and the undertaking, or on the basis of parameters that may be an obstacle to mobility between different insurance undertakings. In particular, insurance undertakings shall ensure that, within the same bonus class, the new policyholder receives the same premium conditions assigned to policyholders having the same risk profile.<sup>617</sup>

2. Insurance undertakings shall have the right to have online access to the national register of the persons entitled to drive which was set up by the road code at the Ministry of the Infrastructure and Transport for the purpose of verifying and updating the information relating to entitlement to drive according to economic and technical conditions strictly related to the costs of the service provided. The implementing provisions shall be adopted by decree of the Minister of Economic

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<sup>615</sup> Paragraph repealed by article 1 (25) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "11. Non-compliance by the insurance undertaking with the criteria and methods for determining the discount pursuant to paragraphs 2 and 4 and the obligation to reduce the premium where so provided under the provisions of paragraphs 1 and 7 shall be punished by IVASS with a pecuniary administrative sanction varying from 10,000 euros to 80,000 euros and the automatic reduction of the insurance premium for existing contracts."

<sup>616</sup> The sentence: "Non-compliance with the provision referred to under this paragraph shall be punished by IVASS with a pecuniary administrative sanction varying from EUR 1,000 to EUR 50,000" has been deleted by article 1 (26) of legislative Decree n. 68 of 21 May 2018.

<sup>617</sup> Paragraph inserted by article 1 (13) of law n. 124 of 4 August 2017.

Development in agreement with the Ministry of Infrastructure and Transport after hearing the opinion of the Authority for the protection of personal data.

Art. 134  
(Claims history statement)

1. The policyholder or, if different, the owner or usufructuary, the buyer under retention of title or the leasee of an operating or financial leasing has the right to request at any time – within fifteen days from the request – a claims history statement relating to at least the last five years of the compulsory motor insurance contract, or to the absence of such claims. Insurance undertakings do not treat policyholders in a discriminatory manner or surcharge their premiums because of their nationality or solely on the basis of their previous Member State of residence. Insurance undertakings shall treat the claims-history statements issued in other Member States as equal to those issued by an insurance undertaking with head office in the territory of the Italian Republic, including when applying any discounts. The claims history statement shall be delivered by electronic techniques, using the electronic databases referred to under paragraph 2 or under article 135.<sup>618</sup>

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2. The insurance undertaking puts<sup>621</sup> the information included in the claims history statement in an electronic database held by public bodies or, if already existing, by private bodies in order to allow adequate supervision in the underwriting of the insurance contracts referred to in article 122 (1). At any rate IVASS shall have free of charge access to the database containing information on the statement.

3. The bonus class shown in the claims history statement shall be referred to the vehicle's owner. The regulation shall establish the validity, which may be not less than twelve months, and indicate the starting date and the duration of the observation period.<sup>622</sup>

4. When a contract is concluded for the same vehicle to which the certificate of claims experience refers, the latter shall be directly acquired by the insurance undertaking by electronic techniques through the databases referred to under paragraph 2 of this article and article 135<sup>623</sup>.

4-bis. Provided that no claims with full or main or equal liability occurred in the last five years on the basis of the claims history statement, whenever a new contract has been concluded or renewed for another vehicle, even if of a different type<sup>624</sup>, purchased by the natural person who already holds an insurance policy or by a permanently cohabiting family member, the insurance undertaking may not assign the contract a less favourable bonus class than that shown in the

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<sup>618</sup> Paragraph replaced by article 2 (1,) letter i, number 1) of legislative decree no. 184 of 22 November 2023. The previous version laid down: "1. IVASS shall, by its own regulation, establish the information to be included in the certificate of claims experience which, on each annual expiry date of compulsory motor insurance contracts, the undertaking must deliver to the policyholder or, if different, to the owner or usufructuary, the buyer under retention of title or the leasee of an operating or financial leasing. The information to be included in the certificate of claims experience shall include the specification of the type of damage paid."

<sup>619</sup> Paragraph repealed by article 2 (1,) letter i, number 2) of legislative decree no. 184 of 22 November 2023.

<sup>620</sup> Paragraph repealed by article 2 (1,) letter i, number 3) of legislative decree no. 184 of 22 November 2023.

<sup>621</sup> Paragraph replaced by article 2 (1,) letter i, number 4) of legislative decree no. 184 of 22 November 2023.

<sup>622</sup> The second period has been repealed by article 2 (1,) letter i, number 5) of legislative decree no. 184 of 22 November 2023.

<sup>623</sup> Paragraph replaced by article 32 (2, d) of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

<sup>624</sup> Paragraph amended by article 55-bis (1, a and b) of decree-law n. 124 of 26 October 2019, converted into law n. 157 of 19 December 2019.

latest claims history statement relating to the vehicle already insured<sup>625</sup>, may not discriminate on the basis of the duration of the relationship and shall ensure that, within the same bonus class, the new policyholder receives the same premium conditions assigned to policyholders having the same risk profile<sup>626</sup>.

4-ter. After an accident has occurred insurance undertakings may not bring any changes to the bonus class until they have ascertained the policyholder's actual liability, to be referred to the person who ultimately caused the accident, according to the damages paid and subject to any different assessment by the court. In case it is not possible to ascertain the ultimate liability or, provisionally and subject to adjustment, in case of partial settlement, the liability shall be calculated proportionately in relation to the number of drivers involved, with a view to any change in the bonus class due to more than one accident<sup>627</sup>. In any event, the negative changes to the bonus class and the consequent increases in the premium for policyholders who have made use of the option in article 132-ter, (1, b), must be lower than the ones that would otherwise be applied<sup>628</sup>.

4-ter.1. After an accident has occurred, if the policyholder consents to the installation of one of the devices referred to in article 132-ter, the negative changes to the bonus class and the consequent increases in the premium must be lower than the ones that would otherwise be applied.<sup>629</sup>

4.ter. 2. After the occurrence of an accident for which liability has been fully or mainly assigned to a driver having a more favourable bonus class for the vehicle of a different type pursuant to the provisions of paragraph 4 -bis and which resulted in the payment of a compensation exceeding 5,000 euro in total, insurance undertakings, at the first contract expiry date, may, limited to the vehicle of a different type involved in the claim, assign a worse bonus class of up to five classes with respect to the criteria established by IVASS pursuant to this article. The provisions of this paragraph shall apply only to the beneficiaries of the more favourable bonus class and only to the vehicle of a different type in accordance with the provisions of paragraph 4 -bis as per the text in force after the amendments introduced by article 55 - bis paragraph 1, a) of decree-law No. 124 of 26 October 2019, converted after amendments by Law No. 157 of 19 December 2019.<sup>630</sup>

4-quater. Insurance undertakings shall anyhow be obliged to immediately inform the policyholder of the negative changes in the bonus class<sup>631</sup>.

4-quinquies. Pursuant to Article 30 (5), the undertaking shall adopt policies in respect of the use of claims-history statements when calculating premiums and publish a general overview of such policies.<sup>632</sup>

4-sexies. Until the European Commission issues the implementing act referred to in Article 16 of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009, which specifies, by means of a template, the form and content of the claims history statement, the provisions adopted by IVASS with its own regulation shall apply.<sup>633</sup>

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<sup>625</sup> Paragraph inserted by article 5 (2), decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007.

<sup>626</sup> Addition introduced by article 1 (14, a) of law n. 124 of 4 August 2017.

<sup>627</sup> Paragraph inserted by article 5 (2), decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007.

<sup>628</sup> Sentence added by article 1 (14, b) of law n. 124 of 4 August 2017.

<sup>629</sup> Paragraph added by article 1 (14, c) of law n. 124 of 4 August 2017.

<sup>630</sup> Paragraph inserted by article 12 (4-ter) of decree-law No. 162 of 30 December 2019, converted after amendments by Law No. 8 of 28 February 2020.

<sup>631</sup> Paragraph inserted by article 5 (2), decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007.

<sup>632</sup> Paragraph introduced by article 2 (1,) letter i, number 6) of legislative decree no. 184 of 22 November 2023.

<sup>633</sup> Paragraph introduced by article 2 (1,) letter i, number 6) of legislative decree no. 184 of 22 November 2023. See ISVAP Regulation no. 4 of 9 August 2007, amended and supplemented by ISVAP Order no. 2590 of 8 February 2008 and afterwards repealed by IVASS Regulation no. 9 of 19 May 2015, without prejudice to the provisions of art. 13 (5).

Art. 135

(Claims data bank and data banks for the register of witnesses and of injured parties)<sup>634</sup>

1. To enhance prevention and combating of fraudulent behaviours in compulsory insurance for motor vehicles registered in Italy, a database on the claims pertaining to such vehicles and two databases called "register of witnesses" and "register of injured parties" shall be set up at IVASS<sup>635</sup>.

2. Insurance undertakings authorised in Italy to pursue compulsory insurance against civil liability in respect of the use of motor vehicles and craft, shall be required to communicate the data about the claims handled, including those handled as designated undertaking pursuant to article 286, as well as the claims handled by the Italian national bureau (Ufficio centrale italiano) pursuant to article 125 (5) and article 296, on the basis of the procedures established by regulation adopted by IVASS. Insurance undertakings with head office in a EU member State authorised to pursue business in Italy under the freedom to provide services or under the right of establishment and licensed to pursue compulsory insurance against civil liability in respect of the use of motor vehicles and craft in the territory of the Italian Republic shall be subject to the same obligation.<sup>636</sup>

3. The organisation and operating procedures, the terms and conditions of access to the databases referred to in paragraph 1 by public administrations, the judiciary, police, insurance undertakings and third parties, and the obligations for insurance companies to consult the databases when settling claims, shall be established by IVASS regulation, after hearing the opinion of the Ministry of Economic Development and the Ministry of the Interiors, and, for the profiles regarding protection of privacy, the Authority for the protection of personal data.<sup>637</sup>

3-bis. For accidents with only material damage, the identification of any witness at the place where the accident occurred must be reported in the accident statement form or, in any case, in the first formal act of the claimant against the insurance undertaking or, in its absence, it must be requested by the insurance undertaking with an explicit warning to the policyholder of the procedural consequences of a non reply. In this latter case, the insurance undertaking shall request the provision of witnesses by means of a registered letter with advice of receipt within sixty days of reporting the claim and the party that receives the request shall name the witnesses by means of a registered letter with advice of receipt within sixty days of receiving the request. The insurance undertaking shall in turn identify and name any further witnesses within sixty days. Without prejudice to what stated in the records of the police authorities present at the site of the accident, the indication of the witnesses at a later stage shall entail the exclusion of witness evidence.

3-ter. In the event of a judgement, the court, based on the documents submitted, shall not admit testimonies that have not been received in accordance with the terms set out in paragraph 3-bis. The court shall hear the witnesses whose names have not been submitted in accordance with the above-mentioned paragraph 3-bis only when there is objective evidence that it was impossible to name them immediately.

3-quater. In case of civil disputes for the establishment of liability and the quantification of damages, the court, also on the basis of a documented report by the parties who, for this purpose,

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<sup>634</sup> Heading amended by article 32 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

<sup>635</sup> Paragraph amended by article 32 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

<sup>636</sup> Paragraph replaced by article 1 (28, b) of law n. 124 of 4 August 2017. The previous version laid down: "2. *Undertakings shall be required to communicate the data about the accidents in which their policyholders are involved on the basis of the procedures established by regulation adopted by IVASS. IVASS shall request the data on the insurance undertakings pursuing business in the territory of the Italian Republic under the right of establishment or the freedom to provide services from their home supervisory authorities of the member States concerned.*"

<sup>637</sup> Paragraph replaced by article 32 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

may request the data to IVASS, shall inform the Office of the State Prosecutor, for the aspects falling within their competence, about the recurrence of the same names of witnesses in more than three accidents in the last five years recorded in the claims database envisaged in paragraph 1. This paragraph shall not apply to police agents and officers who are called to testify.<sup>638</sup>

#### Art. 136

##### (Functions of the Ministry of economic development)

1. To enable the Ministry of economic development to perform its functions IVASS shall communicate to the Ministry data, information and news on the rates of compulsory insurance against civil liability in respect of the use of motor vehicles and craft.

2. For the purposes specified in paragraph 1, a committee of experts on compulsory insurance against civil liability in respect of the use of motor vehicles and craft shall be set up at the Ministry of economic development, whose task shall be the monitoring of the increase in insurance rates applied by insurance undertakings operating in the territory of the Italian Republic by assessing, in particular, the differences in insurance rates applied in the territory of the Italian Republic and also to what extent the behaviour of policyholders who have not reported any accident during the year has been taken into account. The setting up and operation of the committee of experts shall be regulated by decree of the Minister of economic development, it being understood that such experts shall not receive any benefits or emoluments however named.

3. For the purposes of disseminating adequate information for policyholders and realising a system of permanent monitoring of compulsory motor vehicle liability premiums, the National Council of consumers and users shall be authorised to conclude a specific agreement with the National Institute of Statistics and co-finance, according to procedures and criteria established by decree of the Minister of economic development, information and orientation programmes for the users of insurance services promoted by consumers and users associations, to be covered by the available funding allocated to the Council by the law establishing the Council.

3-bis. The Ministry of Economic Development shall use the tariff system with all its extensions arranged by IVASS according to the data furnished by insurance undertakings, to realise an information service, also through its internet site, enabling consumers to compare the tariffs applied by the various insurance undertakings in relation to their own individual profile<sup>639</sup>.

### Chapter III

#### COMPENSATION FOR DAMAGE

#### Art. 137

##### (Pecuniary damage)

1. In case of personal injury, when the incidence of temporary incapacity or permanent disability over an occupational income of any kind is to be taken into account when calculating the awards, this income shall be determined, for employees, on the basis of the higher occupational income of the last three years, plus the non-taxable income and gross of the deductions and retentions envisaged by law and, for self-employed workers, on the basis of the higher net income declared by the injured party for personal income tax purposes in the last three years or, in the cases provided for by law, shown in the certification issued by the employer in accordance with legal provisions.

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<sup>638</sup> Paragraphs 3-bis, 3-ter and 3-quater have been introduced by article 1 (15) of law n.124 of 4 August 2017.

<sup>639</sup> Paragraph inserted by article 5 (3), decree-law n. 7 of 31 January 2007, converted into law n. 40 of 2 April 2007.

2. This may however be challenged by evidence to the contrary; nonetheless, if such evidence shows that the income is more than one fifth higher than the income shown in the papers indicated under paragraph 1, the court shall inform the competent department at the Agenzia delle entrate accordingly.

3. In all the other cases the income to be taken into account for determining compensation may not be lower than three times the annual amount of the social pension.

Art. 138  
(Non-financial damage for serious injuries)<sup>640</sup>

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<sup>640</sup> Article replaced by article 1 (17) of law n. 124 of 4 August 2017 and amended by article 3-ter of decree-law n. 228 of 30 December 2021, converted into law n. 15 of 25 February 2022. The previous article 138 laid down:

"Art. 138

*(Non-financial damage for serious injuries)*

1. *In order to ensure that the victims of accidents obtain full compensation for the non financial damage actually suffered and to rationalise the costs for the insurance system and consumers, a specific single table valid all over the territory of the Italian Republic shall be drawn up by presidential decree, to be adopted within one hundred twenty days of the entry into force of this provision upon resolution of the Council of Ministers based on the proposal of the Minister of Economic Development, in agreement with the Minister of Health, the Minister for Labour and Social Policy and the Minister of Justice; and it shall indicate:*

*a) impairments to physical and mental integrity ranging between ten and one hundred points;*  
*b) the pecuniary value of each point of disability, including the coefficients of variation corresponding to the age of the injured party.*

2. *The national single table shall be drawn up taking account of the criteria for the assessment of non-financial injury considered appropriate under the settled case-law of the supreme courts, according to the following principles and criteria:*

*a) for the purposes of the table biological damage shall mean any temporary or permanent injury to a person's physical and mental integrity, which can be identified through a medico-legal assessment and which has a negative impact on the activities of daily living and on the dynamic and interpersonal aspects of the life of the injured party, regardless of any repercussions on his/her capacity to produce income;*

*b) the table of economic values shall be based on a system of points varying according to the age and degree of disability;*

*c) the economic value of the point shall be an increasing function of the percentage of disability, and the incidence of impairments on the dynamic and interpersonal aspects of the injured party's life shall increase more than proportionally to the percentage increase of sequelae;*

*d) the economic value of the point shall be a decreasing function of the person's age, according to the mortality tables drawn up by ISTAT, at a revaluation rate equal to the statutory interest rate;*

*e) when considering the component of the non-material damage resulting from injury to physical integrity, the share corresponding to the biological damage established according to the criteria under a) to d) shall be progressively increased in its percentage value for each point, and the percentage increase of these values shall be established with a view to personalising compensation;*

*f) temporary biological damage of less than 100 per cent shall be calculated according to the percentage of incapacity recognised for each day.*

3. *If the declared impairment has a significant impact on specific dynamic and interpersonal aspects documented and objectively verified, the amount of damages, calculated according to the national single table referred to in paragraph 2, may be increased by the court up to thirty per cent, on the basis of a fair and reasoned assessment of the subjective conditions of the injured party.*

4. *The overall amount of damages awarded pursuant to this article shall include the damages resulting from bodily injuries.*

5. *The amounts shown in the national single table shall be updated each year, by decree of the Minister of economic development, in accordance with the changes in the national index of consumer prices for families of clerical and manual workers assessed by ISTAT."*

1. In order to ensure that the victims of accidents obtain full compensation for the non financial damage actually suffered and to rationalise the costs for the insurance system and consumers, specific single tables valid all over the territory of the Italian Republic shall be drawn up with two separate decrees of the President of the Republic, to be adopted by 1 May 2022, upon resolution of the Council of Ministers; the former, referred to under letter a), upon the proposal of the Minister of Health, in agreement with the Minister of Economic Development, the Minister for Labour and Social Policy and the Minister of Justice, and the latter, referred to under letter b), upon the proposal of the Minister of Economic Development, in agreement with the Minister of Justice, after hearing IVASS; and they shall indicate:

- a) impairments to physical and mental integrity ranging between ten and one hundred points;
- b) the pecuniary value of each point of disability, including the coefficients of variation corresponding to the age of the injured party.

2. The national single tables referred to under par. 1 shall be drawn up taking account of the criteria for the assessment of non-financial injury considered appropriate under the settled case-law of the supreme courts, according to the following principles and criteria:

- a) for the purposes of the tables, biological damage shall mean any temporary or permanent injury to a person's physical and mental integrity which can be identified through a medico-legal assessment and which has a negative impact on the activities of daily living and on the dynamic and interpersonal aspects of the life of the injured party, regardless of any repercussions on his/her capacity to produce income;
- b) the table of economic values shall be based on a system of points varying according to the age and degree of disability;
- c) the economic value of the point shall be an increasing function of the percentage of disability, and the incidence of impairments on the dynamic and interpersonal aspects of the injured party's life shall increase more than proportionally to the percentage increase of sequelae;
- d) the economic value of the point shall be a decreasing function of the person's age, according to the mortality tables drawn up by ISTAT, at a revaluation rate equal to the statutory interest rate;
- e) when considering the component of the non-material damage resulting from injury to physical integrity, the share corresponding to the biological damage established according to the criteria under a) to d) shall be progressively increased in its percentage value for each point, and the percentage increase of these values shall be established with a view to personalising compensation;
- f) temporary biological damage of less than 100 per cent shall be calculated according to the percentage of incapacity recognised for each day.

3. If the declared impairment has a significant impact on specific dynamic and interpersonal aspects documented and objectively verified, the amount of damages, calculated according to the national single table referred to in paragraph 1b, may be increased by the court up to thirty per cent, on the basis of a fair and reasoned assessment of the subjective conditions of the injured party.

4. The overall amount of damages awarded pursuant to this article shall include the damages resulting from bodily injuries.

5. The amounts shown in the national single table referred to in paragraph 1b shall be updated each year, by decree of the Minister of economic development, in accordance with the changes



in the national index of consumer prices for families of clerical and manual workers assessed by ISTAT.<sup>641</sup>

Art. 139  
(Non-financial damage for minor injuries)<sup>642</sup>

1. Compensation in case of biological damage for minor injuries resulting from accidents caused by motor vehicles and craft shall be calculated according to the following criteria and measurements:

a) in respect of permanent biological damage, a compensation which is increased more than proportionally in relation to each percentage point of disability shall be paid for the sequelae of impairments equal to or lower than 9 per cent; this amount shall be calculated by applying to each percentage point of disability the relevant coefficient according to the correlation established in paragraph 6. The amount thus calculated decreases with the increasing age of the person at the rate of 0.5 per cent for each year of age starting from the age of eleven. The value of the first point is 795.91 euros;

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<sup>641</sup> Paragraph 18 of article 1 of law n. 124 of 4 August 2017 lays down that the national single table drawn up by presidential decree as referred to in article 138 (1) of the CAP, as replaced by article 1 (17) of law n. 124 of 4 August 2017, shall apply to the claims and events occurred after the entry into force of the afore-mentioned presidential decree.

<sup>642</sup> Article replaced by article 1 (19) of law n. 124 of 4 August 2017. The previous version laid down:

“Art. 139

*(Biological damage for minor injuries)*

1. Compensation in case of biological damage for minor injuries resulting from accidents caused by motor vehicles and craft shall be calculated according to the following criteria and measurements:

a) in respect of permanent biological damage, a compensation which is increased more than proportionally in relation to each percentage point of disability shall be paid for the sequelae of impairments equal to or lower than nine per cent; this amount shall be calculated by applying to each percentage point of disability the relevant coefficient according to the correlation described in paragraph 6. The amount thus calculated decreases with the increasing age of the person at the rate of 0.5 per cent for each year of age starting from the age of eleven. The value of the first point is 793.52 euros;

b) in respect of temporary biological damage, a compensation of 46.29 euros shall be paid for each day of absolute incapacity; in case of temporary incapacity of less than 100%, compensation shall be calculated according to the percentage of incapacity recognised for each day.

2. For the purposes described in paragraph 1 biological damage shall mean any temporary or permanent injury to a person's physical and mental integrity which can be identified through a medico-legal assessment and which has a negative impact on the activities of daily living and on the dynamic and interpersonal aspects of the life of the injured party, regardless of any repercussions on his/her capacity to produce income. Anyhow minor injuries that are not susceptible of objective instrumental clinical surveillance may not give rise to compensation for permanent biological damage<sup>642</sup>.

3. The amount of the biological damage paid in accordance with paragraph 1 may be increased by the court of not more than one fifth, on the basis of a fair and reasoned assessment of the subjective conditions of the injured party.

4. By presidential decree, upon resolution of the Council of Ministers based on the proposal of the Minister of Health, in agreement with the Minister of Labour and Social Policy, with the Minister of Justice and the Minister of Economic Development, a specific table of impairments to physical and mental integrity ranging between one and nine points of disability shall be drawn up.

5. The amounts shown in paragraph 1 shall be updated each year by decree of the Minister of Economic Development, in line with the changes in the national index of consumer prices for families of clerical and manual workers assessed by ISTAT.

6. For the purposes of calculating the amount under paragraph 1 a), a multiplying coefficient of 1.0 shall apply to 1 percentage point of disability, a multiplying coefficient of 1.1 shall apply to 2 percentage points of disability, a multiplying coefficient of 1.2 shall apply to 3 percentage points of disability, a multiplying coefficient of 1.3 shall apply to 4 percentage points of disability, a multiplying coefficient of 1.5 shall apply to 5 percentage points of disability, a multiplying coefficient of 1.7 shall apply to 6 percentage points of disability, a multiplying coefficient of 1.9 shall apply to 7 percentage points of disability, a multiplying coefficient of 2.1 shall apply to 8 percentage points of disability, a multiplying coefficient of 2.3 shall apply to 9 percentage points of disability.”.

b) in respect of temporary biological damage, a compensation of 39.37 euros shall be paid for each day of absolute incapacity; in case of temporary incapacity of less than 100%, compensation shall be calculated according to the percentage of incapacity recognised for each day.

2. For the purposes described in paragraph 1 biological damage shall mean any temporary or permanent injury to a person's physical and mental integrity which can be identified through a medico-legal assessment and which has a negative impact on the activities of daily living and on the dynamic and interpersonal aspects of the life of the injured party, regardless of any repercussions on his/her capacity to produce income. Anyhow minor injuries that are not susceptible of objective instrumental clinical surveillance, or that cannot be verified visually, as is the case of injuries such as scars, objectively ascertainable without the use of any instruments, may not give rise to compensation for permanent biological damage.

3. If the declared impairment has a significant impact on specific dynamic and interpersonal aspects documented and objectively ascertained or causes or has caused extremely intense physical and mental suffering, the amount of damages calculated according to the national single table may be increased by the court up to 20 per cent, on the basis of a fair and reasoned assessment of the subjective conditions of the injured party. The overall amount of damages awarded pursuant to this article shall include the non-financial damage resulting from bodily injuries.

4. By presidential decree, upon resolution of the Council of Ministers based on the proposal of the Minister of Health, in agreement with the Minister of Labour and Social Policy, with the Minister of Justice and the Minister of Economic Development, a specific table of impairments to physical and mental integrity ranging between 1 and 9 points of disability shall be drawn up.

5. The amounts shown in paragraph 1 shall be updated each year by decree of the Minister of Economic Development<sup>643</sup>, in line with the changes in the national index of consumer prices for families of clerical and manual workers assessed by ISTAT.

6. For the purposes of calculating the amount under paragraph 1 a), a multiplying coefficient of 1 shall apply to 1 percentage point of disability, a multiplying coefficient of 1.1 shall apply to 2 percentage points of disability, a multiplying coefficient of 1.2 shall apply to 3 percentage points of disability, a multiplying coefficient of 1.3 shall apply to 4 percentage points of disability, a multiplying coefficient of 1.5 shall apply to 5 percentage points of disability, a multiplying coefficient of 1.7 shall apply to 6 percentage points of disability, a multiplying coefficient of 1.9 shall apply to 7 percentage points of disability, a multiplying coefficient of 2.1 shall apply to 8 percentage points of disability, and a multiplying coefficient of 2.3 shall apply to 9 percentage points of disability.

#### Art. 140

(Cases where there is more than one injured party and the amounts of cover are exceeded)

1. In the cases where there is more than one injured party in the same accident and the awards to be paid by the person liable exceed the insured amounts, the injured parties' rights vis-à-vis the insurance undertaking shall be proportionately reduced within the limits of the insured amounts.

2. When, after thirty days from the accident, the insurance undertaking is not aware of other injured parties, despite the due diligence used for their identification, and has paid to some of

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<sup>643</sup> The amounts shown in paragraph 1 have recently been updated by decree of the Minister of Enterprises and Made in Italy of 16 October 2023 with effect from April 2023 and are equal respectively to 939.78 euros (disability as referred to in a)) and to 54.80 euros (absolute incapacity as referred to in b)).

them an amount higher than the portion owed to them, it shall be liable to the other injured parties only within the limits of difference between the insured amount and the amount paid.

3. In the case referred to in paragraph 2, the other injured parties whose claim has remained unsatisfied, shall be entitled to claim the amount due to them in accordance with paragraph 1 from those who have received compensation from the insurance undertaking.

4. In the legal proceedings between the insurance undertaking and injured parties compulsory joinder shall be required, in application of article 102 of the code of civil procedure. The insurance undertaking can deposit an amount, within the limit of the maximum amount of cover, which has the effect of releasing it in regard of all persons entitled to compensation, provided that it is an irrevocable blocked deposit in favour of all injured parties.

Art. 141  
(Compensation for passengers)

1. Except for accidents caused by unforeseeable circumstances, the loss or injury suffered by passengers shall be paid by the insurance undertaking of the vehicle in which they were being carried at the time of the accident up to the minimum amount of cover established by law, without prejudice to the provisions of article 140, regardless of which driver of the vehicles involved in the accident is liable, notwithstanding the right to claim compensation for any excess damages from the insurance undertaking of the party civilly liable, if the latter's vehicle is insured for an amount higher than the minimum amount of cover.

2. To obtain damages passengers may start the compensation proceedings envisaged in article 148 against the insurance undertaking of the vehicle in which they were being carried at the time of the accident.

3. A direct right of action for damages may be exercised against the insurer of the vehicle in which the injured party was being carried at the time of the accident under the terms of article 145. The insurance undertaking of the party civilly liable may intervene in court proceedings and exclude the insurer of the vehicle, recognising the responsibility of its own insured. The provisions of chapter IV shall apply, *mutatis mutandis*.

4. The insurance undertaking which has paid damages has a right of recourse against the insurance undertaking of the party civilly liable within the limits and under the terms envisaged in article 150.

Art. 142  
(Right to subrogation of the social insurer)

1. If the injured party is covered by social insurance, the institution administering social insurance has the right to receive reimbursement of the expenses incurred for the benefits paid to the injured party directly by the insurance undertaking in accordance with the laws and regulations relating to social insurance, provided that no compensation has already been paid to the injured party, in accordance with the procedures and requirements under paragraphs 2 and 3.

2. Before settling the claim, the insurance undertaking is required to request the injured party a declaration stating that he/she has no right to benefits from institutions administering compulsory social insurances. If the injured party states that he/she has right to these benefits, the insurance undertaking is required to inform the competent social insurance institution and settle the claim only after setting aside an amount sufficient to cover the amount owed by the institution for the benefits paid or to be paid.

3. After forty-five days have elapsed from the communication under paragraph 2 without a declaration of the social insurance institution to be subrogated to the rights of the injured party, the insurance undertaking may provide for the definitive settlement in favour of the injured party. The social insurance institution shall be entitled to claim from the injured party the amount corresponding to the expenses incurred if the behaviour of the injured party has prejudiced the action by way of subrogation.

4. In any case the social insurance institution may not start an action by way of subrogation to the detriment of the assisted person's right to compensation for personal injury not otherwise indemnified.

Art. 142-bis  
(Information on the insurance cover)

1. The injured party shall have the right to obtain from the Information centre referred to in article 154 the information on the insurance cover of the vehicle which caused the accident, the number of the insurance policy and its expiry date<sup>644</sup>.

Article 142-ter  
(Non-driving road users)

1. Compulsory motor vehicle and craft insurance shall cover personal injuries and damage to property suffered by pedestrians, cyclists and other non-driving road users who, as a consequence of an accident in which a motor vehicle is involved, are entitled to compensation, to the extent that there is drivers' liability<sup>645</sup>.

**Chapter IV**  
**SETTLEMENT PROCEDURES**

Art. 143  
(Reporting a claim)

1. In case of accident between motor vehicles for which insurance is compulsory the drivers of the vehicles involved or, if different, the respective owners shall be required to report the claim to their insurance undertaking through the form provided by the latter, whose specimen shall be approved by IVASS<sup>646</sup>. In case of failure to submit the accident statement form article 1915 of the civil code shall apply for failure to report.

2. If the form has been signed jointly by both drivers involved in the accident it shall be presumed, unless proved otherwise by the insurance undertaking, that the accident occurred in the circumstances, ways and with the consequences as it can be inferred from the form.

Art. 144  
(Direct right of action for the injured party)

1. The injured party in an accident caused by a vehicle or craft which is subject to compulsory insurance shall have a direct right of action for damages against the insurance undertaking of the party civilly liable, within the amounts insured.

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<sup>644</sup> Article inserted by article 1 (6) of legislative decree n. 198 of 06 November 2007.

<sup>645</sup> Article inserted by article 1 (6) of legislative decree n. 198 of 6 November 2007.

<sup>646</sup> ISVAP Regulation n. 13 of 06 February 2008.

2. In relation to the insured amounts the insurance undertaking shall neither raise any objections deriving from the contract nor envisage any clauses providing for the policyholder's contribution to damages. Nonetheless the insurance undertaking shall have a right of recourse against the policyholder to the extent to which it would have been entitled, by contract, to refuse or reduce its insurance benefit.

3. The person who caused the damage shall be also involved in the civil action against the insurance undertaking.

4. The direct right of action against the insurance undertaking to which the injured party is entitled shall be subject to the same limitation period applicable to any action against the person who caused the damage.

#### Art. 144-bis

(Protection of injured parties in accidents involving a trailer towed by a vehicle)<sup>647</sup>

1. In the case of an accident caused by a set of vehicles consisting of a vehicle towing a trailer, where the trailer has a separate third party liability insurance, the injured party may bring his or her claim directly against the insurance undertaking that insured the trailer, where:

- a) the trailer can be identified, but the vehicle that towed it cannot be identified; and
- b) the applicable national law provides for the insurer of the trailer to provide compensation.

2. An insurance undertaking of the trailer that has compensated the injured party shall have recourse to the undertaking that insured the towing vehicle, or to the Guarantee Fund for the Victims of Road Accidents or the equivalent body in the Member State the national law of which shall apply in case of accident.

3. In the case of an accident referred to in paragraph 1, the insurer of the trailer, where the applicable national law requires it to provide full compensation, shall, at the request of the injured party, inform him or her without undue delay of:

- a) the identity of the insurer of the towing vehicle; or
- b) where the insurer of the trailer cannot identify the insurer of the towing vehicle, the compensation mechanism provided for by the Guarantee Fund for the Victims of Road Accidents or the equivalent body in another Member State.

#### Art. 145

(Admissibility of action for damages)

1. In case the procedure referred to in article 148 applies, the action for damages caused by motor vehicles and craft for which insurance is compulsory can be started only after sixty days have elapsed (ninety in case of personal injury) from the date when the injured party filed a claim for damages with the insurance undertaking by means of a registered letter with advice of receipt, even in copy, according to the procedures and terms referred to in article 148.

2. In case the procedure referred to in article 149 applies, the action for damages caused by motor vehicles and craft for which insurance is compulsory can be started only after sixty days have elapsed (ninety in case of personal injury) from the date when the injured party filed a claim for damages with his/her own insurance undertaking by means of a registered letter with advice of receipt sent in copy to the insurance undertaking of the other vehicle involved, according to the procedures and terms referred to in articles 149 and 150.

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<sup>647</sup> Article inserted by article 2 (1) letter l) of legislative decree no. 184 of 22 November 2023

Art. 145-bis  
(Probative value of the so-called "black boxes" and of other electronic devices)<sup>648</sup>

1. When one of the vehicles involved in an accident is equipped with an electronic device having the technical and functional features established in article 132-ter (1), *b*) and *c*), without prejudice to any equivalent electronic device already in use at the date of entry into force of these provisions, the results of the device constitute full evidence, in civil proceedings, of the facts to which they refer, except when the party against whom they are invoked proves the malfunctioning or tampering of the device. The results are made available to the parties.

2. The interoperability and portability of electronic devices that record the activity of the vehicle referred to in article 132-ter (1) *b*), also when the policyholder underwrites an insurance contract with an insurance undertaking other than the one which has installed the electronic devices, are guaranteed by operators, hereafter called "insurance telematics providers", whose identifying data must be notified to IVASS by the insurance undertakings using their services. Data regarding the operation of the vehicle shall be safely managed by sectoral operators in accordance with the common technical standard indicated in article 32 (1-ter) of decree-law no. 1 of 24 January 2012, converted, after amendment, into law no. 27 of 24 March 2012 as further amended, and shall afterwards be sent to the respective insurance undertakings.

3. The means to ensure the interoperability of electronic devices, of the telecommunications equipment connected to them and of the relative data management systems, in case the policyholder underwrites an insurance contract with an insurance undertaking other than the one which has installed the device or in case of portability between different insurance telematics providers, shall be determined by the regulation envisaged in article 32 (1-bis) of decree-law no. 1 of 24 January 2012, converted, after amendment, into law no. 27 of 24 March 2012 and further amended. Operators shall be liable for the proper functioning in case of interoperability.

4. (repealed)<sup>649</sup>.

5. Data shall be processed by the insurance undertaking according to the provisions of the personal data protection code, referred to in legislative decree n. 196 of 30 June 2003. The insurance undertaking is the data controller pursuant to article 28 of the above mentioned code, referred to in legislative decree n. 196 of 2003. Except when expressly allowed by the policyholder in relation to the availability of further services connected with the transport function of the vehicle, insurance undertakings and any related subjects shall be prevented from using the devices referred to in this article for the purpose of collecting information other than that relating to the establishment of liability in the event of an accident and for calculating the premium rate, or from detecting the position and conditions of the vehicle on an on-going basis or in a manner that is disproportionate to the aim pursued.

6. The policyholder shall be prohibited from removing, tampering or otherwise rendering inoperative the installed device. In the event of a breach of the afore-mentioned prohibition by the policyholder, the premium reduction envisaged in article 132-ter shall not apply to the residual duration of the contract. The policyholder who has benefited from the premium reduction shall be required to refund the amount corresponding to the reduction, without prejudice to any possible criminal sanctions.

Art. 146  
(Right of access to documents)

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<sup>648</sup> Article inserted by article 1 (20) of law n. 124 of 4 August 2017.

<sup>649</sup> Paragraph repealed by article 1 (27) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "4. *Non compliance, by the insurance undertaking or the insurance telematics provider, with the conditions laid down in the regulation envisaged in article 32 (1-bis) of decree-law n. 1 of 24 January 2012, converted, after amendment, into law n. 27 of 24 March 2012 and further amended, shall be punished by IVASS with a pecuniary administrative sanction of 3.000 euros for each day of delay.*"

1. Without prejudice to the provisions on access to single personal data laid down by the personal data protection code, the insurance undertakings which pursue compulsory insurance against civil liability in respect of the use of motor vehicles and craft shall be required to give policyholders and injured parties the right of access to the documents at the conclusion of the ascertainment, valuation and settlement of their damages.

2. The right of access may not be exercised in case of documents pertaining to investigations where evidence of fraudulent behaviours has been detected. On the other hand such right shall be suspended in case of litigation between the undertaking and the applicant, without prejudice to the powers attributed by the law to the judicial authority.

3. If, within sixty days of the date of the written request, policyholders or injured parties are not put in a position to see the documents requested and take copies of them at their expense, they may file a complaint with IVASS also with a view to having their right guaranteed.

4. The Minister of Economic Development, in agreement with the Minister of Justice and by regulation adopted upon IVASS' proposal, shall establish the types of documents concerned by and those excluded from the right of access, the undertakings' obligations, the costs to be borne by applicants and the terms and other conditions for the exercise of the right referred to in paragraph 1<sup>650</sup>.

Art. 147  
(Injured party's need)

1. Those entitled to compensation who, due to the accident, are in need, may in the course of a case at first instance ask that an amount of money, to be charged to the definitive settlement of the claim, be allocated to them.

2. The civil or penal court, after hearing the parties and if a summary assessment shows serious liability of the driver, shall allocate the money referred to in paragraph 1 through an ordinance which shall come into force immediately, for an amount up to four fifths of the amount of damages assumed to be paid under judgement. If the civil case is suspended in accordance with article 75 (3) of the code of criminal procedure the application shall be submitted to the president of the court in which the action is pending.

3. The application may be submitted again in the course of the case.

4. The ordinance shall be irrevocable until a decision on the substance of the case is delivered.

Art. 148  
(Compensation proceedings)

1. For accidents with only material damage the claim for compensation shall bear the fiscal code of the persons entitled to compensation as well as the place, days and hours in which the damaged property shall be available, for not less than five working days, for assessment of the damages. Within sixty days of receiving such documents the insurance undertaking shall make an appropriate and reasoned offer of compensation to the injured party or specify the reasons for not making an offer.<sup>651</sup> The sixty-day period shall be reduced to thirty days if the accident statement form has been underwritten by the drivers involved in the accident. The injured party may repair the damaged property only after the expiry of the deadline stated in the previous sentence, within which the insurer must anyhow have ascertained the damage, or after the

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<sup>650</sup> Decree by the Minister of Economic Development n. 191 of 29 October 2008.

<sup>651</sup> Sentence amended by article 1 (7) of legislative decree n. 198 of 6 November 2007.

ascertainment has been completed, if it has been completed before such deadline has expired. If the damaged property has not been made available for inspection according to the terms of this article, or has been repaired before the inspection, for the purposes of making an offer for compensation the undertaking shall make its assessment on the extent of damage only after submission of an invoice stating the repair work performed. And this without prejudice to the insured person's right to compensation even where no reparation is made<sup>652</sup>.

2. The obligation to make an appropriate and reasoned offer of compensation to the injured party or specify the reasons for not making an offer also applies to the accidents which caused personal injuries or death. The claim for compensation shall be presented by the injured party or the persons entitled according to the terms and procedures referred to in paragraph 1. The application shall contain the indication of the fiscal code of the persons entitled to compensation and a description of the circumstances in which the accident occurred, shall be accompanied – for the purposes of the undertaking's assessment and estimate of the damage – by the data pertaining to age, the job of the injured party, his/her income, the extent of injuries, a medical certificate of recovery with or without sequelae as well as by a declaration pursuant to article 142 (2) or the victim's family status in case of death. The insurance undertaking shall comply with that obligation within ninety days of receiving such documents<sup>653</sup>.

2-bis. For the sake of preventing and combating fraudulent phenomena, the insurance undertaking shall consult the claims database referred to in article 21 of decree-law n. 179 of 18 October 2012, converted after amendments by law n. 221 of 17 December 2012, and subsequent modifications, and if the outcome of the consultation, carried out on the basis of the fiscal code of the people involved or of the damaged vehicles, shows the abnormality indices defined by IVASS in an ad hoc order, or when other fraud indicators have been reported by the electronic devices referred to in article 132-ter (1) of this code or when the expertise has provided evidence of the inconsistency of the damage reported by the claimant, the undertaking may decide, within the deadlines of paragraphs 1 and 2 of this article, not to make an offer of compensation, and explain that it needs to conduct further investigations in relation to the accident<sup>654</sup>. The relevant communication shall be sent by the undertaking to the injured person and to IVASS, to which the documents regarding the analyses on the accident are also sent. Within thirty days of notification of such decision the undertaking shall inform the injured person of its final determinations regarding the claim for compensation. Upon completion of the queries made in compliance with the first sentence the undertaking may not to make an offer of compensation if, within the deadline referred to in the third sentence, it files a complaint, in the situations where this is envisaged, and at the same time informs the insured person of such complaint through the communication regarding the final determinations on the claim for compensation referred to in the third sentence; in that case the deadlines of paragraphs 1 and 2 shall be suspended, and the deadline for submission of the complaint referred to under article 124 (1) of the penal code shall commence when the thirty days within which the undertaking informs the injured party of its final determinations have elapsed. In the above cases, the legal action provided in article 145 may be started only after receiving the final determinations of the undertaking or, in their absence, after the period of sixty days of suspension of the proceedings has expired. The injured person's right

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<sup>652</sup> Paragraph replaced by article 32 (3, a) of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012 and further amended, only as regards the number of days in which the damaged property is available for assessment, by article 21 paragraph 7-bis of decree-law n.179 of 18 October 2012 converted, after amendment, by article 1 of law n. 221 of 17 December 2012.

<sup>653</sup> Paragraph amended by article 1 (7) of legislative decree n. 198 of 6 November 2007.

<sup>654</sup> Sentence replaced by article 1 (21) of law n. 124 of 4 August 2017. *The previous version laid down "For the sake of preventing and combating fraudulent phenomena, the insurance undertaking shall consult the claims database referred to in article 135, and if the outcome of the consultation, having regard to the fiscal code of the people involved or to the damaged vehicles, shows at least two parameters of significance as defined in article 4 of IVASS order n. 2827 of 25 August 2010, published in the Italian Official Journal n. 209 of 7 September 2010, the undertaking may decide, within the deadlines of paragraphs 1 and 2 of this article, not to make an offer of compensation, and explain that it needs to conduct further investigations in relation to the accident."*



of access to the documents in compliance with article 146 shall remain unaffected, unless a complaint is filed.<sup>655 656</sup>

3. The injured party, pending the terms referred to in paragraphs 1 and 2 and without prejudice to the provisions established in paragraph 5, may not refuse the assessments strictly required for the undertaking's estimate of material damage, within the deadline referred to in paragraph 1, or of personal injuries. If this happens the time-limits for the undertaking to make an offer of compensation or to communicate the reasons for not making an offer shall be suspended.<sup>657</sup>

4. The insurance undertaking may ask the competent police bodies for information on the accident, the residence and domicile of the parties, the registration plate or any other distinguishing element – nonetheless it shall have to comply with the terms established under paragraphs 1 and 2 also in case of accident involving material damage or personal injuries or death.

5. If the claim has not been filled out completely the undertaking shall ask for the necessary supplementary information within thirty days of receiving it; in that case the terms referred to in paragraphs 1 and 2 shall commence again from the receipt date of the supplementary data or documents.

6. If the injured party states that he/she will accept the sum offered the undertaking shall pay it within fifteen days of receiving the relevant communication.

7. Within the same period the undertaking shall pay the sum offered to the injured party who communicated that he/she would not accept the offer. The sum paid shall be charged to the ultimate settlement of the claim.

8. When the party concerned has not sent any reply after thirty days from the communication the undertaking shall pay to the injured party the sum offered in accordance with the terms, time and effects referred to in paragraph 7.

9. For the purposes of applying the provisions under this article the insurance undertaking may not raise the objection that the policyholder has failed to comply with the obligation to report an accident referred to in article 1913 of the civil code.

10. In case of judgement in favour of the injured party, when the sum offered in pursuance of paragraphs 1 and 2 is less than half of that settled, net of any revaluation and interests, the court shall lodge the judgement at the registry and at the same time transmit a copy of it to IVASS, so that the latter can check compliance with the provisions under this chapter.

11. An undertaking paying fees to professionals shall be required to ask for the documentary evidence of the relevant collaboration and show such payment as a separate item among the individual loss items of the acquittance. An undertaking which has directly paid the fees to the professional shall inform the injured party thereof and indicate the amount paid.

11-bis. This is without prejudice to the possibility for the policyholder to obtain the whole amount of damages for the professional repair of the damaged vehicle using a trusted repair shop licensed pursuant to law n. 122 of 5 February 1992. To this end, the repair shop shall provide the tax

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<sup>655</sup> Paragraph added by article 32 (3, b) of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

<sup>656</sup> Sentence replaced by article 1 (22) of law n. 124 of 4 August 2017. The previous version laid down: *"The injured person's rights on the admissibility of action for damages under the terms provided for by article 145, and of access to the documents in compliance with article 146 shall remain unaffected, unless a complaint is filed."*

<sup>657</sup> Paragraph replaced by article 32 (3, c) of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

documents and an adequate warranty on repairs of no less than two years for all the components other than wear parts.<sup>658</sup>

Art. 149  
(Direct compensation proceedings)

1. In case of accident between two identified and insured motor vehicles which involves damage to the vehicles or injury to drivers the injured parties shall present their claim for compensation to the insurance undertaking which concluded the contract covering the vehicle used.

2. Direct compensation proceedings shall concern the damage to the vehicle and the damage to the goods in transit owned by the policyholder or the driver. They shall also apply to personal injuries suffered by the driver not liable if they do not exceed the limit envisaged by article 139. The procedure shall not apply to accidents involving vehicles registered abroad and to compensation for the damage suffered by passengers as envisaged by article 141.

3. Once a claim for direct compensation has been presented the undertaking shall be obliged to settle damages on behalf of the insurance undertaking of the responsible vehicle, without prejudice to the subsequent regulation of relationships between undertakings.

4. If the injured party states that he/she will accept the sum offered the undertaking shall pay it within fifteen days of receiving such communication and the injured party shall be required to issue a formal receipt also valid with respect to the person who caused the accident and his/her insurance undertaking.

5. Within fifteen days the insurance undertaking shall pay the sum offered to the injured party who communicated that he/she would not accept the offer or who has not sent any reply. The sum paid shall be charged to the ultimate settlement, if any, of the claim.

6. In case of communication of the conditions that prevent direct compensation or in case of failure to make an offer or refusal to make an offer within the terms envisaged by article 148 or failure to reach an agreement, the injured party may take direct action as envisaged in article 145 (2) against his/her insurance undertaking only. The insurance undertaking of the responsible vehicle may ask to intervene in court proceedings and exclude the other insurer, recognising the responsibility of its own insured, without prejudice to the subsequent regulation of relationships between undertakings according to the provisions of the direct compensation system.

Art. 149-bis  
(Transparency of compensation procedures)<sup>659</sup>

1. In case of assignment of the claim arising from the right to compensation for the damage caused by the use of motor vehicles and craft, the amount of damages for the repair of the damaged vehicles shall be paid only after submission of the invoice issued by the repair shop licensed pursuant to law n. 122 of 5 February 1992, which has performed the repair work.

Art. 150  
(Rules on direct compensation)

1. A presidential decree<sup>660</sup>, based on the proposal of the Minister of Economic Development, to be issued within ninety days of entry into force of this code, shall establish:

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<sup>658</sup> Paragraph added by article 1 (9) of law n. 124 of 4 August 2017.

<sup>659</sup> Article inserted by article 1 (24) of law n. 124 of 4 August 2017.

<sup>660</sup> Presidential decree n. 254 of 18 July 2006

- a) the criteria for the determination of the level of responsibility of parties, also as regards the definition of the internal relationships between insurance undertakings;
- b) the contents and the procedure for submitting the accident statement form and the steps required for compensation;
- c) the procedures, conditions and steps which the undertaking shall follow when paying damages;
- d) the limits and conditions of compensation for accessory damage;
- e) the principles for cooperation between insurance undertakings, including the advantages for policyholders deriving from the direct compensation system.

2. The provisions pertaining to the procedure envisaged by article 149 shall also apply to insurance undertakings having their head office in other member States and carrying on business in the territory of the Italian Republic pursuant to articles 23 and 24.<sup>661</sup>

3. IVASS shall supervise over the direct compensation system as well as over the principles adopted by undertakings to guarantee policyholders' protection, the correct performance of settlement operations and undertakings' stability<sup>662</sup>.

Art. 150-bis  
(Certificate of terminated investigation)<sup>663</sup>

1. Insurance undertakings shall be obliged to pay compensation for damages resulting from fire or theft, irrespective of the application for the certificate of terminated investigation, without prejudice to the provisions of paragraph 2.

2. In legal proceedings where the offence is that referred to under article 642 of the penal code, and limited to the assumption that the insured good is a motor vehicle, damages resulting from theft or fire of the latter shall be paid only after a certificate of closed investigation has been issued.

**Chapter V**  
**COMPENSATION FOR DAMAGE RESULTING FROM ACCIDENTS OCCURRING ABROAD**

Art. 151  
Procedure

1. The objective of this chapter is to lay down special provisions applicable to those entitled to compensation in respect of any loss or injury resulting from accidents occurring in a member State other than their member State of residence, which are caused by the use of vehicles insured and normally based in a member State.

2. Without prejudice to the legislation of third States on civil liability and private international law, the provisions of this chapter shall also apply to persons resident in a member State and entitled to compensation in respect of any loss or injury resulting from accidents occurring in third States whose national insurer's bureaux have joined the green card system whenever such accidents are caused by the use of vehicles insured and normally based in a member State.

3. Articles 152, 296, 297, 298 and 299 shall apply only in case of accidents caused by the use of a vehicle insured through a branch established in a member State other than the member State of residence of the person entitled to compensation and normally based in a member State other than the member State of residence of the person entitled to compensation.

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<sup>661</sup> Paragraph replaced by Article 31 (1) of Law no. 118 of 5 August 2022, with effect from 1 January 2023.

<sup>662</sup> See article 29 of decree-law n.1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

<sup>663</sup> Article inserted by article 34 ter (1), decree-law n. 1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

4. Articles 300 and 301 shall also apply to accidents caused by vehicles from third States permitted within the Community territory and are insured in compliance with the provisions of article 125.

5. In the cases referred to in this article the persons entitled to compensation shall enjoy a direct right of action against the insurance undertaking covering the responsible person against civil liability.

Art. 152  
(Claims representative)

1. Insurance undertakings shall promptly notify to the information centres of all member States the name and address of the claims representative which they have appointed in each of the member States.

2. The claims representative shall be resident or established in the member State where he is appointed and shall address to the persons entitled to compensation in the official language(s) of their member State of residence.

3. The claims representative, who may work for one or more insurance undertakings, shall collect all information necessary in connection with the settlement of claims and shall take all the measures necessary to negotiate such settlement.

4. The appointment of the claims representative shall not preclude the right of the injured party to present a claim for compensation directly against the person who caused the accident or against the insurance undertaking of the vehicle the use of which caused the accident.

5. Within three months of receiving a claim for compensation the insurance undertaking of the person who caused the accident or its claims representative shall make a reasoned offer of compensation to those entitled or specify the reasons for not making an offer.

Art. 153  
(Injured parties resident in the territory of the Italian Republic)

1. The injured parties resident in the territory of the Italian Republic who are victims of road accidents caused by the use of vehicles normally based and insured in the territory of another member State and occurring in one of the States covered by the green card system, shall have the right to claim compensation not only from the person who caused the accident but also from the insurance undertaking of the vehicle which caused the accident or from its claims representative appointed in the territory of the Italian Republic.

2. If the insurance undertaking of the vehicle which caused the accident has failed to appoint a claims representative and in cases of non compliance with the requirements of article 152 (5), the injured party may apply to the Italian compensation body in accordance with article 298.

Art. 154  
(Italian Information Centre)<sup>664</sup>

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<sup>664</sup> Pursuant to art. 13 (36) of decree law n. 95 of 6 July 2012, converted into law n. 135 of 7 August 2012, from 1 January 2013 - the date of the takeover by IVASS of the functions of ISVAP - the management of the Italian Information Centre has been transferred to Consap – Concessionaria servizi assicurativi pubblici s.p.a.

1. The Italian Information Centre is set up within CONSAP for the purposes of allowing those entitled to seek compensation for a motor vehicle claim in the cases envisaged by article 151. To this end CONSAP may conclude specific agreements – free of charge – with public or private entities which already hold and manage the information under paragraph 2, for the organization and functioning of the Italian Information Centre<sup>665</sup>.

2. The Italian information centre shall be responsible for keeping a register containing the following information:

- a) the registration plate of motor vehicles normally based in the territory of the Italian Republic;
- b) the numbers and the period of validity of the insurance policies covering civil liability in respect of the use of those vehicles for the risks classified in class 10 of article 2 (3), other than carrier's liability;
- c) insurance undertakings covering civil liability in respect of the use of vehicles for the risks classified in class 10 of article 2 (3), other than carrier's liability, and claims representatives appointed by such insurance undertakings in accordance with article 152.

3. The Italian Information Centre shall assist those entitled to compensation in having access to the information under paragraph 2 a), b) and c).

4. Insurance undertakings covering civil liability in respect of the use of vehicles normally based in the territory of the Italian Republic shall be required to send, on a systematic basis, data on number plates of insured vehicles, policy numbers, termination dates of insurance covers, names of claims representatives appointed in each member State and, upon request, immediately provide the data on the name and address of the owner, usufructuary, buyer under retention of title or of the leasee of an operating or financial leasing.

5. The procedures, times and means for sending data by insurance undertakings, the arrangements for data processing and management of the Italian Information Centre, also in respect of the persons concerned and of those entitled to obtain information, as well as the arrangements for access to information by insurance undertakings and claims representatives, shall be defined by regulation adopted by CONSAP, after hearing the opinion of the Authority for the protection of personal data. The same regulation shall set out the data contained in the claims database envisaged in article 135, which can also be processed by the Italian Information Centre, with the exception of sensitive data<sup>666</sup>.

6. As regards the operating requirements of the Italian Information Centre, CONSAP shall be authorised, in accordance with the personal data protection code, to use the data processed for the purposes of the claims data bank. IVASS shall, by its own regulation<sup>667</sup>, organize the claims data bank with a view to coordinating the processing of data with the requirements of the Italian Information Centre<sup>668</sup>.

7. The processing and communication of personal data shall be allowed, to the exclusion of sensitive personal data within the meaning of the personal data protection code, within the limits established in this chapter. The information under paragraph 2 shall be preserved for a period of seven years after the termination of the registration of the vehicle or the termination of the insurance contract.

8. The Information Centre shall cooperate with the information centres set up by the other member States in the implementation of the provisions envisaged by Community law.

#### Art. 155

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<sup>665</sup> Paragraph amended by article 1 (111) of legislative decree n. 74 of 12 May 2015.

<sup>666</sup> Paragraph amended by article 1 (111) of legislative decree n. 74 of 12 May 2015.

<sup>667</sup> ISVAP Regulation n. 31 of 1 June 2009.

<sup>668</sup> Paragraph amended by article 1 (214) of legislative decree n. 74 of 12 May 2015.

(Access to the Italian Information Centre)<sup>669</sup>

1. Injured parties involved in the accidents envisaged in article 151 shall be entitled for a period of seven years after the accident to obtain from the Italian Information Centre the following information:

- a) the name and address of the insurance undertaking;
- b) the number of the insurance policy and its expiry date;
- c) the name and address of the insurance undertaking's claims representative in the member State of residence of those entitled to compensation, when:
  - 1) they are resident in the territory of the Italian Republic;
  - 2) the vehicle which caused the accident is normally based in the territory of the Italian Republic;
  - 3) the accident occurred in the territory of the Italian Republic.

2. If those entitled to compensation apply to the Italian Information Centre for the name and address of the owner, usufructuary, buyer under retention of title or of the leasee of the vehicle which caused the accident, provided that they have a legitimate interest in obtaining this information, the information centre shall address itself in particular:

- a) to the insurance undertaking;
- b) to the vehicle registration agency.

3. Without prejudice to the powers of the judicial authority, police forces, traffic police bodies indicated in article 12 of the road code and the competent public administrations responsible for preventing and combating fraudulent practices in the compulsory insurance sector shall have free of charge access to the data of the Italian Information Centre. Insurance undertakings, the Ufficio centrale italiano and the Italian compensation body may ask the Italian Information Centre for the data in which they have a legitimate interest.

4. IVASS and CONSAP shall have free of charge access to the data on the vehicles and the names of the owners of the vehicles contained in the public registers and to the data in the national vehicle file referred to in articles 225 (1) b), 226 (5) and following, of the road code<sup>670</sup>.

5. The Italian Information Centre shall cooperate with the information centres set up by the other member States in the implementation of the provisions envisaged by Community law.

5-bis. At the request of the interested parties, the data furnished by the Italian Information Centre must be available in electronic form<sup>671</sup>.

## **Chapter VI**

### **PROVISIONS ON THE ACTIVITY OF LOSS ADJUSTERS**

#### **Art. 156** (Loss adjusters)

1. The professional activity of loss adjuster, consisting in assessing and estimating material damage resulting from the use, theft and fire of motor vehicles and craft falling within the scope of this title, may not be exercised by persons not enrolled in the list referred to in article 157.

2. Insurance undertakings may directly assess and estimate material damage resulting from the use, theft and fire of motor vehicles and craft.

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<sup>669</sup> See footnote n. 215.

<sup>670</sup> Paragraph amended by article 1 (218) of legislative decree n. 74 of 12 May 2015.

<sup>671</sup> Paragraph inserted by article 1 (8) of legislative decree n. 198 of 6 November 2007.

3. In the performance of their tasks loss adjusters shall behave with diligence, correctness and transparency.

Art. 157  
(List of loss adjusters)

1. CONSAP<sup>672</sup> is in charge of the setting up and operation of the list and shall, by its own regulation to be published in the Official Journal of the Italian Republic and website, establish the duties of notification, the registration and removal procedures as well as the forms of publicity which can better ensure public access to the list<sup>673</sup>.

2. Loss adjusters pursuing this activity as their own business and meeting the requirements envisaged in article 158 shall be registered in the list.

Art. 158  
(Registration requirements)

1. In order to be registered in the list natural persons must fulfil the following requirements:

- a) they must enjoy full rights as a citizen;
- b) they must not have been convicted by final judgement, or final judgement enforcing the penalty specified in article 444 (2) of the code of criminal procedure, of crimes against the public administration, the administration of justice, public good faith, public economy, industry and trade, as well as property for which the law prescribes imprisonment for a minimum term of one year up to a maximum term of three years, or for any intentional offence for which the law prescribes imprisonment for a minimum term of two years up to a maximum term of five years or for failure to pay compulsory social security contributions, or have been convicted by final judgement enforcing the additional penalty of disqualification from holding public office, for life or for more than three years, unless they have been rehabilitated;
- c) they must neither have previously been declared bankrupt, unless they have been rehabilitated, nor have been president, manager with delegated powers, general manager, auditor of companies or bodies which were subject to judicial winding up proceedings<sup>674</sup>, composition to avoid bankruptcy or administrative compulsory winding-up, at least in the three years preceding the adoption of these measures, it being understood that this impediment lasts for five years following the adoption of these measures;
- d) they must not be affected by lapse of entitlement, prohibition or suspension envisaged by article 10 of Law n. 575 of 31 May 1965, and subsequent modifications;
- e) they must have a certificate of advanced secondary education or a three-year degree;
- f) they must have undergone a two-year training with a licensed loss adjuster;
- g) they must have passed a qualifying examination as provided for in paragraph 3.

2. Without prejudice to the provisions of article 156, repairers of motor vehicles and craft and civil servants under a full-time contract of employment or a part-time contract when the working hours exceed half of the working hours of a full-time contract may neither carry out the activity of loss adjuster nor be registered in the register of insurance and reinsurance intermediaries.

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<sup>672</sup> Pursuant to art. 13 (35) of decree law n. 95 of 6 July 2012, converted into law n. 135 of 7 August 2012, from 1 January 2013 - the date of the takeover by IVASS of the functions of ISVAP - the keeping of the list of loss adjusters referred to under art. 157 and foll. of the Code and any other power in this field have been transferred to CONSAP – Concessionaria servizi assicurativi pubblici s.p.a.

<sup>673</sup> Paragraph amended by article 1 (111 and 215) of legislative decree n. 74 of 12 May 2015.

<sup>674</sup> Words amended by article 349 of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

3. To be registered loss adjusters shall also possess appropriate professional knowledge and ability, which shall be determined by CONSAP through a qualifying examination, consisting in a test on technical, legal and economic subjects which are essential to the exercise of their activity. CONSAP shall, by its own regulation<sup>675</sup>, establish the qualification requirements, set out the arrangements for the holding of the qualifying examination and oversee its organization and conduct<sup>676</sup>.

Art. 159  
(Removal from the register)

1. CONSAP<sup>677</sup> shall effect the removal from the register by order specifying the reasons for doing so in case of:

- a) renunciation of registration;
- b) loss of one of the requirements envisaged in article 158 (1), a), b), c) and d);
- c) subsequent incompatibility as per article 158 (2);
- d) striking off;
- e) failure to pay the management fee provided for in article 337, despite the formal notice given by CONSAP<sup>678</sup>.

2. No removal from the register may be effected, even upon the request of the loss adjuster, as long as disciplinary proceedings or investigations preliminary to such proceedings are under way<sup>679</sup>.

Art. 160  
(Reinstatement)

1. Loss adjusters who have been removed from the register further to the striking off may, upon request, be reinstated, provided that at least five years have elapsed from their removal and that the requirements envisaged in article 158 (1) and (2) are met.

2. In case of removal due to final sentence or judicial winding up<sup>680</sup>, loss adjusters may be reinstated in the register only after they have been rehabilitated.

3. Loss adjusters who have been removed for failure to pay the management fee, may be reinstated in the register provided that they effect the payment of the amounts due until their removal<sup>681</sup>.

4. If loss adjusters, after being removed from the register, apply to be reinstated, they may be reinstated after verifying that the requirements envisaged in article 158 (1) and (2) are met, it being understood that their qualification shall remain valid<sup>682</sup>.

**TITLE XI**

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<sup>675</sup> Until now the subject-matter has been regulated by ISVAP Regulation n. 11 of 3 January 2008, in particular Title II, Chapter II.

<sup>676</sup> See art. 13, para. 35 of Decree-Law n. 95 of 6 July 2012 converted after amendments by Law n. 135 of 7 August 2012 for transfer of the list of loss adjusters to CONSAP. Paragraph amended by article 1 (111) of legislative decree n. 74 of 12 May 2015.

<sup>677</sup> Paragraph amended by article 1 (111) of legislative decree n. 74 of 12 May 2015.

<sup>678</sup> Letter amended by article 1 (216) of legislative decree n. 74 of 12 May 2015.

<sup>679</sup> See art. 13 (35) of Decree-Law n. 95 of 6 July 2012 converted after amendments by Law n. 135 of 7 August 2012 for transfer of the list of loss adjusters to CONSAP.

<sup>680</sup> Words amended by article 349 of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>681</sup> Paragraph amended by article 1 (216) of legislative decree n. 74 of 12 May 2015.

<sup>682</sup> See article 13 (35) of Decree-Law n. 95 of 6 July 2012 converted after amendments by Law n. 135 of 7 August 2012 for transfer of the list of loss adjusters to CONSAP.



## PROVISIONS RELATING TO PARTICULAR INSURANCE OPERATIONS

### Chapter I COMMUNITY CO-INSURANCE

#### Art. 161 (Community co-insurance)

1. Non-life insurance taken out for the purposes of covering risks situated in the territory of the Italian Republic may be shared through community co-insurance, where each insurer participates with a given share, among undertakings having their head office in other member States or in States belonging to the European Economic Area, provided that at least one of the undertakings is established in a member State other than that of the leading insurer and the risks to be covered are those classified under the large risks defined in article 1 (1) r).

#### Art. 162 (Object of the appointment as leading insurer)

1. Insurance shall be taken out by means of a single contract, underwritten by all the co-insurers, for the same period and at an overall premium.
2. One of the co-insurers shall be appointed as leading insurer and shall be responsible for the management of the contract on behalf and in the interest of all the co-insurers.
3. The leading insurer shall perform all the functions envisaged under the appointment and those belonging to him according to co-insurance practice.
4. The leading insurer shall determine the terms and conditions of insurance and the premium rate to apply to the contract.

#### Art. 162-bis (Technical provisions)<sup>683</sup>

1. An undertaking with head office in the territory of the Republic of Italy which participates in Community co-insurance contracts shall determine the technical provisions in compliance with the provisions of Title III.
2. Anyhow the amount of technical provisions referred to under paragraph 1 shall be at least equal to that identified and communicated by the leading insurer according to the rules of its home Member State.
3. If the undertaking referred to under paragraph 1 holds the position of leading insurer it shall take account of the risks for the whole contract.

#### Article 162-ter (Statistical data)<sup>684</sup>

1. An undertaking with head office in the territory of the Republic of Italy which pursues Community co-insurance shall keep statistical data showing the extent of Community co-insurance operations in which it participates and the member States concerned.

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<sup>683</sup> Article inserted by article 1 (112) of legislative decree n. 74 of 12 May 2015.

<sup>684</sup> Article inserted by article 1 (112) of legislative decree n. 74 of 12 May 2015.

**Chapter II**  
**LEGAL EXPENSES INSURANCE**

Art. 163  
(Special requirements)

1. The undertaking pursuing legal expenses insurance shall, in its dealings with insured persons, comply with the provisions of articles 173 and 174 and with the requirements for the management of claims in accordance with article 164.
2. The provisions under this chapter shall not apply to legal expenses insurance in respect of disputes arising out of, or in connection with, the use of sea-going vessels and to the expenses incurred by undertakings covering liability insurance for their defence in proceedings started by injured parties as per article 1917 of the civil code.

Art. 164  
(Procedures for the management of claims)

1. The undertaking pursuing legal expenses insurance shall adopt, for the management of legal expenses claims and the legal advice connected with such management, one of the solutions envisaged in paragraph 2, which must be previously notified to IVASS.
2. The undertaking may:
  - a) directly carry on the activity of claims management and of legal advice;
  - b) entrust it to an undertaking having separate legal personality;
  - c) in the contract, afford the insured person the right to entrust the defence of his interests in case of claim, from the moment that he has the right to claim from his insurer, to a lawyer, or to any other person qualified under the law, of his choice.
3. If the undertaking intends to use the option under paragraph 2 a), all the following conditions must be met:
  - a) if the undertaking is a composite one, the members of its staff may not pursue, on its behalf, the activity of management of claims or of legal advice for another class transacted by it;
  - b) irrespective of whether the undertaking is a composite or a specialized one, the members of its staff may not carry on, on behalf of another undertaking authorised to pursue non-life business and having financial, commercial or administrative links with the first undertaking, the activity of management of claims or of legal advice in other classes transacted by the undertaking with which such links exist.
4. The undertaking must mention in the contract if it intends to use the option under paragraph 2 b), stating the corporate name of the undertaking to which the management of claims is entrusted. If the undertaking has links with an undertaking which carries on non-life business, members of the staff who are concerned with the management of claims or with legal advice connected with such management may not pursue the same or a similar activity in the other insurance classes pursued by the latter undertaking. The undertaking to which the management of claims is entrusted shall be subject to IVASS' supervision.
5. The undertaking may adopt a different operating procedure provided that an appropriate notification has been sent to IVASS and only with effect on the contracts concluded after such notification.

**TITLE XII**  
**PROVISIONS RELATING TO INSURANCE CONTRACTS**

**Chapter I**  
**GENERAL PROVISIONS**

Art. 165

(Link with the provisions of the civil code)

1. Unless otherwise provided by the provisions of this code, insurance, co-insurance and reinsurance contracts shall remain subject to the provisions of the civil code.

Art. 166

(Drafting criteria)

1. The contract and any other document delivered by the undertaking to the policyholder must be drawn up in a clear and exhaustive manner.

2. Clauses laying down forfeitures, voidness, limitations of covers or costs to be borne by the policyholder or insured party shall be shown in highlighted characters.

Art. 167

(Voidness of contracts concluded with unauthorised undertakings)

1. An insurance contract concluded with an unauthorised undertaking or with an undertaking prevented from concluding new business shall be void.

2. Only the policyholder or the insured party may plead the voidness of the contract. The declaration of voidness shall result in the reimbursement of premiums paid. In any case awards for damages and any amounts paid or owed by the undertaking to insured parties and other parties entitled to insurance benefits may not be claimed back.

Art. 168

(Effects of portfolio transfers, mergers and divisions)

1. To supplement the provisions of article 1902 (1) of the civil code, the portfolio transfer authorised in accordance with articles 198 and 200 does not entail the termination of the contracts; however, policyholders having their domicile or – if legal persons – their head office in the territory of the Italian Republic can cancel their contracts within sixty days of publication of the authorization, if the contracts are transferred to an insurance undertaking with head office in a foreign country or to a foreign branch of an undertaking with head office in the territory of the Italian Republic.

2. In the cases envisaged under paragraph 1, if the transfer concerns contracts covering compulsory insurance against civil liability in respect of the use of motor vehicles and craft, those entitled to compensation shall enjoy a direct right of action, within the limits of the insured amounts, against the Italian ceding undertaking until the publication of the authorization issued by IVASS.

3. To supplement the provisions of article 1902 (1) of the civil code, the transfer of the portfolio of insurance undertakings from other member States, which has been authorised by the supervisory authority of the home member State of the ceding undertaking and has obtained IVASS' agreement, does not entail the termination of the transferred contracts; however, policyholders

having their domicile or – if legal persons – their head office in the territory of the Italian Republic can cancel their contracts within sixty days of publication of the notice referred to in article 199 (6).

4. To supplement the provisions of article 1902 (1) of the civil code, the provisions of this article shall also apply to the portfolio transfers resulting from mergers or divisions.

#### Art. 169

(Effects of compulsory winding up of insurance undertakings)

1. To supplement the provisions of article 1902 (2) of the civil code, insurance contracts in force at the date of publication of the winding up in the Gazzetta Ufficiale shall continue to cover risks until sixty days after the date of publication.

2. Policyholders may exercise the right of withdrawal, after the publication of the winding up, by means of a registered letter with advice of receipt. The withdrawal shall take effect the day after the receipt of the communication by the liquidator.

3. By way of derogation from paragraph 1, compulsory insurance contracts against civil liability in respect of the use of motor vehicles and craft, in force at the date of publication of the winding up, shall continue to cover risks within the limits of the minimum amounts for which insurance is compulsory, until the expiry date of the contract or of the time period for which the premium has been paid.

### Chapter II

#### COMPULSORY INSURANCE AGAINST CIVIL LIABILITY IN RESPECT OF THE USE OF MOTOR VEHICLES AND CRAFT<sup>685</sup>

#### Art. 170

(Prohibition of tie-in sales)

1. For the purposes of ensuring compliance with the obligation to insure motor vehicles, undertakings may not subordinate the conclusion of a compulsory insurance contract against civil liability to the conclusion of other insurance, banking or financial contracts.

2. By way of derogation from paragraph 1, in order to guarantee the recovery of the deductible – if any – to be borne by the policyholder, undertakings may envisage adequate guarantees, provided that they do not imply additional costs and that the premium is lower than the one that would otherwise be applied in the absence of a guaranteed recovery of deductibles.

3. By way of derogation from paragraph 1, undertakings may propose the tie-in sale of policies covering compulsory insurance against civil liability in respect of the use of motor vehicles and other insurance, banking or financial contracts, provided that these proposals are not the only offer made by the undertaking and that the provisions of the consolidated banking law and of the consolidated law on financial mediation relating to the offer of contracts are complied with.

4. Contracts concluded pursuant to paragraphs 2 and 3, including banking and financial contracts, may be terminated at the same time by the policyholder in the case provided for in article 172.

#### Art. 170-bis

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<sup>685</sup> Decree by the Minister of Economic Development n. 86 of 1 April 2008, introducing the Regulation on the obligation to take out insurance against civil liability in respect of the use of motor vehicles and craft referred to under Title X, Chapter I, and Title XII, Chapter II of legislative decree n. 209 of 7 September 2005 – Code of Private Insurance.

(Lifetime of the contract)

1. The compulsory insurance contract against civil liability in respect of the use of motor vehicles and craft shall last one year or, at the request of the insured, one year plus fraction, shall automatically terminate on its natural expiry date and cannot be tacitly renewed, notwithstanding article 1899, first and second paragraph of the Civil Code. The insurance undertaking shall be obliged to notify the policyholder of the expiry of the contract with at least thirty days notice and to keep the cover provided with the previous insurance contract until no later than the fifteenth day following the expiration of the contract, till the new policy takes effect<sup>686</sup>.

1-bis. The provision in paragraph 1 shall also apply to insurance covers of risks ancillary to the main risk relating to civil liability in respect of the use of motor vehicles and craft, when the same contract, or another contract concluded at the same time, simultaneously covers both the main risk and ancillary risks.<sup>687</sup>

Art. 171

(Transfer of ownership of the vehicle or craft)

1. The transfer of ownership of the vehicle or craft shall have one of the following effects, at the irrevocable choice of the transferor:

- a) the termination of the contract starting from the date of execution of the transfer of ownership, with a right to reimbursement of the part of the premium relating to the remaining period of insurance, net of the taxes paid and of the compulsory fee envisaged in article 334;
- b) the cession of the insurance contract to the buyer;
- c) the replacement of the insurance contract relating to another vehicle or, respectively, to another craft belonging to the transferor, after any adjustment of the premium.

2. When the transfer of ownership has been executed, the transferor shall immediately inform the insurance undertaking and the buyer of whether the insurance contract is transferred together with the vehicle.

3. The cover shall have effect for the new vehicle or craft starting from the date of issue of the new certificate and, where appropriate, of the new sticker relating to the vehicle or craft according to the terms and conditions envisaged in the regulation<sup>688</sup> adopted by the Minister of Economic Development, upon IVASS' proposal.

Art. 172

(Right of withdrawal)<sup>689</sup>

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<sup>686</sup> Article inserted by article 22 (1) of decree-law n. 179 of 18 October 2012, converted after amendments by article 1 of law n. 221 of 17 December 2012.

See also paragraphs 2 and 3 of the same article 22, according to which:

"2. For automatic renewal clauses as may be provided in contracts concluded before the date of entry into force of this decree, the provisions of article 170-bis (3) of legislative decree n. 209 of 7 September 2005 (Code of Private Insurance) shall apply from 1 January 2013.

3. In case of contracts valid on the date of entry into force of this decree with automatic renewal clause, insurance undertakings shall be obliged to communicate in writing to the policyholder the loss of effectiveness of automatic renewal clauses in due time compared to the expiry of the period originally agreed in the same clauses for the exercise of the right to terminate the contract".

<sup>687</sup> Paragraph inserted by article 1 (25) of law n. 124 of 4 August 2017.

<sup>688</sup> Decree by the Minister of Economic Development n. 86 of 1 April 2008.

<sup>689</sup> The rules on the right of withdrawal are to be understood as impliedly revoked by art. 170-bis, introduced into the Code by art. 22 (1) of decree law n. 179 of 18 October 2012, converted, after amendment, by art. 1 of law n. 221 of 17 December 2012.

1. *In case of tariff changes other than those resulting from the application of transition rules under the bonus/malus tariff system, exceeding the anticipated rate of inflation, the policyholder may withdraw from the insurance contract provided a notification by means of a registered letter with advice of receipt or delivered by hand, or by fax, is made to the undertaking's head office or to the intermediary where the policy was concluded before the expiry date of the contract. In this case the policyholder shall not be entitled to the days of grace provided for by article 1901 (2) of the civil code.*

2. *Without prejudice to the provisions of paragraph 1, a notice of termination of the contract shall be sent by fax or registered letter at least fifteen days before the expiry date indicated in the policy.*

3. *The provisions of this article may only be derogated from in a manner more favourable to the policyholder.*

### **Chapter III** **LEGAL EXPENSES INSURANCE AND ASSISTANCE INSURANCE**

#### Art. 173 (Legal expenses insurance)

1. Legal expenses insurance is a contract by which an insurance undertaking undertakes, against the payment of a premium, to bear the costs of legal proceedings and expert services or to provide other services, needed by the insured person for purposes of the defence of his rights before the court, in any kind of proceedings, or out-of-court, mainly for purposes of securing compensation for the loss, damage or injury suffered by the insured person or for defending himself in respect of any claim made against him, provided that the claim is not filed by the undertaking providing cover for legal expenses.

2. When legal expenses insurance is provided at the same time with other insurance covers, by means of a single contract, the nature of the legal expenses cover, the applicable contractual terms and conditions and the amount of the relevant premium shall be dealt with in a separate section of the contract.

#### Art. 174 (Insured party's rights in legal expenses insurance)

1. Any contract of legal expenses insurance must expressly recognize, in order to protect the insured party, that when the latter requires the assistance of a professional to defend or represent his interests in any inquiry or proceedings or whenever a conflict of interests arises with the insurance undertaking, he shall have free choice of the professional, provided that the latter is appropriately qualified according to the applicable law.

2. In the event of a disagreement over the management of the claim between the insurance undertaking and its insured, the parties may bring the case to court or apply to an arbitrator for a decision, based on equity, on the attitude to be adopted. The latter option must be expressly envisaged by the contract.

3. Without prejudice to the insured person's right to use the option under paragraph 1, it is not necessary that the contractual terms and conditions expressly envisage the same option when all the following conditions are met:

- a) legal expenses insurance is limited to disputes arising out of the use of road vehicles in the territory of the Italian Republic;
- b) the insurance is connected to an insurance contract to provide assistance in the event of an accident or breakdown involving a road vehicle;

c) neither the legal expenses insurer nor the assistance insurer carries out any class of liability insurance.

4. In the case referred to in paragraph 3, if the same undertaking provides legal expenses insurance for both the parties to a dispute, the latter must be assisted and represented by lawyers, or by other persons appropriately qualified according to the applicable law, independent of the insurance undertaking.

5. Whenever a conflict of interests arises between the insured party and the insurance undertaking or there is disagreement over the management of claims, the undertaking shall, in writing, draw the injured party's attention that he may use the right referred to in this article or that he may have recourse to the arbitration referred to in paragraph 2.

Art. 175  
(Assistance insurance)

1. Assistance insurance is a contract by which an insurance undertaking undertakes, against the prior payment of a premium, to make aid immediately available to the insured party, within the limits set out in the contract, where that person is in difficulties following the occurrence of a chance event.

2. The aid may consist in benefits in cash or in kind. The provision of benefits in kind may also be effected by means of the staff and equipment of third parties.

**Chapter IV**  
**LIFE ASSURANCE**

Art. 176  
(Withdrawal of the proposal)

1. The proposal relating to an individual life assurance contract falling within classes I, II, III and V of article 2 (1) can be withdrawn.

2. Any amounts paid by the policyholder must be returned by the insurance undertaking within thirty days from the time when it was informed of the withdrawal.

3. The provisions of this article shall not apply to contracts of a duration of six months or less.

Art. 177  
(Right of withdrawal)

1. The policyholder may withdraw from an individual life assurance contract within thirty days from the time when he was informed that the contract had been concluded.

2. Insurance undertakings must inform policyholders of their right of withdrawal provided for in paragraph 1. The time limits and procedures for exercising such right must expressly be highlighted in the insurance proposal and contract.

3. Within thirty days from the time when it was informed of the withdrawal, the insurance undertaking shall reimburse the policyholder any premium paid, net of that part of the premium referring to the period during which the contract was in force. The insurance undertaking shall have the right to charge the costs actually sustained for the issue of the contract, on condition that these are identified and quantified in the proposal and in the contract.

4. The provisions of this article shall not apply to contracts of a duration of six months or less.

Art. 178

(Inversion of the burden of proof in proceedings to claim compensation)

1. In the proceedings to claim compensation for damages suffered by the holder of a life assurance contract falling within classes III and V of article 2 (1), the burden of providing proof that it has acted with due diligence rests on the undertaking.

**Chapter V**

**CAPITAL REDEMPTION**

Art. 179

(Concept)

1. Capital redemption is the contract with which an insurer undertakes to pay, irrespective of the duration of human life, predefined amounts after the lapse of an agreed period of time as consideration for the payment in cash or in other assets of single or periodic premiums.

2. Whenever contracts establish the periodic drawing of lots for the advance payment of the agreed capital, the same or a higher number of contracts – which may not however exceed five contracts every hundred contracts issued per year – must be drawn in the subsequent drawings of lots. The drawing of lots shall be made at least every six months.

3. The duration of capital redemption contracts may not be less than five years. For contracts with periodic premiums, payments may be expressed as a fixed or variable amount, provided that the latter possibility is expressly stated in the contract.

4. The policyholder may withdraw from the contract in accordance with the time limits and procedures envisaged in article 177. Policyholders may surrender the contract starting from the second year and on condition that they have paid a full annual premium.

**Chapter VI**

**APPLICABLE LAW**

Art. 180

(Non-life insurance contracts)

1. Non-life insurance contracts shall be governed by Italian law, without prejudice to the rules of private international law, when the member State where the risk is situated is the Italian Republic.

2. The parties may agree that the contract be subject to the law of another State, except for the limits deriving from the application of mandatory rules.

3. The specific provisions relating to compulsory insurance, as provided by the State imposing the insurance obligation, shall prevail over the law applicable to the contract; when the latter provides a guarantee which may cover risks in more than one State, the specific provisions of the State concerned shall prevail.

4. Non-life insurance contracts covering risks situated in another member State shall be governed by the law of that State.

5. If the risk is situated in a third State, the provisions of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, which came into force by means of law n. 975 of 18 December 1984, shall apply.



Art. 181  
(Life assurance contracts)

1. Life assurance contracts shall be governed by Italian law, without prejudice to the rules of private international law, when the member State of the commitment is the Italian Republic.
2. The parties may however agree that the contract be subject to the law of another State, except for the limits deriving from the application of mandatory rules.
3. Life assurance contracts where the member State of the commitment is other than the Italian Republic shall be governed by the law of the member State of the commitment.
4. If the risk is situated in a third State, the provisions of the Rome Convention of 19 June 1980 on the law applicable to contractual obligations, which came into force by means of law n. 975 of 18 December 1984, shall apply.

**TITLE XIII**  
**DISCLOSURE OF OPERATIONS AND POLICYHOLDER'S PROTECTION**

**Chapter I**  
**GENERAL PROVISIONS**

Art. 182  
(Advertising of insurance products)

1. Advertising of insurance undertakings' products shall be carried out in compliance with the principles of fairness of information and with the content of the information documents<sup>690</sup> and contractual terms of the relevant products.
2. These principles shall also be respected when advertising is carried out by intermediaries autonomously.
3. *(repealed)*<sup>691</sup>.
4. IVASS shall suspend advertising, on a precautionary basis and for no more than ninety days, in case there are reasonable grounds for suspecting that the provisions on disclosure and fairness have been violated.
5. IVASS shall prohibit advertising in the event of an ascertained violation of the provisions on disclosure and fairness.
6. IVASS shall prohibit the marketing of products in case of failure to comply with the measures under paragraphs 4 and 5 as envisaged by article 184 (2).
7. IVASS shall, by its own regulation<sup>692</sup>, lay down the criteria for distinguishability of advertising and clearness and accuracy of information.

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<sup>690</sup> Paragraph amended by article 1 (28, a) of legislative decree n. 68 of 21 May 2018.

<sup>691</sup> Paragraph repealed by article 1 (16) of legislative decree n. 187 of 30 December 2020. Paragraph 3 laid down: " 3. IVASS may require, on a non-systematic basis, that the various publicity material used by undertakings and intermediaries be sent to it."

<sup>692</sup> IVASS Regulation n. 41 of 2 August 2018.

Art. 183  
(Rules of conduct)

1. Before the conclusion and during the term of the contract undertakings shall<sup>693</sup>:
  - a) behave with diligence, fairness and transparency towards policyholders and insured persons;
  - b) *(repealed)*<sup>694</sup>;
  - c) make arrangements so as to identify and prevent – where reasonably possible – conflicts of interest and, in case of conflict, make policyholders aware of the possible adverse effects, and anyhow manage conflicts of interest so as to exclude any detrimental consequences for policyholders;
  - d) achieve an independent, sound and prudent financial management and take adequate measures to safeguard the rights of policyholders and of insured persons.
2. IVASS shall, by its own regulation<sup>695</sup>, adopt specific provisions on the drawing up of the rules of conduct to be observed in the relations with policyholders, so that the activity is carried out correctly and taking account of each individual's specific needs<sup>696</sup>.
3. In its regulation<sup>697</sup> IVASS shall take account of policyholders' and insured persons' different needs for protection, as well as of the nature of the risks and commitments covered by the undertaking; it shall establish the categories of subjects who do not need, in whole or in part, the protection envisaged for retail customers and shall establish the terms, limits and conditions of application of these provisions before the conclusion and during the term of non-life insurance contracts, taking account of the particular features of the various types of risk.

Art. 184  
(Precautionary and prohibitory measures)

1. With regard to the objective of insured parties' protection IVASS shall suspend marketing of the product, on a precautionary basis and for no more than ninety days, in case there are reasonable grounds for suspecting that the provisions under this title or the relevant implementing rules have been violated, as well as the provisions on product oversight and governance referred to in articles 30-decies, 121-bis and 121-ter<sup>698</sup>.
2. IVASS shall prohibit the marketing of products in the event of an ascertained violation of the provisions referred to in paragraph 1 and shall provide that the measures adopted are disseminated to the wider public in the most understandable forms at the expense of the undertaking or of the distributor concerned<sup>699</sup>.

**Chapter II**

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<sup>693</sup> Paragraph amended by article 1 (29, a) of legislative Decree n. 68 of 21 May 2018 and by article 1 (17) of legislative Decree n. 187 of 30 December 2020.

<sup>694</sup> Letter repealed by article 1 (29, b) of legislative decree n. 68 of 21 May 2018. The previous version laid down: *b) acquire from policyholders the information necessary to evaluate their insurance or pension needs and act in such a manner that they are always appropriately informed*.

<sup>695</sup> IVASS Regulation n. 40 of 2 August 2018, IVASS Regulation n. 41 of 2 August 2018, ISVAP Regulation n. 40 of 3 May 2012 concerning the definition of the minimum contents of the life assurance contract referred to under article 28 (1) of decree-law n. 1 of 24 January 2012, converted into law n. 27 of 24 March 2012.

<sup>696</sup> IVASS Regulation n. 40 of 02 August 2018, in particular Part III, Title II, Chapter II.

<sup>697</sup> IVASS Regulation n. 40 of 2 August 2018, in particular Part III, Title II, Chapter II.

<sup>698</sup> Paragraph replaced by article 1 (30, a) of legislative decree n. 68 of 21 May 2018. The previous version laid down: *"1. With regard to the objective of insured parties' protection IVASS shall suspend marketing of the product, on a precautionary basis and for no more than ninety days, in case there are reasonable grounds for suspecting that the provisions under this title or the relevant implementing rules have been violated."*

<sup>699</sup> Paragraph amended by article 1 (30, b) of legislative decree n. 68 of 21 May 2018.

## OBLIGATION TO PROVIDE INFORMATION

### Art. 185 (Information Documents)<sup>700</sup>

1. Insurance undertakings and intermediaries which manufacture insurance products for sale to customers shall draw up the following documents:

a) the pre-contractual information document for non-life insurance products referred to in article 185-bis, drawn up in accordance with the Implementing Regulation (EU) 2017/1469 of 11 August 2017 (*DIP* - pre-contractual information document);

b) the pre-contractual information document for life assurance products referred to in article 185-ter, other than those indicated under c) (*Life DIP* - pre-contractual information document for life products);

c) the information document for investment products drawn up in accordance with Regulation (EU) n. 1286/2014 of 26 November 2014 and relevant implementing rules (KID).

2. Insurance undertakings and intermediaries which manufacture insurance products shall also draw up the additional pre-contractual information document.

3. Without prejudice to the provisions of the consolidated law on financial mediation and the relevant implementing provisions on pre-contractual information, the additional pre-contractual information document referred to in paragraph 2 shall contain information, other than that with an advertising or promotional nature, which is additional and complementary to the information contained in the documents referred to in paragraph 1 which, on account of the features and complexity of the product, of the type of customer and of the characteristics of the insurance undertaking, is necessary for policyholders and insured persons to come to a reasoned decision about contract rights and obligations and, where appropriate, about the undertaking's financial position. The additional pre-contractual information document shall contain the reference to the undertaking's solvency and financial condition report referred to in article 47-septies. The additional pre-contractual information document shall indicate the procedure to follow in case of complaint, any competent body or authority and the applicable law.

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<sup>700</sup> Article replaced by article 1 (31) of legislative decree no. 68 of 21 May 2018. The previous version laid down:

"Art. 185

(Information note)

1. *Italian insurance undertakings and foreign insurance undertakings carrying on business in the territory of the Italian Republic under the right of establishment or the freedom of services shall submit to policyholders, prior to the conclusion of the contract and along with the policy conditions, an information note drawn up in compliance with the provisions of this article.*

2. *The information note shall contain the information, other than advertising, which is necessary, based on the characteristics of the products and of the insurance undertaking, for policyholders and insured persons to come to a reasoned conclusion about contract rights and obligations and, where appropriate, about the undertaking's financial position. The information note shall contain the reference to the undertaking's solvency and financial condition report referred to under article 47-septies.*

3. *IVASS shall, by its own regulation, lay down rules on the contents and model of the information note, which shall contain not only information on the undertaking, but also information on the contract, with special regard to guarantees and commitments covered by the undertaking, voidness, lapses, exclusions and limitations of covers as well as recourse, rights and obligations during the term of the contract and, in case of accident, the applicable law and limitation periods, the procedure to follow in case of complaint and any competent body or authority.*

4. *As regards the assurance classes I, II, III, IV and V as referred to in article 2 (1) IVASS shall, by its own regulation, determine the additional information necessary for the full comprehension of the main features of the contract with special regard to the contract costs and risks and the operations in conflict of interests. During the whole contract term life assurance policyholders shall also be given the information indicated in the regulation adopted by IVASS, with special regard to the costs, composition and results achieved in the management of the assets in which the premium or capital assured is invested. CONSOB's competences as per article 25-bis of legislative decree n. 58 of 28 February 1998 shall remain unchanged".*

4. IVASS shall, by its own regulation<sup>701</sup>, lay down rules on the contents, model and instructions for filling in the additional pre-contractual information document.

5. IVASS shall, by its own regulation<sup>702</sup>, establish the information to be provided to life assurance policyholders during the whole contract term.

#### Art. 185-bis

(Pre-contractual non-life insurance product information document)<sup>703</sup>

1. The standardised non-life insurance product information document referred to in article 185

(1) a), shall:

- a) be a short and stand-alone document;
- b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
- c) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- d) be written in Italian or in another language agreed by the parties;
- e) be accurate and not misleading;
- f) contain the title 'insurance product information document' at the top of the first page;
- g) include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

2. The standardised information document referred to in paragraph 1 shall contain:

- a) information about the type of insurance;
- b) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;
- c) the means of payment of premiums and the duration of payments;
- d) main exclusions where claims cannot be made;
- e) obligations at the start of the contract;
- f) obligations during the term of the contract;
- g) obligations in the event that a claim is made;
- h) the term of the contract including the start and end dates of the contract;
- i) the means of terminating the contract.

#### Art. 185-ter

(Pre-contractual life assurance product information document)<sup>704</sup>

1. The pre-contractual life assurance product information document referred to in article 185 (1) b), shall:

- a) be a short and stand-alone document;
- b) be presented and laid out in a way that the information is accurate, fair, clear and not misleading and consistent with the documentation of the insurance product to which it refers;
- c) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- d) be written in Italian or in another language agreed by the parties;
- e) contain the title 'insurance product information document' at the top of the first page;
- f) include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

2. The standardised information document referred to in paragraph 1 shall contain:

- a) information about the type of insurance;
- b) a summary of the insurance cover, including the risks insured, the insured sum and, where applicable, the excluded risks;

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<sup>701</sup> IVASS Regulation n. 41 of 02 August 2018.

<sup>702</sup> IVASS Regulation n. 41 of 02 August 2018.

<sup>703</sup> Article inserted by article 1 (31) of legislative decree n. 68 of 21 May 2018.

<sup>704</sup> Article inserted by article 1 (31) of legislative decree n. 68 of 21 May 2018.

- c) the means of payment of premiums and the duration of payments;
- d) the case of exclusions from cover, if any, where claims cannot be made;
- e) obligations at the start of the contract;
- f) obligations during the term of the contract;
- g) the documents to be submitted in the event that a claim is made;
- h) the term of the contract including the start and end dates of the contract;
- i) the means of terminating the contract.

3. The information document referred to in paragraph 1 shall be drawn up according to the standardised format defined by IVASS regulation<sup>705</sup>.

4. IVASS may, by its own regulation<sup>706</sup>, lay down detailed rules for drawing up the document referred to in paragraph 1 in case of multi-risk insurance policies which, in compliance with directly applicable EU provisions, ensure that the customer may make an informed decision.

#### Art. 186

(Interpellation about the additional pre-contractual information document)<sup>707</sup>

1. Without prejudice to the provisions of the consolidated law on financial mediation and the relevant implementing provisions on pre-contractual information, an undertaking may first send the additional pre-contractual information document, along with the contract terms, to IVASS, in order to require the assessment of compliance with the information obligations envisaged by the provisions of this chapter, it being understood that IVASS' assessment may not be used for promotional purposes in the relationships with policyholders.

2. IVASS shall inform the undertaking of its assessment within sixty days of receiving exhaustive and comprehensive documents pertaining to the contract. If no negative assessments or assessments with remarks in line with paragraph 3 are made by IVASS within this deadline, the additional pre-contractual information document shall be considered as compliant with the information obligations. IVASS may order the withdrawal, once it has notified the undertaking concerned, if the requirements for the assessment are no longer met or if the undertaking abuses the measure requested. IVASS shall indicate to the undertaking any supplementary information to be included in the additional pre-contractual information document.

<sup>705</sup> IVASS Regulation n. 41 of 2 August 2018.

<sup>706</sup> IVASS Regulation n. 41 of 02 August 2018.

<sup>707</sup> Article replaced by article 1 (32) of legislative decree no. 68 of 21 May 2018. The previous version laid down:

"Art. 186

(Interpellation about the information note)

1. An undertaking may first send the information note, along with the contract terms, to IVASS, in order to require the assessment of compliance with the information obligations envisaged by the provisions of this chapter, it being understood that IVASS' assessment may not be used for promotional purposes in the relationships with policyholders.

2. IVASS shall inform the undertaking of its assessment within sixty days of receiving exhaustive and comprehensive documents pertaining to the contract. If no negative assessments or assessments with remarks in line with paragraph 3 are made by IVASS within this deadline the information note shall be considered as compliant with the information obligations. IVASS may order the withdrawal, once it has notified the undertaking concerned, if the requirements for the assessment are no longer met or if the undertaking abuses the measure requested. IVASS shall indicate to the undertaking any supplementary information to be included in the information note.

3. During the period necessary for the preliminary enquiry and until IVASS takes its measure the undertaking shall not market its product.

4. IVASS shall, by its own regulation, establish the provisions regarding the transmission of the information note and the procedures to be observed, before its publication, to disseminate news or make market surveys or collect contract proposals and to market products."

3. During the period necessary for the preliminary enquiry and until IVASS takes its measure the undertaking shall not market its product.

4. IVASS shall, by its own regulation<sup>708</sup>, establish the provisions regarding the transmission of the additional pre-contractual information document and the procedures to be observed, before its publication, to disseminate news or make market surveys or collect contract proposals and to market products.

#### Art. 187

(Additional information to be included in the additional pre-contractual information document)<sup>709</sup>

1. Without prejudice to the Consolidated Law on Finance and the relevant implementing provisions on pre-contractual information, and subject to the provisions of this chapter, IVASS may request that the undertaking make changes to the additional pre-contractual information document used, whenever it is necessary to furnish further and essential information for policyholders' protection.

### **Chapter II bis Disputes<sup>710</sup>**

#### Art. 187-1<sup>711</sup>

(Out-of-court redress systems)

1. Without prejudice to the provisions of article 32-ter of legislative decree n. 58 of 24 February 1998, the parties per article 6 (1) a) and d), as well as ancillary insurance intermediaries, shall participate in out-of-court systems for the settlement of disputes with customers related to the insurance benefits and services deriving from all insurance contracts, without any exclusion.

2. With decree by the Minister of Economic Development, jointly with the Minister of Justice, at the proposal of IVASS, are determined, in compliance with the principles of the procedures and of the requirements per Part V, Title 2-bis of Legislative Decree n. 206 of 6 September 2005, the criteria for the execution of the procedures for the settlement of disputes per paragraph 1, the criteria for the composition of the deciding body, so that its impartiality is assured along with the representativeness of the involved parties, as well as the nature of the disputes, relating to the insurance benefits and services deriving from an insurance contract, treated by the systems in accordance with the present article. The procedures shall in any case assure the rapidity, cost-efficiency and effectiveness of the protection.

3. With regard to the disputes defined by the decree under paragraph 2, the recourse to the redress system set out in paragraph 1 is alternative to the mediation and assisted negotiation procedures envisaged, respectively, by legislative decree n. 28 of 4 March 2010, and by decree-law n. 132 of 12 September 2010, converted after amendments by Law n.162 of 10 November 2014, and does not compromise use of any other protection instrument prescribed by the rules.

4. The related operating expenses for the systems referred to in this article shall be covered, without new or higher costs for public finance, with the resources referred to in articles 335 and 336.

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<sup>708</sup> IVASS Regulation n. 41 of 02 August 2018.

<sup>709</sup> Article replaced by article 1 (33) of legislative decree no. 68 of 21 May 2018. The previous version laid down: "Art. 187 (Additional information to be included in the information note)

1. Without prejudice to the provisions of this chapter IVASS may request that the undertaking make changes to its information note whenever it is necessary to furnish further and essential information for policyholders' protection."

<sup>710</sup> Chapter inserted by article 1 (18, a) of legislative decree n. 187 of 30 December 2020.

<sup>711</sup> Article inserted by article 1 (18, b) of legislative decree n. 187 of 30 December 2020.

**TITLE XIV**  
**SUPERVISION OVER UNDERTAKINGS AND INTERMEDIARIES**

**Chapter I**  
**GENERAL PROVISIONS**

Art. 187-bis  
(Arrangements for the exercise of supervisory powers)<sup>712</sup>

1. Supervisory powers shall be applied in a timely and proportionate manner.

**Chapter II-bis                      Disputes**  
**(repealed)<sup>713</sup>**

Article 187-ter  
(repealed)

Art. 188  
(Powers of intervention)

1. In the exercise of its supervisory functions over the technical, financial, assets/liabilities management of undertakings and on compliance with the laws, regulations and measures of this code and with the directly applicable EU rules, IVASS may<sup>714</sup>:

- a) convene the members of the administrative and control bodies, the general managers of insurance and reinsurance undertakings, the legal representatives of the auditing firm and those who are responsible for the key functions within insurance and reinsurance undertakings<sup>715</sup>;
- b) order the convocation of the shareholders' meeting and the meeting of the administrative and control bodies of insurance and reinsurance undertakings, by specifying the items to be included in the agenda and submitting to their examination the measures required to ensure that management is in accordance with the law;
- c) directly undertake the convocation of the shareholders' meeting and the meeting of the administrative and control bodies of insurance and reinsurance undertakings, when these bodies have not fulfilled the measure referred to in b);

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<sup>712</sup> Article inserted by article 1 (114) of legislative decree n. 74 of 12 May 2015.

<sup>713</sup> Chapter II-bis and article 187-ter repealed by article 1 (20), legislative decree n. 187 of 30 December 2020. Art. 187-ter laid down: "Art. 187-ter (Out-of-court redress systems)

*1. Without prejudice to the provisions of article 32-ter of legislative decree n. 58 of 24 February 1998, the parties per article 6 (1) a) and d), as well as ancillary insurance intermediaries, shall participate in out-of-court systems for the settlement of disputes with customers related to the insurance benefits and services deriving from all insurance contracts, without any exclusion.*

*2. With decree by the Minister of Economic Development, jointly with the Minister of Justice, at the proposal of IVASS, are determined, in compliance with the principles of the procedures and of the requirements per Part V, Title 2-bis of Legislative Decree n. 206 of 6 September 2005, the criteria for the execution of the procedures for the settlement of disputes per paragraph 1, the criteria for the composition of the deciding body, so that its impartiality is assured along with the representativeness of the involved parties, as well as the nature of the disputes, relating to the insurance benefits and services deriving from an insurance contract, treated by the systems in accordance with the present article. The procedures shall in any case assure the rapidity, cost-efficiency and effectiveness of the protection.*

*3. Subject to the provisions of article 5 (1-bis) of legislative decree n. 28 of 4 March 2010, the provisions in paragraphs 1 through 3 do not compromise use of any other protection instrument prescribed by the rules.*

*4. The related operating expenses shall be covered, without new or higher costs for public finance, with the resources referred to in articles 335 and 336 of the present Code."*

<sup>714</sup> Paragraph amended by article 1 (115, a) of legislative decree n. 74 of 12 May 2015.

<sup>715</sup> Letter amended by article 1 (115, b) of legislative decree n. 74 of 12 May 2015.

d) convene the persons who perform functions partly included in the operational cycle of insurance and reinsurance undertakings, within the framework of checks limited exclusively to insurance or reinsurance profiles.

2. In the exercise of its supervisory functions over compliance with the laws and regulations envisaged in this code and with the directly applicable EU rules by insurance market participants, IVASS may convene the legal representatives of mediation companies and the persons entered in the register of intermediaries<sup>716</sup>.

3. In order to know the programmes and assess the commitments guaranteeing the management autonomy and independence of insurance and reinsurance undertakings, IVASS may convene anyone holding a qualifying holding indicated in article 68 in an insurance or reinsurance undertaking<sup>717</sup>.

3-bis. IVASS, in the exercise of the functions referred to under paragraph 1, if the situation requires it, further to the supervisory review process referred to under article 47-quinquies as well, takes preventive and corrective measures in relation to the individual insurance and reinsurance undertakings, including ad hoc measures regarding:

- a) restriction on the conduct of business, including the power to prohibit the further marketing of insurance products;
- b) prohibition to perform certain operations, also of corporate nature, or the imposition, for a period no longer than three months which may be extended for a further three months at most, of limitations, restrictions or deferral of the right of surrender exercised by policyholders;
- c) prohibition on the distribution of profits or of other asset items as well as the setting up of limits to the total amount of the variable part of the undertaking's remuneration;
- d) strengthening of the systems of governance, including risk containment;
- e) order to remove one or more corporate officers or holders of key functions when their remaining in office would be detrimental to the sound and prudent management of insurance or reinsurance undertakings or to the interests of policyholders and those entitled to insurance benefits. Removal is not provided for, where the circumstances for declaring the disqualification are present pursuant to article 76, unless there is a need for an urgent provision.<sup>718</sup>

3-ter. The exercise of supervisory powers referred to under paragraph 3-bis (a) shall be attributed to CONSOB for matters falling within their competence<sup>719</sup>.

3-quater. With the aim to safeguard the stability of the financial system as a whole and to counter systemic risks, IVASS may, on the basis of the recommendations of the Committee for macro-

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<sup>716</sup> Paragraph amended by article 1 (115, c) of legislative decree n. 74 of 12 May 2015.

<sup>717</sup> Paragraph amended by article 4 (1, v) of legislative Decree n. 21 of 27 January 2010.

<sup>718</sup> Paragraph replaced by article 2 (1, a) of legislative decree n. 207 of 07 December 2023. The previous version laid down: "3-bis. In the exercise of the functions referred to under paragraph 1, if the situation requires it, further to the supervisory review process referred to under article 47-quinquies, or with the aim to safeguard the stability of the financial system as a whole and to counter systemic risks under the provisions of the EU law concerning macroprudential supervision of the EU financial system, IVASS may take preventive or corrective measures in relation also to the individual insurance and reinsurance undertakings, including ad hoc measures regarding also:

- a) restriction on the conduct of business, including the power to prohibit the further marketing of insurance products;
- b) prohibition to effect certain operations, also of corporate nature, or limitations, temporary restrictions or deferral of some kinds of operations or options that the policyholders may carry out;
- c) sharing of profits or of other asset items as well as the setting up of limits to the total amount of the variable part of the undertaking's remuneration;
- d) strengthening of the systems of governance, including risk containment;
- e) order to remove one or more corporate officers or holders of key functions when their remaining in office would be detrimental to the sound and prudent management of insurance or reinsurance undertakings or to the interests of policyholders and those entitled to insurance benefits. Removal is not provided for, where the circumstances for declaring the disqualification are present pursuant to article 76, unless there is a need for an urgent provision."

<sup>719</sup> Paragraph inserted by article 1 (115, d) of legislative decree n. 74 of 12 May 2015.



prudential policies, take the preventive or corrective measures referred to in paragraph 3-bis, a), b), c) and d), in relation to all or to individual insurance and reinsurance undertakings.<sup>720</sup>

Art. 189  
(Powers of investigation)

1. IVASS may request information, order the production of documents and the performance of checks and verifications deemed necessary, making such request to the supervised entities referred to under article 6 as well as to the persons pursuing reserved business without authorization<sup>721</sup>.

2. IVASS may conduct inspections at the premises of insurance and reinsurance undertakings, of insurance and reinsurance intermediaries, of persons who perform functions partly included in the operational cycle of these undertakings, limited to this cycle, as well as of persons pursuing reserved business without authorization. For the inspections against undertakings which are focused on the internal models referred to under Title III, Chapter IV-bis, Section III, IVASS may, until 31 December 2016, rely on outside experts, including auditors and actuaries, with costs to be borne by the undertaking. IVASS shall, by its own regulation<sup>722</sup>, lay down the selection criteria and the potential conflicts of interest<sup>723</sup>.

Art. 190  
(Communication obligations)

1. In abidance of articles 3 and 5 IVASS may require supervised subjects to send, also on a regular basis, data and information and acts and documents as well as any information about the contracts held by intermediaries or about the contracts which are entered into with third parties in accordance with the terms and procedures established by its own regulation<sup>724725</sup>.

1-bis. The information referred to in paragraph 1 shall comprise the following:

- a) qualitative or quantitative elements, or any appropriate combination thereof;
- b) historic, current or prospective elements, or any appropriate combination thereof; and
- c) data from internal or external sources, or any appropriate combination thereof<sup>726</sup>.

1-ter. The information, data and documents sent to IVASS:

- a) shall reflect the nature, scale and complexity of the business of the undertaking concerned, and in particular the risks inherent in that business;
- b) shall be accessible, complete in all material respects, comparable and consistent over time; and
- c) shall be relevant, reliable and comprehensible<sup>727</sup>.

2. The powers envisaged in paragraph 1 may also be exercised over the subject responsible for the statutory audit of insurance and reinsurance undertakings. IVASS shall, by its own regulation,

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<sup>720</sup> Paragraph inserted by article 2 (1, b) of legislative decree no. 207 of 7 December 2023.

<sup>721</sup> Paragraph amended by article 1 (116, a) of legislative decree n. 74 of 12 May 2015.

<sup>722</sup> IVASS Regulation n. 20 of 3 May 2016.

<sup>723</sup> Paragraph amended by article 1 (116, b) of legislative decree n. 74 of 12 May 2015.

<sup>724</sup> ISVAP Regulation n. 22 of 4 April 2008 and IVASS Regulation n. 21 of 10 May 2016.

<sup>725</sup> Paragraph amended by article 1 (117, a) of legislative decree n. 74 of 12 May 2015.

<sup>726</sup> Paragraph amended by article 1 (117, b) of legislative decree n. 74 of 12 May 2015.

<sup>727</sup> Paragraph amended by article 1 (117, b) of legislative decree n. 74 of 12 May 2015.

establish the terms and procedures under which the above-mentioned subject shall be required to send the information envisaged in paragraphs 3 and 4<sup>728</sup>.

2-bis. The powers envisaged in paragraph 1 may also be exercised over external experts, such as actuaries. IVASS shall, by its own regulation, establish the terms and procedures under which the above-mentioned subjects are required to send the information envisaged in paragraphs 3 and 4<sup>729</sup>.

3. The body performing the control function in an insurance or reinsurance undertaking shall notify IVASS, without delay, of any acts or facts which may constitute an irregularity in the undertakings' administration or a violation of the provisions regulating the carrying out of insurance or reinsurance business. To this end the memorandum and articles of association of the undertaking, regardless of the administration and control system adopted, shall vest the body performing the control function with the relevant tasks and powers. The same body shall provide IVASS with any other information or document requested.

4. The persons referred to in paragraph 2 shall notify IVASS, without delay, of any acts or facts they have found during the performance of their task, which may represent a serious violation of the provisions regulating the carrying out of business by audited undertakings, or which may undermine the continuity of the undertaking's activity, or involve a negative assessment, an assessment with remarks or a declaration of the impossibility to assess the financial statements, or which may determine non-compliance with the Solvency Capital Requirement or non-compliance with the Minimum Capital Requirement<sup>730</sup>. The same persons shall provide IVASS with any other information or document requested<sup>731</sup>.

4-bis. The disclosure in good faith to the supervisory authorities, by the persons referred to under paragraphs 2 and 2-bis, of any fact or decision referred to in paragraph 4 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind<sup>732</sup>.

5. The provisions under paragraph 3 (first sentence), 4 and 4-bis shall also apply to the persons performing the tasks referred to in the same paragraphs within the companies which control or are controlled by insurance or reinsurance undertakings in accordance with article 72<sup>733</sup>.

5-bis. Insurance and reinsurance undertakings shall immediately inform IVASS of the following:

- a) the appointment and non-appointment of the subject responsible for the statutory audits, along with the causes for the delay in the appointment;
- b) the resignation of the subject responsible for the statutory audit;
- c) the consensual termination of the assignment;
- d) the revocation of the appointment regarding the statutory audit, along with the appropriate explanations of the reason for doing so<sup>734</sup>.

5-ter. IVASS shall establish the arrangements and terms for sending the notifications under paragraph 5-bis. In case of non-appointment of the subject responsible for the statutory audits IVASS shall adopt the precautionary, authoritative and sanctioning measures envisaged by the code<sup>735</sup>.

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<sup>728</sup> Paragraph amended by article 41 (6, a), legislative decree n. 39 of 27 January 2010, as last amended by article 1 (117, c) of legislative decree n. 74 of 12 May 2015. See IVASS Regulations n. 16 of 4 March 2008; n. 21 of 28 March 2008; n. 22 of 04 April 2008.

<sup>729</sup> Paragraph inserted by article 1 (117, d) of legislative decree n. 74 of 12 May 2015.

<sup>730</sup> Art. 72 (duties of auditors) (1, 1).

<sup>731</sup> Paragraph amended by article 1 (117, e) of legislative decree n. 74 of 12 May 2015.

<sup>732</sup> Paragraph inserted by article 1 (117, f) of legislative decree n. 74 of 12 May 2015.

<sup>733</sup> Paragraph amended by article 1 (117, g) of legislative decree n. 74 of 12 May 2015.

<sup>734</sup> Paragraph inserted by article 41 (6, b) of legislative decree n. 39 of 27 January 2010.

<sup>735</sup> Paragraph inserted by article 41 (6, b) of legislative decree n. 39 of 27 January 2010.

Art. 190-bis  
(Statistical information)<sup>736</sup>

1. IVASS shall require the supervised subjects to send data and information to conduct statistical surveys, studies and analyses of the insurance market. IVASS shall, by its own regulation<sup>737</sup>, establish the frequency, terms and procedures under which the above-mentioned subjects are required to send such data and information.

2. The insurance or reinsurance undertaking shall inform IVASS, separately in respect of transactions carried out under the right of establishment and those carried out under the freedom to provide services, of the amount of the premiums, claims and commissions, without deduction of reinsurance or retrocession, by Member State and as follows:

- a) for non-life insurance, by lines of business, in line with the principles of EU regulations;
- b) for life assurance, by lines of business, in line with the principles of EU regulations.

3. As regards undertakings authorised to pursue the class 10 referred to under article 2 (3), the undertaking concerned shall also inform that supervisory authority of the frequency and average cost of claims.

4. IVASS shall submit with the supervisory authorities of the individual member States concerned, within a reasonable period of time and in aggregated form, the information referred to under paragraphs 2 and 3.

Art. 191  
(Regulatory power)

1. Without prejudice to the regulatory powers of the Government and of the Ministry of Economic Development, according to the provisions of this Code, in the exercise of its supervisory functions over the technical, financial, assets/liabilities management of insurance and reinsurance undertakings and on transparency and fairness of behaviours by insurance and reinsurance undertakings and intermediaries, with special regard to the protection of policyholders, IVASS may adopt regulations or other general provisions implementing the provisions of this code and the directly applicable EU provisions, as well as regulations for the implementation of recommendations, guidelines and other provisions issued by the European supervisory authorities relating to the following subjects:

- a) the conditions governing the taking-up of the business of insurance;
- b) the conditions governing the pursuit of insurance and reinsurance business, including:

- 1) the system of corporate governance, including remuneration and incentive systems as well as the essential functions of insurance and reinsurance undertakings<sup>738</sup>;
- 2) the financial adequacy, including the establishment of technical provisions, the representation and valuation of assets, the composition of own funds and the calculation of the Solvency Capital Requirements of the insurance or reinsurance undertakings, with special regard to the provisions on the standard formula and on the partial or full internal model as well as any possibility to require the assessment activities by the auditing firm in abidance by the EU regulations;
- 3) the disclosure and supervisory review process, including the contents of the solvency and financial condition report as well as the possible submission of the disclosure to assessment by the auditing firm<sup>739</sup>;

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<sup>736</sup> Article inserted by article 1 (118) of legislative decree n. 74 of 12 May 2015.

<sup>737</sup> IVASS Regulation n. 36 of 28 February 2017.

<sup>738</sup> Number replaced by article 6 (5) of legislative decree n. 49 of 10 May 2019. The previous version laid down: "1) the system of corporate governance, including the essential functions of insurance and reinsurance undertakings;"

<sup>739</sup> IVASS Regulation n. 42 of 02 August 2018

- c) the conditions for the taking-up and pursuit of insurance business by undertakings with head office in a third State;
- d) the conditions for the taking-up and pursuit of insurance business by local undertakings;
- e) the conditions for the taking-up and pursuit of reinsurance business, including the conditions for the taking-up and pursuit of business by the special purpose vehicles referred to under article 57-bis;
- f) the classification of risks within the insurance classes pursuant to article 2;
- g) the procedures relating to the acquisition of holdings and shareholdings, including the provisions about close links;
- h) the layout of accounts, the chart of accounts, the calculation methods, the forms and arrangements for making a confrontation between the accounting system and the chart of accounts, and the other supervisory models derived from financial statements and consolidated accounts of insurance and reinsurance undertakings<sup>740</sup>;
- i) the indication of the entities not subject to compulsory consolidation which are required to draw up consolidated accounts for the sole purpose of supervision<sup>741</sup>;
- l) the setting up and management of assets devoted to a specific business, under the terms envisaged in the civil code, of segregate assets and internal funds of undertakings pursuing life business, including the limits and restrictions on investments and the principles and layouts to be adopted in the assessment of the property in which assets are invested<sup>742</sup>;
- m) the obligations regarding compulsory insurance for motor vehicles and craft, including the settlement procedures;
- n) insurance contracts, with special regard to compulsory insurance for motor vehicles and craft and special insurance operations;
- o) the fairness of advertising, the rules on the way insurance undertakings and distributors shall introduce themselves and behave in relation to the design and supply of insurance products, taking account of the different needs for policyholders protection<sup>743</sup>;
- p) the procedure for submitting complaints to assess the violation of behavioural obligations by undertakings and intermediaries;
- q) information requirements before the conclusion of the contract and during its term, including the requirements relating to the promotion and placement of insurance products, by means of distance communication techniques;
- r) the procedures regarding extraordinary operations;
- s) supervision over the insurance group, including verification of intra-group transactions and calculation of the group solvency;
- t) the procedures for the safeguards, reorganisation and winding up of insurance and reinsurance undertakings<sup>744</sup> and of the companies subject to group supervision;
- u) the compensation schemes for damages caused by motor vehicles and craft and by the practice of hunting;
- v) the procedures pertaining to the detection and application of administrative sanctions.

2. The regulations envisaged under paragraph 1 shall comply with the principle of proportionality with a view to attaining the goal at the minor cost for the subjects concerned.

3. The regulations shall be consistent with the purposes of supervision referred to in articles 3 and 5 and shall take account of the need for competitiveness and innovation development in the pursuit of business by supervised entities.

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<sup>740</sup> ISVAP Regulation n. 7 of 13 July 2007 and ISVAP Regulation n. 22 of 4 April 2008, on insurance and reinsurance undertakings' financial statements and consolidated accounts. ISVAP regulation n. 19 of 14 March 2008, on the insurance and reinsurance undertakings' solvency margin.

<sup>741</sup> ISVAP Regulation n. 7 of 13 July 2007.

<sup>742</sup> ISVAP Regulation n. 38 of 3 June 2011, on the segregate assets of undertakings pursuing life business.

<sup>743</sup> Letter amended by article 1 (35) of legislative decree n. 68 of 21 May 2018.

<sup>744</sup> ISVAP Regulation n. 14 of 18 February 2008. ISVAP Regulation n. 33 of 10 March 2010, with respect to reinsurance undertakings.

4. Regulations shall be adopted following open and transparent consultation procedures enabling to obtain knowledge of the law in preparation and of the comments received - also through publication on ISVAP's website. When starting the consultation IVASS shall publish the draft measure and the outcome of the analysis on the impact of the new rules, in accordance with the principles stated in article 12 of law n. 229 of 29 July 2003 and IVASS regulatory provisions.

5. At any time during the procedure IVASS may ask for the opinion of the Council of State and shall make public its views on the comments received following the consultation procedure and on the opinion which it may have asked to the Council of State.

6. IVASS shall adopt coordinated regulations which will be encompassed in a single collection of supervisory instructions.

## **Chapter II**

### **SUPERVISION OF THE TECHNICAL, FINANCIAL AND ASSETS/LIABILITY MANAGEMENT OF INSURANCE AND REINSURANCE UNDERTAKINGS**

#### **Art. 192**

(Italian insurance undertakings)

1. Insurance undertakings with head office in Italy shall be subject to the supervision of IVASS for both the business carried out in the territory of the Italian Republic and that carried out in the territory of the other member States under the right of establishment or the freedom of services.

2. IVASS shall exercise the functions of prudential supervision through the constant monitoring of the undertaking's technical financial and assets/liability management, with special regard to the adequacy of capital requirements and technical provisions in relation to the activity pursued, the availability of assets and eligible own funds for the full representation of technical provisions and Solvency Capital Requirements, the assessment of emerging risks as well as the corporate governance and disclosure to IVASS and third parties. In case of undertakings authorised to pursue assistance insurance IVASS' supervision shall extend to monitoring of staff and the technical resources which the undertaking has at its disposal for the purpose of providing the service<sup>745</sup>.

3. Also upon a report by the supervisory authority of the member State of the branch or of the member State of provision of services IVASS shall take the appropriate measures to put an end to the irregularities committed in other member States by insurance undertakings with head office in Italy or to the activities carried out in these States which might undermine the financial stability of those undertakings. The supervisory authority of the member State of establishment or of the member State of provision of services shall be informed of the measures taken.

4. IVASS shall exercise the functions of prudential supervision in order to ensure that insurance undertakings carrying out business under the right of establishment or the freedom to provide services in third States abide by the conditions for the pursuit of business established by this Code and the implementing regulations<sup>746</sup>.

4-bis. Where, in the case of an undertaking pursuing activities that are of relevance in the territory of another Member State pursuant to Article 14-bis (2-bis), IVASS identifies deteriorating financial conditions or other emerging risks posed by such activities and which may have a cross-border effect, it shall notify EIOPA and the supervisory authority of the relevant host Member State thereof, with an adequate level of detail.<sup>747</sup>

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<sup>745</sup> Paragraph amended by article 1 (120, a) of legislative decree n. 74 of 12 May 2015.

<sup>746</sup> Paragraph amended by article 1 (120, b) of legislative decree n. 74 of 12 May 2015.

<sup>747</sup> Paragraph inserted by article 28 (1, d) of law n. 238 of 23 December 2021.

Art. 193  
(Insurance undertakings from other member States)

1. Insurance undertakings having their head office in other member States shall be subject to prudential supervision by the supervisor of the home member State also as regards the business carried out, under the right of establishment or the freedom of services, in the territory of the Italian Republic.

1-bis. If IVASS has reason to consider that the activities of the insurance undertaking referred to under paragraph 1 might affect its financial soundness, it shall inform the competent authorities of the undertaking's home Member State<sup>748</sup>.

1-ter. IVASS shall inform the supervisory authority of the relevant home Member State, where it has reasons to believe that the undertaking from another Member State pursuing activities that are of relevance in the territory of the Italian Republic poses serious and reasoned concerns with regard to consumer protection. In cases where no bilateral solution can be found between IVASS and the authority of the Member State, IVASS may refer the matter to EIOPA and request its assistance.<sup>749</sup>

2. Without prejudice to the provisions of paragraph 1 and in case IVASS ascertains that the insurance undertaking does not comply with the provisions of the Italian law it is required to observe, ISVAP shall notify such violation and shall order that the undertaking comply with the laws and implementing provisions.

3. If the undertaking does not comply with the laws and implementing provisions IVASS shall inform the supervisory authority of the home member State thereof and request that the measures necessary to end violations be taken.

4. If the authority of the home State fails to take measures or the measures prove inadequate, if the irregularities may affect the general good, or in urgent cases of protection of the interests of policyholders and of those entitled to insurance benefits, IVASS may, after informing the supervisory authority of the home member State, take the necessary measures against the insurance undertaking, including the prohibition to commence new business under the right of establishment or the freedom to provide services with the effects referred to in article 167. IVASS may refer the matter to EIOPA, in line with article 19 of (EU) regulation n. 1094/2010<sup>750</sup>.

5. If the insurance undertaking which committed the breach carries on business via a branch or possesses properties in the territory of the Italian Republic, the administrative sanctions applicable according to the provisions of the Italian law shall be adopted against the branch or through confiscation of the assets in Italy.

6. Any measure involving sanctions or restrictions on the conduct of business under the right of establishment or the freedom to provide services shall be communicated to the undertaking concerned. In the communications with IVASS the insurance undertaking shall use the Italian language.

7. IVASS shall order that the measures taken be published in daily newspapers or otherwise disclosed as established in the measure at the expense of the insurance undertaking and for the period of time deemed necessary. IVASS shall inform the supervisory authority of the home member State of the measures adopted.

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<sup>748</sup> Paragraph inserted by article 1 (121, a) of legislative decree n. 74 of 12 May 2015.

<sup>749</sup> Paragraph inserted by article 28 (1, e) of law no. 238 of 23 December 2021.

<sup>750</sup> Sentence added by article 1 (121, b) of legislative decree n. 74 of 12 May 2015.

7-bis. The insurance undertaking shall submit all documents requested of it for the purposes of paragraphs from 1 to 7<sup>751</sup>.

Article 194  
(Third country insurance undertakings)

1. Branches of insurance undertakings with head office in third States shall be subject to the supervision of IVASS for the business carried out in the territory of the Italian Republic.

Article 195  
(Italian reinsurance undertakings)<sup>752</sup>

1. Reinsurance undertakings with head office in the territory of the Italian Republic shall be subject to the supervision of IVASS for both the business carried out in Italy and that under the right of establishment or the freedom to provide services in the territory of the other member States or of third States<sup>753</sup>.

2. IVASS shall exercise the functions of prudential supervision over the undertakings referred to under paragraph 1 through the constant monitoring of the undertaking's technical financial and assets/liability management, with special regard to the adequacy of capital requirements and technical provisions in relation to the activity pursued, the availability of assets and eligible own funds for the full representation of technical provisions and Solvency Capital Requirements, the assessment of emerging risks as well as the corporate governance and disclosure to IVASS and third parties<sup>754</sup>.

3. The provisions of article 192 (3, 4 and 4-bis) shall apply to the undertakings referred to in paragraph 1<sup>755756</sup>.

Art. 195-bis  
(Reinsurance undertakings from other member States)

1. Reinsurance undertakings having their head office in other member States shall be subject to prudential supervision by the supervisor of the home member State also as regards the business carried out, under the right of establishment or the freedom of services, in the territory of the Italian Republic.

1-bis. If IVASS has reason to consider that the activities of the reinsurance undertaking referred to under paragraph 1 might affect its financial soundness, it shall inform the competent authorities of the undertaking's home Member State<sup>757</sup>.

1-ter. IVASS shall inform the supervisory authority of the home Member State, where it has reasons to believe that the reinsurance undertaking from another Member State pursuing activities that are of relevance in the territory of the Italian Republic may pose serious and reasoned concerns with regard to consumer protection. In cases where no bilateral solution can

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<sup>751</sup> Paragraph added by article 1 (121, c) of legislative decree n. 74 of 12 May 2015.

<sup>752</sup> Heading amended by article 11 (1), legislative decree n. 56 of 29 February 2008.

<sup>753</sup> Paragraph amended by article 1 (122, a) of legislative decree n. 74 of 12 May 2015.

<sup>754</sup> Paragraph amended by article 11 (2, a), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (122, b) of legislative decree n. 74 of 12 May 2015.

<sup>755</sup> Paragraph replaced by article 11 (2, b), legislative decree n. 56 of 29 February 2008.

<sup>756</sup> Words amended by article 28 (1, f) of law n. 238 of 23 December 2021. The previous version laid down: "3. *The provisions of article 192 (3 and 4) shall apply to the undertakings referred to in paragraph 1.*"

<sup>757</sup> Paragraph added by article 1 (123, a) of legislative decree n. 74 of 12 May 2015.

be found between IVASS and the authority of the Member State, IVASS may refer the matter to EIOPA and request its assistance.<sup>758</sup>

2. Without prejudice to the provisions of paragraph 1 and in case IVASS ascertains that the reinsurance undertaking does not comply with the provisions of the Italian law it is required to observe, IVASS shall notify such violation to the undertaking and order that it comply with the laws and implementing provisions.

3. If the undertaking does not comply with the laws and implementing provisions IVASS shall inform the supervisory authority of the home member State thereof and request that the measures necessary to end violations be taken.

4. If the authority of the home State fails to take measures or the measures prove inadequate, if the irregularities may affect the general good, IVASS may, after informing the supervisory authority of the home member State, take the necessary measures against the reinsurance undertaking, including the prohibition to commence new reinsurance business under the right of establishment or the freedom to provide services. IVASS may refer the matter to EIOPA, in line with article 19 of (EU) regulation n. 1094/2010<sup>759</sup>.

5. If the reinsurance undertaking which committed the breach carries on business via a branch or possesses properties in the territory of the Italian Republic, the administrative sanctions applicable according to the provisions of the Italian law shall be adopted against the branch or through confiscation of the assets in Italy.

6. Any measure involving sanctions or restrictions on the conduct of business under the right of establishment or the freedom to provide services shall be communicated to the undertaking concerned. In the communications with IVASS the reinsurance undertaking shall use the Italian language.

7. IVASS shall order that the measures taken be published in daily newspapers or otherwise disclosed as established in the order at the expense of the reinsurance undertaking and for the period of time deemed necessary. IVASS shall inform the supervisory authority of the home member State of the measures adopted<sup>760</sup>.

#### Article 195-ter (Third country reinsurance undertakings)

1. Branches of reinsurance undertakings with head office in third States shall be subject to the supervision of IVASS for the business carried out in the territory of the Italian Republic<sup>761</sup>.

#### Art. 196 (Amendments to the articles of association)

1. IVASS shall approve, in compliance with the procedure established by regulation<sup>762</sup>, the amendments to the articles of association of insurance and reinsurance undertakings if they are not in contrast with a sound and prudent management.

2. Registration in the registrar of companies may not be effected if the approval referred to in paragraph 1 is not given.

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<sup>758</sup> Paragraph added by article 28 (1, g) of law n. 238 of 23 December 2021.

<sup>759</sup> Sentence added by article 1 (123, b) of legislative decree n. 74 of 12 May 2015.

<sup>760</sup> Article inserted by article 11 (3), legislative decree n. 56 of 29 February 2008.

<sup>761</sup> Article inserted by article 11 (3), legislative decree n. 56 of 29 February 2008.

<sup>762</sup> ISVAP Regulation n. 14 of 18 February 2008, in particular Title II, Chapter I. ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title V, Chapter I.



Art. 197

(Supervision over the implementation of the scheme of operations)

1. For the first three financial years the insurance undertaking with head office in the territory of the Italian Republic shall submit to IVASS a semi-annual report on the implementation of the scheme of operations.
2. Where the report shows serious imbalance in the undertaking's financial situation IVASS may take the measures necessary to comply with the scheme of operations and restore a sound management.
3. The undertaking shall inform IVASS of any changes made to the scheme of operations as well as of any changes in the persons charged with administration, management and control functions, those who are responsible for the key functions and the holders of qualifying holdings indicated in article 68 in the insurance undertaking<sup>763</sup>. Any changes in the scheme of operations shall be subject to IVASS' approval according to a procedure established by way of regulation<sup>764</sup>.
4. The provisions of this article shall also apply mutatis mutandis to the branches, established in the territory of the Italian Republic, of insurance undertakings with head office in third States, to reinsurance undertakings with head office in the territory of the Italian Republic and to the branches of reinsurance undertakings of third States<sup>765</sup>.

**Chapter III**

**SUPERVISION OF THE EXTRAORDINARY OPERATIONS OF INSURANCE AND REINSURANCE UNDERTAKINGS**

Article 198

(Transfer of the portfolio of Italian insurance undertakings)

1. The transfer of all or part of the portfolio of an insurance undertaking with head office in the territory of the Italian Republic shall be subject to IVASS' prior authorisation, to be sought by the ceding company, based on a procedure established by way of regulation<sup>766</sup>, by order to be published in the Bulletin.
2. If the portfolio is transferred to an insurance undertaking with head office in the territory of the Italian Republic IVASS shall check that the accepting undertaking is duly authorised to carry on the activities subject to transfer and that, after taking the transfer into account, it possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis. If the portfolio includes commitments and risks accepted outside the territory of the Italian Republic IVASS shall also verify that the undertaking meets the conditions for the taking up of business under the right of establishment or the freedom to provide services in the member State of the ceding undertaking. If the transfer includes the portfolio of branches situated in other member States the favourable opinion of the relevant supervisors must be obtained. If the transfer includes contracts concluded in other member States under the freedom to provide services the

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<sup>763</sup> Paragraph amended by article 4 (1, z), legislative decree n. 21 of 27 January 2010, as last amended by article 1 (124) of legislative decree n. 74 of 12 May 2015.

<sup>764</sup> ISVAP Regulation n. 14 of 18 February 2008, in particular Title II, Chapter II. ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title V, Chapter II.

<sup>765</sup> Paragraph amended by article 11 (4), legislative decree n. 56 of 29 February 2008. ISVAP Regulation n. 33 of 10 March 2010.

<sup>766</sup> ISVAP Regulation n. 14 of 18 February 2008, in particular Title III, Chapter I.

favourable opinion of the supervisory authorities of the member States of the commitment and of the member States where the risk is situated must also be obtained<sup>767</sup>.

3. If the portfolio is transferred to an insurance undertaking with head office in another member State, including the case where the portfolio is transferred to a branch established in Italy of the same undertaking, it shall be for the supervisory authority of the member State of the accepting undertaking to certify to IVASS that the latter is authorised to carry on the activities subject to transfer and that, after taking the transfer into account, it possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis. If the portfolio is transferred to a branch situated in another member State IVASS shall check that the accepting undertaking abides by the provisions on the taking up of business by way of free provision of services for the business carried on in the territory of the Italian Republic further to the transfer<sup>768</sup>.

4. The absence of any response from the supervisory authorities referred to in paragraphs 2 and 3 within 90 days of receiving IVASS's request shall be considered equivalent to a favourable opinion.

5. Portfolios may also be transferred to insurance undertakings having their head office in a third State, provided that:

- a) the accepting undertaking be authorised to pursue the activities being transferred under the right of establishment in the territory of the Italian Republic;
- b) the transfer be limited to the contracts concluded by the ceding undertaking under the right of establishment in the territory of the Italian Republic;
- c) the portfolio be assigned to the branch of the accepting undertaking set up in the territory of the Italian Republic;
- d) the branch possesses the required Solvency Capital Requirement, taking account of the transfer<sup>769</sup>.

That part of the portfolio made of contracts concluded, under the right of establishment or the free provision of services, in the third State where the head office of the accepting undertaking is situated may also be transferred to insurance undertakings having their head office in third States. Portfolios may not be transferred to branches of insurance undertakings situated in third States.

6. If the portfolio is transferred to an insurance undertaking with head office in the territory of the Italian Republic or to an insurance undertaking with head office in another State, and assigned to a branch situated in the territory of the Italian Republic the provisions of article 2112 of the civil code shall also apply to the existing employment relationships.

#### Art. 199

(Transfer of the portfolio of insurance undertakings from other member States)

1. An insurance undertaking from another member State carrying on business in the territory of the Italian Republic shall inform IVASS, without delay, that it has submitted to its supervisory authority the application for authorisation to the transfer of the portfolio of contracts concluded in Italy either under the right of establishment or the free provision of services.

2. If the portfolio is transferred to an insurance undertaking with head office in the territory of the Italian Republic IVASS shall give its consent to the home supervisory authority of the ceding

<sup>767</sup> Paragraph amended by article 12 (1), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (125) of legislative decree n. 74 of 12 May 2015.

<sup>768</sup> Paragraph amended by article 12 (1), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (125) of legislative decree n. 74 of 12 May 2015.

<sup>769</sup> Letter amended by article 12 (1), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (125, b) of legislative decree n. 74 of 12 May 2015.

undertaking once it has verified that the accepting undertaking is authorised to carry on the activities subject to transfer and that, after taking the transfer into account, it possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis. The same procedure shall also apply if the portfolio transferred from an insurance undertaking of another member State to an insurance undertaking with head office in the territory of the Italian Republic includes commitments accepted outside the Italian territory<sup>770</sup>.

3. If the portfolio is transferred to a branch in Italy of an insurance undertaking with head office in the territory of another member State IVASS shall give its consent to the home supervisory authority of the ceding undertaking once it has verified that:

- a) the accepting undertaking meets the conditions for the pursuit of business by way of establishment in the territory of the Italian Republic;
- b) the supervisory authority of the home Member State of the ceding undertaking has verified that, after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis<sup>771</sup>.

4. If the portfolio is transferred to an insurance undertaking with head office in another member State or to a branch established in another member State IVASS shall give its consent to the supervisory authority of the home member State of the ceding undertaking once it has verified that:

- a) the accepting undertaking meets the conditions for the pursuit of business by way of free provision of services in the territory of the Italian Republic;
- b) the supervisory authority of the home Member State of the ceding undertaking has verified that, after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis<sup>772</sup>.

5. If the portfolio is transferred to a branch in the territory of the Italian Republic of an insurance undertaking with head office in a third State IVASS shall give its consent to the supervisory authority of the home member State of the ceding undertaking once it has verified that:

- a) the branch is authorised to carry on the activities subject to transfer;
- b) the authority of the home Member State of the ceding undertaking has verified that, after taking the transfer into account, the accepting undertaking possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis. Portfolios may not be transferred to branches, situated in third States, of accepting undertakings<sup>773</sup>.

6. IVASS shall publish in its Bulletin a notice on the opinions given and the measures taken by the supervisory authorities of the other member States pertaining to the authorised portfolio transfers.

## Art. 200

(Transfer of the portfolio of insurance undertakings from third States)

1. The transfer of all or part of the portfolio of the branch in the territory of the Italian Republic of an insurance undertaking from a third State shall be subject to IVASS' prior authorisation, to be

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<sup>770</sup> Paragraph amended by article 12 (2), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (126) of legislative decree n. 74 of 12 May 2015.

<sup>771</sup> Letter amended by article 12 (2), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (126) of legislative decree n. 74 of 12 May 2015.

<sup>772</sup> Letter amended by article 12 (2), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (126) of legislative decree n. 74 of 12 May 2015.

<sup>773</sup> Letter amended by article 12 (2), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (126) of legislative decree n. 74 of 12 May 2015.

sought by the ceding company, based on a procedure established by way of regulation<sup>774</sup>, by order to be published in IVASS' Bulletin.

2. Portfolios may be transferred:

- a) to an undertaking with head office in the territory of the Italian Republic or in another member State, provided the ceded portfolio is not transferred to a branch situated in a third State;
- b) to an undertaking with head office in a third State provided the ceded portfolio is transferred to a branch of the same undertaking situated in the territory of the Italian Republic.

3. In the case referred to in paragraph 2 (a) the accepting undertaking shall meet the conditions envisaged by article 198 (2 and 3 respectively) if the portfolio is transferred to an undertaking with head office in the territory of the Italian Republic or in the territory of other member States.

4. In the case referred to in paragraph 2 (b) IVASS shall verify that the branch of the accepting undertaking is authorised to carry on the activities subject to transfer and that, after taking the transfer into account, it possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis. If supervision over solvency with regard to business carried on by way of establishment in the territory of the Italian Republic is to the supervisory authority of another member State where the undertaking is also established such verification shall fall under the competence of that authority, which shall issue a document of it to IVASS<sup>775</sup>.

5. Article 198 (6) shall apply to the portfolio transfers referred to in this article, if the conditions therein envisaged are met.

#### Art. 201

(Merger and division of insurance undertakings)

1. IVASS shall, in accordance with the procedure established by way of regulation<sup>776</sup>, authorise the mergers and divisions in which at least one insurance undertaking with head office in the territory of the Italian Republic is involved, if they are not in contrast with the criteria of sound and prudent management. The proposed merger or division and the resolution by the shareholders' meeting which has made amendments thereto may not be registered in the registrar of companies if they are not authorised by IVASS.

2. In case of mergers by incorporation the merging insurance undertaking with head office in the territory of the Italian Republic shall show proof that it possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis. If further to the merger a new insurance undertaking with head office in the territory of the Italian Republic is set up such undertaking must be authorised to the pursuit of insurance business and it shall show proof that it possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis, taking account of the merger<sup>777</sup>.

3. The merger shall be authorised by IVASS' order to be published in its Bulletin. The orders granting or refusing the authorisation shall be accompanied by the precise and adequate grounds for doing so, and communicated to the undertakings concerned. If undertakings with head office in other member States are involved in the merger, the authorisation may only be given after their home supervisors have expressed their favourable opinion.

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<sup>774</sup> ISVAP Regulation n. 14 of 18 February 2008, in particular Title III, Chapter I.

<sup>775</sup> Paragraph amended by article 12 (3), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (127) of legislative decree n. 74 of 12 May 2015.

<sup>776</sup> ISVAP Regulation n. 14 of 18 February 2008, in particular Title III, Chapter II.

<sup>777</sup> Paragraph amended by article 12 (4), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (128) of legislative decree n. 74 of 12 May 2015.

4. In case of mergers resulting in the incorporation of an insurance undertaking with head office in the territory of the Italian Republic into an undertaking with head office in another member State, or in the setting up of a new company with head office in another member State, IVASS shall give its favourable opinion after it has verified that:

- a) the merging undertaking or the new insurance undertaking meets the conditions for the taking up of business either under the right of establishment or the freedom to provide services;
- b) the merging or the new insurance undertaking possess the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 45-bis, taking account of the merger<sup>778</sup>.

IVASS' order shall be published in the Bulletin.

5. Article 198 (6) shall apply to the portfolio transfers resulting from mergers or divisions, if the conditions therein envisaged are met.

6. In so far as the provisions referred to in paragraphs 2, 3 and 4 are applicable they shall also apply to divisions.

#### Art. 202

(Portfolio transfer, merger and division of reinsurance undertakings)

1. The transfer of portfolio of a reinsurance undertaking with head office in the territory of the Italian Republic and the same operation effected by a branch of an undertaking with head office in a third State, shall be subject to IVASS' prior authorisation to be published in its Bulletin and sought by the ceding company, based on a procedure established by way of regulation<sup>779</sup>. IVASS shall check that the accepting undertaking, if established in the territory of the Italian Republic, fulfils the conditions for taking up business and anyhow possesses the necessary eligible own funds to cover the Solvency Capital Requirement referred to in article 66-quater<sup>780</sup>.

2. Mergers and split up operations of reinsurance undertakings in which at least one reinsurance undertaking with head office in the territory of the Italian Republic is involved shall be authorised according to the provisions under article 201 (1, 2, 3 and 4) and the corresponding rules on reinsurance undertakings shall apply. Article 198 (6) shall apply if the conditions therein envisaged are met.

### Chapter IV

#### COOPERATION WITH THE SUPERVISORY AUTHORITIES OF THE OTHER MEMBER STATES AND INFORMATION TO THE EUROPEAN COMMISSION AND EIOPA<sup>781</sup>

##### Section I

#### COOPERATION WITH THE SUPERVISORY AUTHORITIES OF THE OTHER MEMBER STATES FOR THE SUPERVISION OF INSURANCE OR REINSURANCE UNDERTAKINGS AND OF INSURANCE, REINSURANCE OR ANCILLARY INSURANCE INTERMEDIARIES<sup>782</sup>

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<sup>778</sup> Letter amended by article 12 (4), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (128, b) of legislative decree n. 74 of 12 May 2015.

<sup>779</sup> ISVAP Regulation n. 14 of 18 February 2008, in particular article 3 (2). ISVAP Regulation n. 33 of 10 March 2010, in particular Part III, Title VI.

<sup>780</sup> Paragraph amended by article 12 (5), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (129) of legislative decree n. 74 of 12 May 2015.

<sup>781</sup> Heading amended by article 1 (130) of legislative decree n. 74 of 12 May 2015.

<sup>782</sup> Section amended by article 1 (36) of legislative decree n. 68 of 21 May 2018.

Art. 203  
(Authorisation to the pursuit of insurance business)

1. IVASS shall first consult the competent supervisory authorities of the other member States on the issuing of authorisation for the pursuit of business requested by any insurance or reinsurance undertaking which is either<sup>783</sup>:

a) controlled by an insurance or reinsurance undertaking authorised in another member State, or<sup>784</sup>;

b) controlled by an undertaking which controls another insurance or reinsurance undertaking authorised in another member State, or<sup>785</sup>;

c) controlled by the same person, whether natural or legal, who controls an insurance or reinsurance undertaking authorised in another member State<sup>786</sup>.

2. Moreover IVASS shall first consult the competent authorities of the other member States responsible for the supervision of credit institutions and investment firms on the issuing of authorisation to any insurance or reinsurance undertaking which is either<sup>787</sup>:

a) controlled by a bank or an investment firm authorised in the European Union, or

b) controlled by an undertaking which controls a bank or an investment firm authorised in the European Union, or

c) controlled by the same person, whether natural or legal, who controls a bank or investment firm authorised in the European Union.

3. IVASS, and the other competent authorities as per the relevant provisions of EU regulations on the supplementary supervision of undertakings belonging to a financial conglomerate, shall provide one another with any useful information for assessing the suitability of the shareholders and the reputation and experience of directors and senior managers involved in the management of another entity of the same group, also for the purposes of verifying the conditions for the taking-up and pursuit of business<sup>788</sup>.

Art. 203-bis  
(Cooperation for the exercise of supervision over special purpose vehicles)

1. IVASS shall cooperate and exchange information with the supervisory authorities of the other member States to verify the contracts concluded by insurance or reinsurance undertakings with head office in the territory of the Italian Republic with special purpose vehicles with head office in another member State or to verify the contracts concluded by insurance or reinsurance undertakings with head office in another member State with special purpose vehicles with head office in the territory of the Italian Republic<sup>789</sup>.

Art. 204  
(Authorisation regarding the acquisition of participations in insurance or reinsurance undertakings)<sup>790</sup>

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<sup>783</sup> As amended by article 13 (1, a), legislative decree n. 56 of 29 February 2008.

<sup>784</sup> Letter amended by article 13 (1, b), legislative decree n. 56 of 29 February 2008.

<sup>785</sup> Letter amended by article 13 (1, c), legislative decree n. 56 of 29 February 2008.

<sup>786</sup> Letter amended by article 13 (1, d), legislative decree n. 56 of 29 February 2008.

<sup>787</sup> As amended by article 13 (1, e), legislative decree n. 56 of 29 February 2008.

<sup>788</sup> Paragraph amended by article 1 (132) of legislative decree n. 74 of 12 May 2015.

<sup>789</sup> Article inserted by article 1 (133) of legislative decree n. 74 of 12 May 2015.

<sup>790</sup> Heading already amended by article 13 (2), legislative decree n. 56 of 29 February 2008, and amended by article 4 (1, aa) of legislative decree n. 21 of 27 January 2010.

1. In those cases in which the issuing of the authorisation referred to in article 68 is required IVASS shall perform its activity in full consultation with the competent authorities of the other member States, if the acquisition of holdings or subscription for shares is made by a purchaser who is:

- a) a bank, an insurance undertaking, a reinsurance undertaking, an investment firm or a management company as per article 2 (1, b) of directive 2009/65/EC authorised in another member State;
- b) a parent company, as defined in the relevant provisions of EU regulations on the supplementary supervision of undertakings belonging to a financial conglomerate, of the undertakings referred to in (a);
- c) a natural or legal person controlling one of the undertakings under (a)<sup>791</sup>.

1-bis. IVASS shall timely exchange with the competent authorities all the information essential, or relevant to the assessment. In this regard it shall communicate upon request all the relevant information and, on its own initiative, all the essential information<sup>792</sup>.

1-ter. In the authorisation IVASS shall mention any opinions or concerns expressed by the Authority competent for supervision over the potential purchaser<sup>793</sup>.

#### Art. 205

(Powers of investigation in collaboration with the authorities of other member States)

1. IVASS may, directly or through persons appointed for that purpose, make on-site inspections on the premises of the branches of insurance or reinsurance undertakings carrying on business by way of establishment in another member State, aimed at verifying any useful element for the purposes of supervision over the undertaking. Before making the inspection IVASS shall inform the home supervisory authority of the branch, which has the right to take part in such inspection, if it so requests<sup>794</sup>.

1-bis. Where IVASS has informed the supervisory authority of the host member State that it intends to carry out an on-site inspection at the premises of the branch referred to under paragraph 1, where IVASS is unable in practice to exercise its right to carry out that inspection, IVASS may refer the matter to EIOPA in accordance with article 19 of Regulation (EU) No 1094/2010<sup>795</sup>.

2. The supervisory authority of the home member State of an insurance or reinsurance undertaking carrying on business in the territory of the Italian Republic by way of establishment may, directly or through persons appointed for that purpose, make on-site inspections on the premises of the branch of such undertaking, aimed at verifying any useful element for the purposes of supervision over the undertaking. Before making the inspection the supervisory authority shall inform IVASS, which has the right to take part in such inspection, if it so requests<sup>796</sup>.

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<sup>791</sup> Paragraph amended by article 4 (1, bb), legislative decree n. 21 of 27 January 2010, as last replaced by article 1 (134, a) of legislative decree n. 74 of 12 May 2015.

<sup>792</sup> Paragraph inserted by article 4 (1, cc) of legislative decree n. 21 of 27 January 2010.

<sup>793</sup> Paragraph inserted by article 4 (1, cc), legislative decree n. 21 of 27 January 2010, as last renumbered as article 1 (134, b) of legislative decree n. 74 of 12 May 2015.

<sup>794</sup> Paragraph amended by article 13 (4, a), legislative decree n. 56 of 29 February 2008.

<sup>795</sup> Paragraph inserted by article 1 (135, a) of legislative decree n. 74 of 12 May 2015.

<sup>796</sup> Paragraph amended by article 13 (4, b), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (135, a) of legislative decree n. 74 of 12 May 2015.

2-bis. Where IVASS is actually prevented from exercising the right to participate referred to under paragraph 2 it may refer the matter to EIOPA in accordance with article 19 of Regulation EU No 1094/2010<sup>797</sup>.

#### Art. 205-bis

(Supervision of functions and activities outsourced by undertakings with head office in the territory of the Italian Republic)<sup>798</sup>

1. IVASS may carry out itself, or through the intermediary of persons it appoints for that purpose, inspections at the premises of the service provider, with head office in another Member State, aimed at verifying any useful element for the purposes of supervision over the outsourced functions and activities.
2. IVASS shall inform the appropriate authority of the Member State of the service provider prior to conducting the inspection. Where no competent authority can be identified, information shall be provided to the insurance supervisory authority of that Member State.
3. IVASS may delegate the inspection referred to in paragraph 1 to the supervisory authorities of the Member State where the service provider is located.
4. Where IVASS has informed the competent authority of the Member State where the service provider is located that it intends to carry out an on-site inspection at the premises of the service provider, in accordance with paragraph 1 or with article 30-septies (5, c), where IVASS is unable in practice to exercise its right to carry out that inspection, IVASS may refer the matter to EIOPA in accordance with article 19 of Regulation (EU) No 1094/2010.
5. The supervisory authority of the home Member State of an insurance or reinsurance undertaking, whose service provider has its head office in the territory of the Italian Republic, may carry out itself, or through the intermediary of persons it appoints for that purpose, inspections at the premises of the service provider, aimed at verifying any useful element for the purposes of supervision over the outsourced functions and activities. The supervisory authority shall inform IVASS prior to conducting the inspection. IVASS shall be entitled to participate in such inspection, if it so requests.
6. The supervisory authority may delegate the inspection referred to in paragraph 5 to IVASS.

#### Article 205-ter

(Cooperation for the supervision of insurance or reinsurance undertakings and of insurance, reinsurance or ancillary insurance intermediaries)<sup>799</sup>

1. IVASS shall cooperate with the subjects referred to in article 10 in accordance with the terms and conditions envisaged in this provision, in order to facilitate the exercise of their respective functions, also with regard to insurance and reinsurance distribution activities.
2. For the purposes of inclusion in the register referred to in article 109 and in the single European register kept by EIOPA, IVASS and the other competent authorities shall exchange information, on a regular basis, on the fulfilment of the requirements laid down in articles 109, 109-bis, 110, 111 and 112 by insurance and reinsurance distributors.
3. IVASS and the other competent authorities shall also exchange information on insurance and reinsurance distributors who have been subject to a sanction envisaged in Title XVIII or other

<sup>797</sup> Paragraph inserted by article 1 (135, c) of legislative decree n. 74 of 12 May 2015.

<sup>798</sup> Article inserted by article 1 (136) of legislative decree n. 74 of 12 May 2015.

<sup>799</sup> Article inserted by article 1 (37) of legislative decree n. 68 of 21 May 2018.



measure referred to in Titles IX, XIII, XIV, and such information is likely to lead to removal from the register referred to in article 109, pursuant to article 113, or from the European register.

Art. 206  
(*repealed*)<sup>800</sup>

**Section II**  
**COOPERATION FOR THE EXERCISE OF GROUP SUPERVISION**<sup>801</sup>

Art. 206-bis  
(College of supervisors)<sup>802</sup>

1. In order to facilitate the exercise of the group supervision tasks, the supervisory authorities of the undertakings of the group shall establish the College of supervisors, chaired by the group supervisor.

2. The College of supervisors shall ensure that cooperation, exchange of information and consultation processes among the supervisory authorities of the College, are effectively applied in accordance with this Title, with a view to promoting the convergence of their respective decisions and activities.

3. Where the group supervisor fails to carry out the tasks and does not exercise the powers conferred on it by the provisions in this code and by the relevant provisions for its implementation,

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<sup>800</sup> Article repealed by article 1 (137) of legislative decree n. 74 of 12 May 2015. Article 206 laid down:  
“Art. 206  
(Assistance for the exercise of supplementary supervision)

1. ISVAP may ask the competent authorities of another member State to make inspections or agree upon other arrangements necessary for the exercise of supplementary supervision if it intends to acquire information on an insurance or reinsurance undertaking with head office in another member State which is a subsidiary or a related undertaking of the insurance or reinsurance undertaking subject to supplementary supervision, or information regarding an undertaking which is:

- a) a subsidiary of the insurance or reinsurance undertaking subject to supplementary supervision with head office in the territory of the Italian Republic;
- b) a parent undertaking of the insurance or reinsurance undertaking subject to supplementary supervision with head office in the territory of the Italian Republic;
- c) a subsidiary of the parent undertaking of the insurance or reinsurance undertaking subject to supplementary supervision with head office in the territory of the Italian Republic or an undertaking which is anyhow managed on a unified basis with the latter in compliance with article 96.

2. The competent supervisory authority of another member State may ask ISVAP to make on-site inspections at undertakings with head office in the territory of the Italian Republic whose supplementary supervision is up to the authority which made the request. ISVAP may directly make the inspection or allow that the inspection be made by the authorities which requested it or by an auditing firm registered in the register established by the consolidated law on financial mediation or by a certified auditor. The authority which made the request may participate in the verification when it does not carry out the verification itself. The verification may concern the following undertakings:

- a) subsidiaries or related insurance or reinsurance undertakings of an insurance undertaking with head office in another member State;
- b) subsidiaries or parent undertakings of an insurance or reinsurance undertaking with head office in another member State;
- c) subsidiaries of a parent undertaking of the insurance or reinsurance undertaking with head office in another member State.

3. On-site inspections at undertakings other than insurance and reinsurance undertakings shall be limited to checking the exactness of data and information required for the exercise of supplementary supervision.

4. ISVAP may agree with the competent authorities of third States terms and procedures for the on-site inspection of branches of insurance and reinsurance undertakings situated within their territories”.

<sup>801</sup> Section inserted by article 1 (138) of legislative decree n. 74 of 12 May 2015.

<sup>802</sup> Article inserted by article 1 (139) of legislative decree no. 74 of 12 May 2015.

or where the members of the College of supervisors do not cooperate to the extent required in paragraphs 1 and 2, any supervisory authority concerned may refer the matter to EIOPA in accordance with Article 19 of Regulation (EU) n. 1094/2010.

4. The membership of the College of supervisors shall include the group supervisor, the supervisory authorities of all the Member States in which the head offices of the subsidiary undertakings are situated, and EIOPA in accordance with Article 21 of Regulation (EU) No 1094/2010. For the sole purpose of facilitating the exchange of information, the supervisory authorities of significant branches and related undertakings shall also participate in the College of supervisors.

5. Some activities may be carried out by a reduced number of supervisory authorities when this is necessary to guarantee the effective functioning of the College.

Article 206-ter  
(Coordination arrangements)<sup>803</sup>

1. The establishment and functioning of the College of supervisors shall be governed by coordination arrangements concluded by the group supervisor and the other supervisory authorities concerned. Where diverging views concerning the coordination arrangements arise, any supervisor in the College may refer the matter to EIOPA in accordance with article 19 of Regulation (EU) No 1094/2010.

2. The group supervisor shall take its final decision in conformity with EIOPA's decision and shall transmit the decision to the other supervisory authorities concerned.

3. The coordination arrangements referred to in paragraphs 1 and 2 shall specify the procedures for:

- a) the decision-making processes for group supervision, with special regard to the group internal model, the group capital add-on and the identification of the group supervisor;
- b) consultation among the supervisory authorities concerned, as envisaged by the provisions of the European Union.

4. Without prejudice to the rights and duties allocated to the group supervisor and to other supervisory authorities of the undertakings of the group, the coordination arrangements may entrust additional tasks to these supervisory authorities or to EIOPA, where this would result in the more efficient supervision of the group and would not impair the activities of the supervisory authorities which are members of the college of supervisors in respect of their individual responsibilities.

5. The coordination arrangements may also set out procedures for:

- a) consultation among the supervisory authorities of the undertakings of the group, as envisaged by the provisions of the European Union, with special regard to the provisions relating to the scope of group supervision and to those relating to corporate governance, the provisions relating to the group solvency calculation, the provisions relating to supervision of intra-group transactions and risk concentration referred to in Title XV;
- b) cooperation with other supervisory authorities.

Art. 207  
(*repealed*)<sup>804</sup>

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<sup>803</sup> Article inserted by article 1 (139) of legislative decree no. 74 of 12 May 2015.

<sup>804</sup> Article repealed by article 1 (140) of legislative decree n. 74 of 12 May 2015. Article 207 laid down:  
"Art. 207

Art. 207-bis  
(Cooperation and exchange of information between supervisory authorities)<sup>805</sup>

1. The supervisory authorities of the undertakings of the group shall cooperate closely, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.
2. The supervisory authorities of the undertakings of the group shall provide one another with the information necessary to allow and facilitate the exercise of the supervisory tasks within the scope of their competences, with the objective of ensuring that they have the same amount of relevant information available to them.
3. For the purposes of paragraph 2 the supervisory authorities of the undertakings of the group shall communicate to one another without delay all relevant information as soon as it becomes available, or exchange information on request. The information referred to in this paragraph includes also information about actions of the group and supervisory authorities, and information provided by the group.
4. Where a supervisory authority has not communicated relevant information or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within two weeks, the supervisory authorities may refer the matter to EIOPA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) n. 1094/2010.
5. If the parent company at the head of the group has not, within a reasonable period of time, provided the group supervisor and the other supervisory authorities of the undertakings of the group with information on an Italian undertaking belonging to the group, IVASS shall cooperate with the requesting authority for the acquisition of that information from the Italian undertaking.
6. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall without delay call for a meeting of all supervisory authorities involved in group supervision in at least the following circumstances, where:
  - a) they become aware of a significant breach of the Solvency Capital Requirement or of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking;
  - b) they become aware of a significant breach of the group Solvency Capital Requirement calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used in accordance with Title XV, Chapter I-ter;
  - c) other exceptional circumstances are occurring or have occurred.

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*(Exchanges of information for the exercise of supplementary supervision)*

1. If a subsidiary or related undertaking of an insurance or reinsurance undertaking referred to in article 210 (1) has its head office in another member State ISVAP may ask the home supervisory authority for the information necessary in relation to the transfer of the solvency margin constituents.

2. ISVAP shall provide the supervisory authorities of the other member States with the information they need in order to verify that the solvency margin constituents of insurance or reinsurance undertakings subject to ISVAP supervision which are subsidiaries or related undertakings of insurance undertakings subject to supplementary supervision by these authorities may actually become available as elements eligible for the adjusted solvency margin of the latter undertakings<sup>805</sup>.

<sup>805</sup> Article inserted by article 1 (141) of legislative decree n. 74 of 12 May 2015.

Article 207-ter  
(Consultation between supervisory authorities)<sup>806</sup>

1. Without prejudice to articles 206-bis, 206-ter, 207-septies and 212-bis, the supervisory authorities concerned shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other in the college of supervisors with regard to the following:

- a) changes in the shareholder structure, organisational or decision-making structure of insurance and reinsurance undertakings in a group, which require the authorisation of supervisory authorities;
- b) the decision on the extension of the recovery period under article 222 (2-bis, 2-ter and 2-quater);
- c) major sanctions or exceptional measures taken by the supervisory authorities concerned, including the imposition of a capital add-on to the Solvency Capital Requirement under article 47-sexies and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under articles 46-bis to 46-quinquiesdecies. In the cases set out in points (b) and (c), the group supervisor shall always be consulted.

2. In any case, the supervisory authorities concerned shall, where a decision is based on information received from other supervisory authorities, consult each other prior to that decision.

3. Without prejudice to articles 206-bis, 206-ter, 207-septies and 212-bis, a supervisory authority of the undertakings of the group may decide not to consult other supervisory authorities in cases of urgency or where such consultation could jeopardise the effectiveness of the decision and, in that case, it shall, without delay, inform the other supervisory authorities concerned.

Article 207-quater  
(Cooperation with authorities responsible for credit institutions and investment firms)<sup>807</sup>

1. Where an insurance or reinsurance undertaking and either a credit institution or an investment firm, or both, are directly or indirectly related or have a common participating undertaking, the supervisory authorities of the undertakings of the group and the authorities responsible for the supervision of those other undertakings shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task.

Article 207-quinquies  
(Professional secrecy and confidentiality)<sup>808</sup>

1. IVASS may exchange information with the other supervisory authorities concerned and with the other supervisory authorities, as referred to in this Chapter.

2. Information received in the framework of group supervision, and in particular any exchange of information between IVASS and the other supervisory authorities concerned or other authorities, shall be subject to professional secrecy under articles 10 and 10-bis.

Article 207-sexies  
(Group Supervisor)<sup>809</sup>

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<sup>806</sup> Article inserted by article 1 (141) of legislative decree n. 74 of 12 May 2015.

<sup>807</sup> Article inserted by article 1 (141) of legislative decree n. 74 of 12 May 2015.

<sup>808</sup> Article inserted by article 1 (141) of legislative decree n. 74 of 12 May 2015.

<sup>809</sup> Article inserted by article 1 (141) of legislative decree n. 74 of 12 May 2015.

1. IVASS, where it is competent for the exercise of supervision of all insurance or reinsurance undertakings in the group, shall be designated as group supervisor. In this case IVASS is responsible for coordination and exercise of group supervision.

2. Without prejudice to paragraphs 1 and 3, IVASS shall exercise the task of group supervisor in accordance with the following criteria:

a) where the group is headed by an insurance or reinsurance undertaking and IVASS has authorised that undertaking;

b) where the group is not headed by an insurance or reinsurance undertaking, and IVASS has been identified as group supervisor in accordance with the following criteria:

1) where IVASS has authorised an insurance or reinsurance undertaking the parent company of which is an insurance holding company or mixed financial holding company;

2) where IVASS has authorised an insurance or reinsurance undertaking which has its head office in the territory of the Italian Republic, where more than one insurance or reinsurance undertaking in the group with their head offices in different Member States have as their parent the same insurance holding company or mixed financial holding company and this insurance holding company or mixed financial holding company has its head office in the territory of the Italian Republic;

3) where IVASS has authorised the insurance or reinsurance undertaking with the largest balance sheet total, where the group is headed by more than one insurance holding company or mixed financial holding company which have their head offices in different Member States and there is an insurance or reinsurance undertaking in each of those Member States;

4) where IVASS has authorised the insurance or reinsurance undertaking with the largest balance sheet total, where more than one insurance or reinsurance undertaking in the group with their head office in different Member States have as their parent the same insurance holding company or mixed financial holding company and none of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office;

5) where IVASS has authorised the insurance or reinsurance undertaking with the largest balance sheet total, where the group is a group without a parent undertaking, or in any circumstances not referred to in points 1) to 4).

3. Where the criteria referred to in paragraphs 1 and 2 do not apply, the role of group supervisor shall be assumed by the supervisory authority which is competent according to the criteria envisaged in article 247 of directive 2009/138/EC.

4. In particular cases, IVASS and the other supervisory authorities of the undertakings of the group may, at the request of any of the authorities, take a joint decision to derogate from the criteria set out in paragraphs 2 and 3 where the application of these criteria would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings' activities in different Member States, and designate a different supervisory authority as group supervisor. For that purpose, IVASS or any of the supervisory authorities of the undertakings of the group may request that a discussion be opened on whether the criteria referred to in paragraphs 2 and 3 may be applied. Such a discussion shall not take place more often than annually.

5. IVASS and the other supervisory authorities of the undertakings of the group, after consulting the group, shall adopt the joint decision referred to in paragraph 3 within three months from the request for discussion. IVASS shall submit the joint decision to the group stating the full reasons.

6. Within the three-month period referred to in paragraph 4, any of the supervisory authorities of the undertakings of the group may refer the matter to EIOPA in accordance with article 19 of Regulation (EU) n. 1094/2010. In this case, IVASS and the supervisory authorities concerned shall defer their joint decision and await any decision that EIOPA may take, within one month of

the referral, in accordance with article 19 (3) of that Regulation, and shall take their joint decision in conformity with EIOPA's decision. That joint decision shall be recognised as determinative and shall be applied by IVASS and the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of article 19 (2) of that Regulation.

7. The referral to EIOPA set out in paragraph 6 may not be made after the end of the three-month period or after a joint decision has been reached. The designated group supervisor shall submit the joint decision to the group and to the college of supervisors stating the full reasons.

8. In the absence of a joint decision derogating from the criteria set out in paragraph 2, IVASS shall exercise the task of group supervisor where it is the supervisory authority identified in accordance with the same paragraph 2.

Article 207-septies  
(Functions of IVASS as group supervisor )<sup>810</sup>

1. IVASS, as group supervisor, shall:

- a) transmit to EIOPA the information on the functioning of the colleges of supervisors and on any difficulties encountered that might be relevant for the review that EIOPA carries out, at least every three years, on the operational functioning of colleges in order to assess the level of convergence between them;
- b) provide the supervisory authorities of the undertakings of the group and EIOPA with information regarding the group, with special regard to the close links and the group solvency and financial condition report, as well as the information acquired in accordance with article 214-bis, in particular regarding the legal structure and the governance and organisational structure of the group;
- c) coordinate the gathering and dissemination of relevant or essential information. also in emergency situations, and disseminate information which is of importance for the supervisory task of the supervisory authorities of the undertakings of the group;
- d) plan and coordinate, in cooperation with the supervisory authorities of the undertakings of the group, supervisory activities over the group, also in emergency situations, through regular meetings held at least annually or through other appropriate means, taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;
- e) perform other tasks, adopt measures and decisions assigned by the laws, regulations and EU rules which are directly applicable, in particular leading the process for validation of any internal model at group level and leading the process for permitting the application of supervision of group solvency for groups with centralised risk management.

2. IVASS may invite the supervisory authorities of the Member State in which a parent undertaking has its head office to request from the parent undertaking any information which would be relevant for the exercise of its coordination functions as laid down in paragraph 1.

3. When it needs information referred to in article 213 (2, 3 and 4) which has already been given to another supervisory authority, IVASS shall contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Art. 207-octies  
(Cooperation for the approval of an internal group model)<sup>811</sup>

1. Where an insurance or reinsurance undertaking, in its capacity as ultimate Italian parent undertaking pursuant to article 210 (2), and its related undertakings or subsidiaries, or jointly the

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<sup>810</sup> Article inserted by article 1 (141) of legislative decree n. 74 of 12 May 2015.

<sup>811</sup> Article inserted by article 1 (141) of legislative decree n. 74 of 12 May 2015.

related undertakings or subsidiaries of an insurance holding company, in its capacity as ultimate Italian parent undertaking pursuant to article 210 (2), has submitted an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, IVASS, in its capacity as group supervisor, and the supervisory authorities concerned shall cooperate to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.

2. The application for approval of the use of the internal model as referred to in paragraph 1 shall be submitted to IVASS which shall inform the other members within the college of supervisors, including EIOPA, and forward them the complete application without delay, together with the documentation submitted. IVASS may request EIOPA to provide technical assistance with respect to the decision on the application, in accordance with the provisions of Article 8, paragraph 1, letter b), of Regulation (EU) n. 1094/2010.<sup>812</sup>

3. IVASS and the other supervisory authorities concerned shall endeavour to reach a joint decision on the application within six months from the date of receipt of the complete application by IVASS.

4. If, within the six-month period referred to in paragraph 3, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with article 19 of Regulation (EU) No 1094/2010, IVASS shall defer its decision and await any decision that EIOPA may take in accordance with article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision.

5. The decision referred to in paragraph 4, taken by EIOPA within one month, shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The matter shall not be referred to EIOPA after the end of the six-month period or after a joint decision has been reached. IVASS shall take the final decision where EIOPA does not take a decision in accordance with Article 19 (3) of Regulation (EU) No 1094/2010.<sup>813</sup> That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The six-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

6. Where the supervisory authorities concerned have reached the joint decision referred to in paragraph 3, IVASS shall provide the applicant with a document setting out the full reasons.

7. In the absence of a joint decision by the supervisory authorities concerned within the six-month period envisaged in paragraph 3, IVASS shall make its own decision on the application, taking into due account any views and reservations of the other supervisory authorities concerned expressed during that six-month period. IVASS shall provide a document setting out its fully reasoned decision to the applicant and the other supervisory authorities concerned which shall recognise that decision as determinative and shall apply it.

8. Where any of the supervisory authorities concerned considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the supervisory authority, that authority may, in the cases set out in article 47-sexies, propose to:

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<sup>812</sup> Paragraph amended by article 28 (1, h), 1) of law no. 238 of 23 December 2021. The previous version laid down: "2. The application for approval of the use of the internal model as referred to in paragraph 1 shall be submitted to IVASS which shall inform the other members within the college of supervisors and forward them the complete application without delay."

<sup>813</sup> Sentence replaced by article 28 (1, h), 2) of law no. 238 of 23 December 2021. The previous version laid down: "IVASS shall take a final decision if, in accordance with article 41(2) and (3) and Article 44(1) and (3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected."

- a) impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model;
- b) in exceptional circumstances where the capital add-on under point a) would not be appropriate, require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Title III, Chapter IV-bis, Sections I and II.

9. In accordance with article 47-sexies (1)(a) and (c), the supervisory authority may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula. The supervisory authority shall explain any decision taken in accordance with this paragraph and with paragraph 10 to both the insurance or reinsurance undertaking and the other members of the college of supervisors.

10. IVASS, when it is not the group supervisor pursuant to paragraph 1, shall cooperate with the group supervisor of another member State in order to approve the group internal model. In any case IVASS may use the power to impose a capital add-on when the conditions under paragraphs 8 and 9 are met.

### **Section III** **INFORMATION TO THE EUROPEAN COMMISSION AND EIOPA<sup>814</sup>**

#### Art. 208

(Information to the European Commission and EIOPA and the supervisory authorities of the other Member States as regards undertakings from Member States and third States)<sup>815</sup>

1. IVASS shall inform the European Commission, EIOPA and the supervisory authorities of the other member States:

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<sup>814</sup> Section inserted by article 1 (142) of legislative decree n. 74 of 12 May 2015.

<sup>815</sup> Article replaced by article 1 (143) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

“Art. 208

*(Relationships with the European Commission as regards undertakings from third States)*

1. *ISVAP shall inform the European Commission:*

*a) of any authorisation to the pursuit of insurance or reinsurance business granted to a newly set-up insurance or reinsurance undertaking directly or indirectly controlled by insurance or reinsurance undertakings with head office in a third State;*

*b) of any authorisation to the acquisition, by insurance or reinsurance undertakings with head office in a third State, of controlling interests in insurance or reinsurance undertakings with head office in the territory of the Italian Republic.*

*If the authorisation has been granted to an insurance or reinsurance undertaking which is in the situation referred to in (a) the structure of the control relationships shall be specifically indicated in the communication sent to the European Commission by ISVAP.*

2. *ISVAP shall inform the European Commission of any difficulties for undertakings with head office in the territory of the Italian Republic in taking up and carrying on business by way of establishment in a third State.*

3. *Upon a decision by the European Commission ISVAP shall suspend the procedures for issuing authorisations to undertakings which are in the conditions referred to in paragraph 1, for a period of no more than three months. The authorisations shall be denied if by this deadline the decision of the Commission has been extended by the Council of the European Union.*

4. *The provision under paragraph 3 shall not apply in case insurance or reinsurance undertakings from third States or their subsidiaries authorised by a State of the European Union set up an insurance or reinsurance undertaking and in case they acquire participations in insurance or reinsurance undertakings authorised according to the law of a member State.”.*



- a) of any authorisation to the pursuit of insurance or reinsurance business granted to a newly set-up insurance or reinsurance undertaking directly or indirectly controlled by insurance or reinsurance undertakings with head office in a third State;
- b) of any authorisation to the acquisition, by insurance or reinsurance undertakings with head office in a third State, of controlling interests in insurance or reinsurance undertakings with head office in the territory of the Italian Republic.

1-bis. If the authorisation has been granted to an insurance or reinsurance undertaking which is in the situation referred to in (a) the structure of the control relationships shall be specifically indicated in the communication sent by IVASS to the European Commission, EIOPA and the supervisory authorities of the other member States.

2. IVASS shall inform the European Commission and EIOPA of any general difficulties encountered by undertakings and intermediaries, including ancillary insurance intermediaries<sup>816</sup>, with head office in the territory of the Italian Republic in taking up and carrying on business by way of establishment in a third State.

#### Art. 208-bis

(Information regarding insurance undertakings not complying with the legal provisions)<sup>817</sup>

1. IVASS shall inform the Commission and EIOPA of the number and types of cases which led to refusals under articles 17 (2) and 19 (2) and in which measures have been taken under article 193 (4).

#### Article 208-ter

(Cooperation for the application of the provisions on Community co-insurance)<sup>818</sup>

1. IVASS shall cooperate with the supervisory authorities of the other member States and with the European Commission for the purpose of examining any difficulties which may arise in relation to Community co-insurance contracts and verifying that the EU rules have been properly applied.

#### Article 208-quater

(Collaboration platforms set up by EIOPA)<sup>819</sup>

1. At the request of EIOPA, IVASS shall provide all necessary information in a timely manner to allow for the proper functioning of the collaboration platforms set up by EIOPA.

2. IVASS may ask for the creation and subsequent establishment of collaboration platforms with the supervisory authorities of the other Member States or join existing platforms.

#### Art. 209

(Information to the European Commission about compulsory insurances)

1. IVASS shall inform the European Commission of the insurances which the Italian law has established to be compulsory and shall indicate the laws and implementing provisions in force for each of them while specifying the information to be included in the document that the insurance undertaking shall deliver to the policyholder as a certification that that requirement has been complied with.

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<sup>816</sup> Paragraph amended by article 1 (38) of legislative decree n. 68 of 21 May 2018.

<sup>817</sup> Article inserted by article 1 (144) of legislative decree n. 74 of 12 May 2015.

<sup>818</sup> Article inserted by article 1 (144) of legislative decree n. 74 of 12 May 2015.

<sup>819</sup> Article inserted by article 28 (1, i) of law n. 238 of 23 December 2021.

**TITLE XV**  
**GROUP SUPERVISION<sup>820</sup>**

**CHAPTER I**  
**GROUP SUPERVISION<sup>821</sup>**

Art. 210  
(Group supervision)<sup>822</sup>

1. Supervision at the level of the group shall apply, in accordance with the provisions in this Title and those established by IVASS regulation, to<sup>823</sup>:

- a) insurance or reinsurance undertakings with head office in the territory of the Italian Republic which are the parent or participating undertakings of at least one insurance or reinsurance undertaking, or an insurance or reinsurance undertaking with head office in a third State;
- b) insurance or reinsurance undertakings with head office in the territory of the Italian Republic which are subsidiaries of an insurance holding company, or a mixed financial holding company with head office in the territory of the Italian Republic or in another Member State;
- c) insurance or reinsurance undertakings with head office in the territory of the Italian Republic which are subsidiaries of an insurance holding company, a mixed financial holding undertaking or an insurance or reinsurance undertaking with head office in a third State.
- d) insurance or reinsurance undertakings with head office in the territory of the Italian Republic which are subsidiaries of a mixed-activity insurance holding company;
- e) insurance or reinsurance undertakings with head office in the territory of the Italian Republic which are the parent undertakings of an instrumental company;
- f) insurance or reinsurance undertakings with head office in the territory of the Italian Republic managed on a unified basis in compliance with article 96;

2. Without prejudice to Chapters IV-bis and IV-ter, IVASS shall exercise group supervision at the level of the ultimate Italian parent undertaking, or the insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding undertaking with head office in the territory of the Italian Republic which, within the group, is not, in its turn, controlled by an insurance or reinsurance undertaking, an insurance holding company or by a mixed financial holding undertaking with head office in the territory of the Italian Republic<sup>824</sup>.

3. Without prejudice to the provisions of article 220-octies (4), when there is no ultimate Italian parent undertaking pursuant to paragraph 2, IVASS shall determine the application rules for group

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<sup>820</sup> Heading amended by article 1 (145) of legislative decree n. 74 of 12 May 2015.

<sup>821</sup> Heading amended by article 1 (146) of legislative decree n. 74 of 12 May 2015.

<sup>822</sup> Article replaced by article 14 (1), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (147) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

*"Art. 210*

*(Scope)*

*1. The provisions referred to in article 217 shall apply to the supplementary supervision of insurance or reinsurance undertakings with head office in the territory of the Italian Republic which are the parent or participating undertakings of at least one insurance or reinsurance undertaking, an insurance or reinsurance undertaking with head office in a third State.*

*2. The provisions referred to in article 218 shall apply to the supplementary supervision of insurance or reinsurance undertakings with head office in the territory of the Italian Republic which are subsidiaries of an insurance holding company, a mixed financial holding undertaking or an insurance or reinsurance undertaking with head office in a third State.*

*3. The provisions referred to in article 218 shall apply to the supplementary supervision of branches set up in the territory of the Italian Republic by insurance or reinsurance undertakings with head office in a third State, unless – for insurance undertakings – they are already subject to the overall solvency supervision exercised by the supervisory authority of another member State."*

<sup>823</sup> IVASS Regulation n. 22 of 01 June 2016.

<sup>824</sup> Paragraph amended by article 3 (11), legislative decree n. 53 of 04 March 2014.

supervision, including the identification of the company responsible for compliance with this code instead of the ultimate Italian parent undertaking.

4. Without prejudice to the provisions of this Title, the rules for the supervision of insurance or reinsurance undertakings of this code shall continue to apply to such undertakings.

5. For the purposes of this Title, branches set up in the territory of the Italian Republic by insurance or reinsurance undertakings with head office in a third State shall be treated as if they were Italian insurance or reinsurance undertakings.

Article 210-bis  
(Other applicable provisions)<sup>825</sup>

1. IVASS may identify, by general or ad hoc measures, the cases in which one or more provisions adopted under this Title, in particular those relating to risk concentration and intra-group transactions, do not apply if the ultimate parent undertaking referred to in article 210 (2) is an insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding undertaking subject to supervision at the level of the financial conglomerate in accordance with legislative decree n. 142 of 30 May 2005.

2. IVASS may identify, by general or ad hoc measures, the cases in which one or more provisions adopted under this Title do not apply to the mixed financial holding undertaking which is subject to equivalent supervisory provisions, in particular in terms of risk-based supervision.

3. IVASS, in its capacity as group supervisor, shall inform EBA and EIOPA of the decisions taken under paragraphs 1 and 2.

4. Without prejudice to paragraph 1, the provisions referred to in articles 210-ter (7), 212-bis (1, c), shall apply to the mixed financial holding company if the largest area within the financial conglomerate is the insurance area, determined according to legislative decree n. 142 of 30 May 2005. The measures referred to under articles 79 (3-bis) and 81 (2 and 3), the approval referred to under article 196, the authorization referred to under article 68 and disqualification referred to under article 76 shall be adopted by IVASS upon agreement with the Bank of Italy.

5. The measures envisaged by Title XVI, Chapter I, II, IV and VII, as well as the measures referred to under article 220-novies, in relation to the mixed financial holding company shall be adopted or proposed by IVASS upon agreement with the Bank of Italy.

Article 210-ter  
(Register of ultimate parent undertakings)<sup>826</sup>

1. The ultimate Italian parent undertaking referred to under article 210 (2) is registered in a special register of ultimate parent undertakings kept by IVASS.

2. The parent undertaking shall inform IVASS of the list of insurance or reinsurance undertakings and instrumental undertakings, intermediate insurance holding subsidiaries or mixed financial holding subsidiaries.

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<sup>825</sup> Article inserted by article 3 (12), legislative decree n. 53 of 4 March 2014, as last amended by article 1 (148) of legislative decree n. 74 of 12 May 2015.

<sup>826</sup> Article inserted by article 1 (149) of legislative decree n. 74 of 12 May 2015.

3. The parent undertaking shall inform IVASS of the list of the related insurance or reinsurance undertakings and instrumental undertakings, of related or subsidiary credit institutions, investment firms and other financial institutions and of the other related undertakings or subsidiaries.
4. The undertakings referred to under paragraph 2 shall be registered by IVASS in the register of ultimate parent undertakings.
5. L'IVASS may, on its own initiative, verify the existence of the control relationship envisaged in paragraph 2 and enter the undertaking in the register of ultimate parent undertakings.
6. The structure of the group shall be such as to ensure the sound and prudent management of the group and not hinder the exercise of supervisory powers. Without prejudice to article 79, where as the result of an acquisition the structure of the group no longer meets the requirements under this paragraph, IVASS may exercise the powers envisaged in articles 79 (3-bis) and 81.
7. IVASS shall verify that the memorandum and articles of association of the ultimate parent undertaking are not incompatible with the sound and prudent management of the group.
8. The provisions of Title VII, Chapter I and III shall apply to the ultimate Italian parent undertaking referred to under article 210 (2).
9. The undertakings referred to in paragraphs 1 and 2 shall indicate their registration in the register in their acts and correspondence.
10. IVASS shall, by its own regulation<sup>827</sup>, establish the requirements for keeping and updating the register.

Article 210-quater  
(Exclusion from the scope of group supervision)<sup>828</sup>

1. Without prejudice to article 216-sexies (1, f), IVASS may exclude from the scope of group supervision referred to in article 210 undertakings having their head office in a third State where there are legal impediments to the transfer of the necessary information.
2. IVASS may exclude a group undertaking from the scope of group supervision when such undertaking is of negligible interest with respect to the objectives of group supervision or if the inclusion of this undertaking would be inappropriate or misleading with respect to those objectives.
3. The undertakings of the same group which, taken individually, may be excluded pursuant to paragraph 2, since they are of negligible interest with respect to the objectives of group supervision, must nevertheless be included where, collectively, they are of non-negligible interest.
4. For the purposes of excluding an insurance or reinsurance undertaking as per paragraph 2 IVASS shall consult the other supervisory authorities concerned before taking a decision.
5. In the event that an insurance or reinsurance undertaking has been excluded from the scope of group supervision as per paragraph 2 the supervisory authority of the member State in which that undertaking is situated may require the ultimate parent undertaking referred to under article 210 (2) to provide information which can facilitate the supervision of the undertaking concerned.

Art. 211  
(*repealed*)<sup>829</sup>

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<sup>827</sup> IVASS Regulation n. 22 of 1 June 2009.

<sup>828</sup> Article inserted by article 1 (149) of legislative decree n. 74 of 12 May 2015.

<sup>829</sup> Article repealed by article 1 (150) of legislative decree n. 74 of 12 May 2015. Article 211 laid down:

Art. 212  
(repealed)<sup>830</sup>

**Chapter II**  
**IVASS' POWERS<sup>831</sup>**

Art. 212-bis  
(IVASS's powers)<sup>832</sup>

1. With regard to group supervision, IVASS shall exercise the following tasks:

- a) carry out, in accordance with the terms and procedures of article 47-quinquies, the prudential review and assessment process as set out in article 216-decies and assess the financial situation of the group;
- b) assess compliance of the group with the rules on solvency and of risk concentration and intra-group transactions;

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“Art. 211  
(Area of supplementary supervision)

1. The following undertakings shall be included in the area of supplementary supervision over insurance or reinsurance undertakings:

- a) subsidiaries or related undertakings of the insurance or reinsurance undertaking referred to in article 210;
- b) parent or participating undertakings of the insurance or reinsurance undertaking referred to in article 210;
- c) subsidiaries or related undertakings of a parent or participating undertaking of the insurance or reinsurance undertaking referred to in article 210 or the undertakings which are anyhow managed on a unified basis with the latter in compliance with article 96.

2. For the purposes of this title a parent undertaking shall be the undertaking exercising control in compliance with article 72 (1 and 2 a and b), and a participating undertaking shall be the company which directly or indirectly holds, in the capital of another company, rights which realise a durable link with the related undertaking or which allow the exercise of a significant influence pursuant to special contractual links. Moreover a participating undertaking shall be an undertaking linked to another undertaking when they are managed on a unified basis or when the administration, management and control bodies are mainly made up of the same persons. At any rate the holding of at least twenty per cent of an undertaking's capital or voting rights shall be considered as a participation. In order to identify the control and participation relationships regarding the undertakings referred to in article 210 (3) reference shall be made to the balance sheet of the branch drawn up in accordance with the provisions of title VIII.

3. ISVAP may, in exceptional cases, decide not to include in the area of supplementary supervision the undertakings referred to in paragraph 1 having their head office in a third State where there are legal impediments to the transfer of the necessary information, with the effects envisaged by the order referred to in article 219.

4. ISVAP may, based on a prudent estimate, decide not to include in the area of supplementary supervision an undertaking referred to in paragraph 1 if such undertaking is of negligible interest with respect to the objectives of supplementary supervision, or if the inclusion of the financial situation of this undertaking would be inappropriate or misleading with respect to the objectives of supplementary supervision.”.

<sup>830</sup> Article repealed by article 1 (150) of legislative decree n. 74 of 12 May 2015. Article 212 laid down:

“Art. 212  
(Internal control mechanisms)

1. The undertakings referred to in article 210 shall have adequate internal control mechanisms in place for the production of any data and information relevant for the purposes of supplementary supervision over the insurance or reinsurance undertaking.

2. The undertakings referred to in article 211 (1) shall be required to provide the ultimate parent undertaking with the information required by it for the purposes of supplementary supervision of the insurance or reinsurance undertaking or of the insurance group”.

<sup>831</sup> Chapter replaced by article 1 (151) of legislative decree n. 74 of 12 May 2015.

<sup>832</sup> Article inserted by article 1 (151) of legislative decree n. 74 of 12 May 2015.

c) assess the system of governance of the group and compliance with the requirements envisaged under article 76 by the persons charged with administration, management and control functions in the parent companies referred to in article 210 (2), and by persons charged with key functions.

Art. 213  
(Off-site supervision)<sup>833</sup>

1. The natural and legal persons included within the scope of group supervision, and their related undertakings or subsidiaries and participating undertakings or subsidiaries shall exchange any information which could be relevant for the purposes of group supervision.

2. The ultimate Italian parent undertaking referred to in article 210 (2) shall transmit IVASS, according to the terms and procedures established by IVASS's own regulation<sup>834</sup>, the data and information required for the exercise of group supervision.

3. IVASS shall have access to any information relevant for the purposes of group supervision regardless of the nature of the undertaking concerned. The provisions under articles 189 (1) and 190 (1) shall apply.

4. IVASS may address the undertakings in the group directly, also with the collaboration of the supervisory authority of the State in which the undertaking concerned has its head office, to obtain the necessary information, only where such information has been requested from the ultimate parent undertaking referred to in article 210 (2) and has not been supplied by it within a reasonable period of time.

Art. 214  
(On-site inspections)<sup>835</sup>

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<sup>833</sup> Article amended by article 15 (2, a and b), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (151) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

*"Art. 213  
(Off-site supervision)*

*1. The undertakings referred to in article 210 shall transmit ISVAP, according to the terms and procedures established by ISVAP's own regulation, the data and information required for the exercise of supplementary supervision of the insurance or reinsurance undertaking or of the insurance group.*

*2. If the insurance or reinsurance undertakings referred to in article 210 do not furnish ISVAP with the data and information required, ISVAP may directly refer to the undertakings included in the area of supplementary supervision in order to acquire such data and information according to the terms and procedures established in paragraph 1, without prejudice to the cooperation between authorities envisaged by article 10".*

<sup>834</sup> ISVAP Regulation n. 25 of 27 May 2008, in particular Chapter IV, Section II; IVASS Regulation n. 30 of 26 October 2016.

<sup>835</sup> Article amended by article 15 (3), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (151) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

*"Art. 214  
(On-site inspections)*

*1. For the purposes of verifying the data and information on the supplementary supervision of the insurance or reinsurance undertaking referred to in article 210 ISVAP may carry out, itself or through the intermediary of persons whom it appoints for that purpose, on-site inspections at the following undertakings with head office in the territory of the Italian Republic:*

- a) subsidiaries of the Italian insurance or reinsurance undertaking;*
- b) parent undertakings of the Italian insurance or reinsurance undertaking;*
- c) subsidiaries of a parent undertaking of the Italian insurance or reinsurance undertaking or the undertakings which are anyhow managed on a unified basis with the latter in compliance with article 96.*

*2. For the purposes of verifying the data and information on the supplementary supervision of the insurance or reinsurance undertaking referred to in article 210 article 206 shall apply to the undertakings referred to in paragraph 1 (a, b and c) or of the insurance or reinsurance subsidiaries or related undertakings of the insurance undertaking referred to in article 210, having their head office in another member State.*

1. For the purposes of verifying information and data relating to group supervision referred to in this Title IVASS may carry out, itself or through the intermediary of persons whom it appoints for that purpose, on-site inspections at the undertakings of the group.

2. On-site inspections at companies other than insurance and reinsurance undertakings shall be limited to checking the exactness of data and information required for the exercise of group supervision.

3. Where IVASS wishes in specific cases to verify the information concerning an undertaking which is part of a group and is situated in another Member State, it shall ask the supervisory authorities of that other Member State to have the verification carried out. The authorities which receive such a request shall, within the framework of their competences, act upon that request either by carrying out the verification directly or by allowing IVASS to carry it out itself. IVASS, when it does not carry out the verification directly, may request the supervisory authority of the other Member State to participate in the inspection. IVASS shall be informed of the action taken.

4. Where, in the cases set out in paragraph 3, IVASS has requested another supervisory authority to carry out a verification and this request has not been acted upon within two weeks, or it is unable in practice to exercise its right to participate in the inspection, IVASS may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010.

5. The powers attributed to IVASS by article 71 shall also be exercised over the subsidiary undertakings referred to in article 210-ter (2) and the holders of participations in those undertakings.

Art. 214-bis  
(Power of direction)<sup>836</sup>

1. In order to ensure the sound and prudent management of the group and not hinder the exercise of supervisory powers, IVASS may, by regulation or specific measures, give the ultimate parent undertaking referred to in article 210 (2), instructions concerning the undertakings referred to in article 210-ter (2), taken either individually or collectively, regarding compliance with the provisions on the system of governance, capital adequacy, limitation of risk in its various formats, permitted holdings, public disclosure on matters referred to in this paragraph.

2. The parent company shall adopt measures implementing the instructions given by IVASS and ensure that they are complied with by the undertakings referred to in paragraph 1, and shall regularly inform IVASS thereof.

3. Directors and managers of undertakings referred to in paragraph 1 are required to provide the parent company with the necessary collaboration to ensure compliance with insurance supervisory provisions.

Article 214-ter  
(Assessment of equivalence of third countries)<sup>837</sup>

1. The assessment of equivalence referred to in articles 216-sexies (1, e), and 220-septies (1) shall be carried out by IVASS in compliance with, and within the limits of, EU provisions.

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*3. On-site inspections at undertakings other than insurance and reinsurance undertakings shall be limited to checking the exactness of the data and information required for the exercise of supplementary supervision of the insurance or reinsurance undertaking referred to in article 210."*

<sup>836</sup> Article inserted by article 1 (151) of legislative decree n. 74 of 12 May 2015.

<sup>837</sup> Article inserted by article 1 (151) of legislative decree n. 74 of 12 May 2015.

Art. 215  
(repealed)<sup>838</sup>

**Chapter III**  
**TOOLS FOR GROUP SUPERVISION**<sup>839</sup>

Art. 215-bis  
(Group's corporate governance system)<sup>840</sup>

1. The group shall have in place a system of corporate governance consistent with provisions of Title III, Chapter I, Section II, and with the relevant implementing provisions established by IVASS regulation<sup>841</sup>.
2. The ultimate Italian parent undertaking referred to under article 210 (2) shall be responsible for the implementation of the provisions on the system of governance of the group. The responsibility of the board of directors of each insurance or reinsurance undertaking in the group for its compliance with the provisions of Title III, Chapter I, Section II shall not be affected.
3. The group internal control mechanisms shall include at least the following:
  - a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;
  - b) sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration;
  - c) the setting up of a function for the production of any data and information relevant for the purposes of group supervision.

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<sup>838</sup> Article repealed by article 1 (152) of legislative decree n. 74 of 12 May 2015. Article 215 laid down:  
"Art. 215  
(Significant intra-group transactions)

1. Insurance and reinsurance undertakings with head office in the territory of the Italian Republic, branches set up in the territory of the Italian Republic by insurance or reinsurance undertakings with head office in a third State shall be subject to ISVAP's supervision over intra-group transactions effected between such entities and the undertakings referred to in article 211 (1), or which exist with a natural person who holds a controlling interest or a participation in the insurance or reinsurance undertaking or in an undertaking included in the area of supplementary supervision.

2. In particular intra-group transactions subject to supervision shall concern:

- a) loans;
- b) guarantees, commitments and the other off balance-sheet items;
- c) elements eligible for the solvency margin;
- d) investments;
- e) reinsurance and retrocession operations;
- f) agreements to share costs.

3. Insurance and reinsurance undertakings shall have in place adequate risk management processes and internal control mechanisms, including suitable reporting and accounting procedures, in order to identify, measure, monitor and control operations as provided for in paragraphs 1 and 2. ISVAP shall verify the suitability of procedures and establish, by way of regulation, the relevant general provisions.

4. ISVAP shall exercise supervision over the operations referred to in paragraphs 1 and 2 in order to check that such operations do not have a negative impact on an insurance or reinsurance undertaking's solvency or can undermine the interests of policyholders and of those entitled to insurance benefits or to the interests of ceding insurance undertakings".

<sup>839</sup> Heading replaced by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>840</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>841</sup> IVASS Regulation n. 32 of 09 November 2016.



4. The provisions under paragraph 3 shall be applied consistently to all the undertakings of the group.

Article 215-ter  
(Own risk and solvency assessment at group level)<sup>842</sup>

1. The ultimate Italian parent undertaking referred to in article 210 (2) shall undertake at the level of the group the assessment required by article 30-ter.

2. Where the calculation of the solvency at the level of the group is carried out in accordance with the method based on consolidated accounts, as referred to in articles 216-ter (2) and 216-quinquies, the ultimate Italian parent undertaking shall provide to IVASS a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the insurance or reinsurance related undertakings or subsidiaries of the group and the group consolidated Solvency Capital Requirement.

3. The ultimate Italian parent undertaking may, subject to the agreement of IVASS, undertake any assessments required pursuant to article 30-ter at the level of the group and at the level of any insurance or reinsurance subsidiary in the group at the same time, and may produce a single document covering all the assessments.

4. For the purposes of exercising the option under paragraph 3, IVASS shall consult and duly take into account any views and reservations of the members of the college of supervisors.

5. Where the assessment is made under paragraph 3, the ultimate Italian parent undertaking shall submit the document to all supervisory authorities concerned at the same time.

Article 215-quater  
(Supervision of risk concentration)<sup>843</sup>

1. Risk concentrations at group level shall be subject to supervision by IVASS in order to verify that these concentrations do not have a negative impact on the group's solvency or can undermine the interests of policyholders and of those entitled to insurance benefits or the interests of the undertakings concerned.

2. Having regard to significant risk concentration in relation to solvency capital requirements, technical provisions, or both, IVASS shall, by its own regulation<sup>844</sup>, identify the risk concentrations to be reported on a regular basis and at least annually, and set the terms and procedures relating to these communications. IVASS shall review the risk concentrations, with particular regard to the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

3. IVASS, after consulting the other supervisory authorities concerned and the group, shall identify the type of risk concentration that the ultimate Italian parent undertaking referred to under article 210 (2) in a particular group shall report in all circumstances. When defining the type of risk concentration and the threshold for significant risk concentration, IVASS and the other supervisory authorities concerned shall take into account the undertakings belonging to the group and its risk-management structure.

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<sup>842</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>843</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>844</sup> IVASS Regulation n. 30 of 26 October 2016.

4. The ultimate Italian parent undertaking referred to under article 210 (2) shall have in place, within the system of governance of the group, adequate reporting and accounting procedures, in accordance with article 215-bis (3, b), in order to identify, measure, monitor and control risk concentration, and ensure that relevant information is immediately reported to the undertaking referred to under this paragraph. IVASS shall verify the suitability of procedures and establish the relevant general provisions.

5. The ultimate Italian parent undertaking referred to in article 210 (2) shall report to IVASS any significant risk concentration at the level of the group. Where the ultimate parent undertaking is not an insurance or reinsurance undertaking, IVASS shall identify, after consulting the other supervisory authorities concerned and the group, the insurance holding company, the mixed financial holding undertaking or the insurance or reinsurance undertaking within the group charged with submitting the information referred to under this paragraph.

Article 215-quinquies  
(Intra-group transactions)<sup>845</sup>

1. Italian insurance and reinsurance undertakings shall be subject to supervision by IVASS over intra-group transactions, including those performed with mixed activity insurance holding companies.

2. Insurance and reinsurance undertakings shall have in place, within the system of governance, adequate reporting and accounting procedures in order to identify, measure, monitor and control the transactions referred to under paragraph 1, in accordance with the instructions given by the ultimate Italian parent undertaking pursuant to article 210 (2). IVASS shall verify the suitability of procedures and establish the relevant general provisions.

3. IVASS shall exercise supervision over the transactions referred to in paragraph 1 in order to check that such transactions do not have a negative impact on group solvency and on the solvency of insurance or reinsurance undertakings within the group, or can undermine the interests of policyholders and of those entitled to insurance benefits or to the interests of the insurance or reinsurance undertakings concerned.

Art. 216  
(Reporting on intra-group transactions)<sup>846</sup>

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<sup>845</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>846</sup> Article replaced by article 1 (153) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

“Art. 216

*(Information about significant operations)*

1. *With regard to the type and economic significance of operations ISVAP shall by its own regulation and in compliance with article 215 (4), establish the operations which shall be subject to subsequent reporting at regular intervals, at least every year, and those which shall be subject to prior notification, and also set the terms and procedures relating to these communications.*

2. *If an operation subject to prior notification may have the negative impact referred to in article 215 (4) or may undermine the interests of policyholders and of those entitled to insurance benefits or the interests of ceding insurance undertakings ISVAP shall, by reasoned order, prevent the undertaking from effecting the operation within twenty days of receiving the notification.*

3. *If the documents furnished in relation to the prior notification are incomplete or insufficient ISVAP shall request the necessary integrative elements. In that case the deadline shall be interrupted and the period shall begin again from the date on which the further documentation is received. Instead the deadline shall be suspended if ISVAP makes comments or asks for further information in relation to the operation, and it shall continue from the date on which the documentation furnished is submitted.*

4. *Should ISVAP find that the operations subject to subsequent reporting at regular intervals, or those for which there has been no prior notification have or may have negative consequences for the insurance or reinsurance undertaking's solvency, or may undermine the interests of policyholders and of those entitled to insurance benefits, it shall require the*

1. Insurance or reinsurance undertakings shall report to IVASS, on a regular basis and at least annually, any significant intra-group transaction performed under article 215-quinquies (1).
2. Insurance or reinsurance undertakings shall report to IVASS very significant intra-group transactions as soon as practicable<sup>847</sup>.
3. Having regard to the type and significance of transactions, IVASS shall, by its own regulation<sup>848</sup>, identify the transactions to be reported, and set the terms and procedures relating to these communications.
4. The communications referred to in paragraphs 1, 2 and 3 may be made in a centralised manner by the ultimate insurance or reinsurance parent undertaking referred to in article 210 (2). Where the parent undertaking is not an insurance or reinsurance undertaking, IVASS shall identify, after consulting the other supervisory authorities concerned and the group, the insurance holding company, the mixed financial holding undertaking or the insurance or reinsurance undertaking within the group which can submit the information in a centralised manner<sup>849</sup>.
5. IVASS, after consulting the other supervisory authorities concerned and the group, shall also identify the type of intra-group transactions insurance and reinsurance undertakings in a particular group must report in all circumstances. When defining the type of significant operations, IVASS and the other supervisory authorities concerned shall take into account the undertakings belonging to the group and its risk-management structure.

Art. 216-bis  
(IVASS's powers on intra-group transactions)<sup>850</sup>

1. If an intra-group transaction has or may have the negative impact referred to in article 215-quinquies (3) or undermines or may undermine the interests of policyholders and of those entitled to insurance benefits or the interests of ceding insurance and reinsurance undertakings, IVASS may, in accordance with the provisions established by regulation<sup>851</sup>:

- a) prevent the undertaking from effecting the transaction or impose conditions for effecting it;
- b) require the undertaking to take the measures necessary to eliminate such negative or detrimental consequences and, to that end, set an appropriate deadline.

Article 216-ter  
(Supervision of group solvency)<sup>852</sup>

1. The calculation of the solvency at the level of the group shall be carried out in accordance with the provisions established by IVASS regulation<sup>853</sup>.
2. The calculation of the solvency at the level of the group shall be carried out by the ultimate Italian parent undertaking referred to under article 210 (2) on the basis of the consolidated

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*insurance or reinsurance undertaking to take the measures necessary to eliminate such negative or detrimental consequences and, to that end, set an appropriate deadline.*

<sup>847</sup> Paragraph amended by article 16 (2, a), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>848</sup> IVASS Regulation n. 30 of 26 October 2016.

<sup>849</sup> Paragraph replaced by article 16 (2, b), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>850</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>851</sup> IVASS Regulation n. 30 of 26 October 2016.

<sup>852</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>853</sup> IVASS Regulations n. 11, 12, 13, 14, 15, 16, 17 of 22 December 2015, IVASS Regulations n. 25, 26, 27 and 28 of 26 July 2016, IVASS Regulation n. 31 of 9 November 2016 and IVASS Regulation n. 35 of 7 February 2017.

accounts. The group solvency of the parent insurance or reinsurance undertaking is the difference between the following:

- a) the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;
- b) the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

3. The rules laid down in Title III, Chapter IV, Sections I and II and in Title III, Chapter IV-bis, Sections I, II and III, as well as the implementing provisions established by IVASS regulation pursuant to paragraph 1 shall apply to the calculation of the Solvency Capital Requirement at group level and of the own funds eligible for the Solvency Capital Requirement calculated on the basis of the consolidated accounts, as set out in points a) and b) of paragraph 2.

4. Where the ultimate Italian parent undertaking referred to under article 210 (2) is an insurance holding company or a mixed financial holding undertaking, the calculation of the solvency of the group is carried out at the level of this company. For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking as regards the Solvency Capital Requirement and the own funds eligible for the Solvency Capital Requirement.

5. IVASS, after consulting the other supervisory authorities concerned and the group, may authorize the application to a particular group of the deduction and aggregation method as per article 216-sexies (1, b), or of the combination of this method and the consolidated accounts method, where the exclusive application of the consolidated accounts method is not considered appropriate.

#### Article 216-quater (Frequency of calculation)<sup>854</sup>

1. The ultimate Italian parent undertaking referred to in article 210 (2) shall calculate and report to IVASS the group Solvency Capital Requirement at least once a year. Where the parent undertaking is not an insurance or reinsurance undertaking, IVASS shall identify, after consulting the other supervisory authorities concerned and the group, the insurance holding company, the mixed financial holding undertaking or the insurance or reinsurance undertaking within the group charged with submitting the information referred to under this paragraph.

2. The ultimate Italian parent undertaking shall monitor the group Solvency Capital Requirement on a continuous basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to IVASS. Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, IVASS may require a recalculation of the group Solvency Capital Requirement.

#### Article 216-quinquies (Consolidated Group Solvency Capital Requirement)<sup>855</sup>

1. The ultimate Italian parent undertaking referred to in article 210 (2) shall ensure that eligible own funds are available in the group which are always at least equal to the Solvency Capital Requirement.

2. The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:

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<sup>854</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>855</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

- a) the Minimum Capital Requirement as referred to in article 47-ter of the parent insurance or reinsurance undertaking;
- b) the proportional share of the Minimum Capital Requirement of the related or subsidiary insurance and reinsurance undertakings.

3. The minimum amount referred to in paragraph 2 shall be covered by eligible basic own funds as determined in article 44-decies (4). For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in article 216-sexies (1, a), c), d) e) and f)) shall apply. Article 222-bis (1 and 2) shall apply. In this case the communications shall be made by the ultimate parent undertaking referred to in paragraph 2.

Article 216-sexies  
(Group solvency calculation)<sup>856</sup>

1. IVASS shall, by its own regulation<sup>857</sup>, fix the criteria and methods for calculating group solvency and in particular:

- a) the provisions relating to the methods used for the group solvency calculation, in particular the method based on consolidated accounts, the frequency of calculation, the inclusion of proportional share, the elimination of double use of eligible own funds, the elimination of the intra-group creation of capital, the valuation criteria for assets and liabilities, the terms and procedures regarding reporting at regular intervals;
- b) the pre-requisites and authorisation procedure for the use of the deduction and aggregation method;
- c) the treatment of the related or subsidiary insurance or reinsurance undertakings having their head office in another Member State, in particular by envisaging that IVASS may take account, in respect of the related or subsidiary undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other Member State;
- d) the treatment of credit institutions, investment firms and other related or subsidiary financial institutions;
- e) the treatment of intermediate insurance holding undertakings and mixed financial holding undertakings and of insurance or reinsurance subsidiaries or related undertakings with head office in a third State for the purposes of including them in the calculation of the group solvency; in particular where the insurance or reinsurance subsidiary or related undertaking with head office in a third State is subject to an at least equivalent authorisation and solvency regime, IVASS may provide that the calculation, made in accordance with the deduction and aggregation method, takes into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country;
- f) the procedures for supervision of group solvency should the information not be available on a subsidiary or related undertaking with head office in a Member State or third State.

Article 216-septies  
(Capital add-on to the consolidated group Solvency Capital Requirement)<sup>858</sup>

1. In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, IVASS shall pay particular attention to any case where the circumstances referred to in article 47-sexies (1, a) b) and c) may arise at group level, in particular where:

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<sup>856</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>857</sup> IVASS Regulation n. 17 of 19 January 2016.

<sup>858</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

- a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;
- b) a capital add-on to the Solvency Capital Requirement of the subsidiary or related insurance or reinsurance undertakings is imposed by IVASS or by the supervisory authorities concerned, in accordance with articles 47-sexies and 207-octies(7).

2. Where the risk profile of the group is not adequately reflected by the consolidated group Solvency Capital Requirement, IVASS, also based on the results of the supervisory review process of the tools for group supervision, may impose a capital add-on to the consolidated group Solvency Capital Requirement. Article 47-sexies shall apply.

#### Art. 216-octies

(Information to IVASS for the purposes of verifying compliance with the requirements on group supervision)<sup>859</sup>

1. In order to enable IVASS to perform the supervisory review process at group level, the ultimate Italian parent undertaking referred to under article 210 (2) shall, on a regular basis, submit to IVASS the necessary information, taking into account the objectives of supervision laid down in this Title, established by regulation<sup>860</sup>. Article 190 (1-bis and 1-ter) shall apply.

2. IVASS may limit regular supervisory reporting with a frequency shorter than one year at the level of the group where all the insurance or reinsurance undertakings within that group benefit from the limitation in accordance with article 47-quater (3), taking account of the nature, scope and complexity of the risks inherent in the business of the group. IVASS may exempt undertakings from reporting on an item-by-item basis at the level of the group, where all the insurance or reinsurance undertakings within that group benefit from the exemption in accordance with article 47-quater (7), taking account of the nature, scope and complexity of the risks inherent in the business of the group and the objective of financial stability.

#### Article 216-novies

(Reporting on the group solvency, financial condition and structure of the group)<sup>861</sup>

1. The ultimate Italian parent undertaking referred to in article 210 (2) shall disclose publicly, on an annual basis, a report on the solvency and financial condition at the level of the group, in accordance with the principles laid down in articles 47-septies, 47-octies, 47-novies and 47-decies.

2. The parent undertaking may, subject to the agreement of IVASS, provide a single solvency and financial condition report which shall comprise the following:

- a) the information at the level of the group which must be disclosed in accordance with paragraph 1;
- b) the information for any of the subsidiaries within the group which must be individually identifiable and disclosed in accordance with articles 47-septies, 47-octies, 47-novies and 47-decies.

3. For the purposes of exercising the option under paragraph 2, IVASS shall consult and duly take into account any views and reservations of the members of the college of supervisors.

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<sup>859</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>860</sup> IVASS Regulation n. 33 of 06 December 2016.

<sup>861</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

4. Where the report referred to in paragraph 2 fails to include information which the supervisory authority having authorised a subsidiary within the group requires comparable undertakings to provide, and where the omission is material, IVASS may require the subsidiary concerned to disclose the necessary additional information.

5. The ultimate Italian parent undertaking referred to in article 210 (2) shall disclose publicly, at the level of the group, on an annual basis, the legal structure and the governance and organisational structure, including a description of all subsidiaries, related undertakings and significant branches belonging to the group.

Article 216-decies  
(Supervisory review process of the tools for group supervision)<sup>862</sup>

1. Compliance with the requirements on the system of governance, own-risk and solvency assessment conducted at group level, risk concentration and intra-group transactions, group solvency calculation referred to in this Chapter, shall be subject to the supervisory review process by IVASS.

**Chapter IV**  
**CENTRALISED RISK MANAGEMENT<sup>863</sup>**

Art. 217  
(*repealed*)<sup>864</sup>

Art. 217-bis  
(Centralised risk management: supervision of group solvency)<sup>865</sup>

1. The rules laid down in articles 217-quater and 217-quinquies shall apply to the insurance or reinsurance undertaking which is the subsidiary of an insurance or reinsurance undertaking where all of the following conditions are satisfied:

- a) the subsidiary insurance or reinsurance undertaking is included in the group supervision carried out by the supervisory authority of the Member State in which the ultimate insurance or reinsurance parent undertaking has its head office;
- b) the risk-management processes and internal control mechanisms of the ultimate insurance or reinsurance parent undertaking cover the insurance or reinsurance subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;

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<sup>862</sup> Article inserted by article 1 (153) of legislative decree n. 74 of 12 May 2015.

<sup>863</sup> Heading replaced by article 1 (155) of legislative decree n. 74 of 12 May 2015. The previous version laid down "Verification of the adjusted solvency"

<sup>864</sup> Article repealed by article 1 (154) of legislative decree n. 74 of 12 May 2015. Article 217 laid down:

"Art. 217

(Adjusted solvency of insurance undertakings)

1. The insurance or reinsurance undertakings referred to in article 210 (1) shall calculate their adjusted solvency in compliance with the provisions established by ISVAP's regulation.

2. For the purposes of calculating the adjusted solvency, and without prejudice to the elimination of the intra-group creation of capital, account shall not be taken of the subsidiaries referred to in article 2359, paragraph 1 (3) of the civil code.

3. The insurance or reinsurance undertakings referred to in article 210 (1) shall send ISVAP, along with their financial statement, a statement relating to the adjusted solvency situation on the date of the close of the financial year to which the financial statement refers in compliance with the model referred to in article 219 (1 b).

<sup>865</sup> Article inserted by article 1 (155) of legislative decree n. 74 of 12 May 2015.

- c) the ultimate insurance or reinsurance parent undertaking, according to the provisions of article 215-ter (3 and 4), has received the agreement on the centralised own-risk and group solvency assessment;
- d) the ultimate insurance or reinsurance parent undertaking, according to the provisions of article 216-novies (2 and 3), has received the agreement on the centralised solvency and financial condition at the level of the group;
- e) the ultimate insurance or reinsurance parent undertaking has been authorised by the supervisory authority, in accordance with the procedure under article 217-ter, to be subject to supervision of group solvency for groups with centralised risk management.

Article 217-ter  
(Centralised risk management: application for permission)<sup>866</sup>

1. The application for permission to be subject to supervision of group solvency for groups with centralised risk management shall be submitted to the supervisory authority having authorised the insurance or reinsurance subsidiary. That supervisory authority shall inform the other members of the college of supervisors and forward the complete application to them, without delay.

2. The supervisory authorities concerned shall work together within the college, in full cooperation, to decide whether or not to grant the permission and to determine the other terms and conditions, if any, to which it should be subject. They shall do everything within their power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college of supervisors.

3. If, within the three-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with article 19 of Regulation (EU) No 1094/2010, the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with article 19(3) of Regulation (EU) No 1094/2010, and shall take its decision in conformity with EIOPA's decision.

4. The decision referred to in paragraph 3, taken by EIOPA within one month, shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached. The group supervisor shall take the final decision where EIOPA does not take the decision referred to in paragraph 3 of this article, in accordance with Article 19 (3) of Regulation (EU) No 1094/2010.<sup>867</sup> That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of article 19(2) of that Regulation.

5. Where the supervisory authorities concerned have reached the joint decision referred to in paragraph 2, the supervisory authority having authorised the subsidiary shall provide the decision to the applicant undertaking. The joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

6. In the absence of a joint decision of the supervisory authorities concerned within the three-month period set out in paragraph 2, the group supervisor shall take its own decision with regard to the application, taking into due account:

- a) any views and reservations of the other supervisory authorities concerned;
- b) any reservations of the other supervisory authorities within the college.

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<sup>866</sup> Article inserted by article 1 (155) of legislative decree n. 74 of 12 May 2015.

<sup>867</sup> Sentence replaced by article 28 (1, l) of law no. 238 of 23 December 2021. The previous version laid down: "*The group supervisor shall take a final decision if, in accordance with article 41(2) and (3) and Article 44(1) and (3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected.*"



7. The decision referred to in paragraph 6 shall contain an explanation of any significant deviation from the reservations expressed by the other supervisory authorities concerned. The decision shall be submitted to the applicant undertaking and the other supervisory authorities concerned which shall recognise that decision as determinative and shall apply it.

#### Article 217-quater

(Centralised risk management: determination of the Solvency Capital Requirement)<sup>868</sup>

1. Without prejudice to article 207-octies, the Solvency Capital Requirement of the insurance or reinsurance subsidiary referred to in article 217-bis shall be calculated as set out in paragraphs 2, 4, 5 and 6 of this article.

Where the Solvency Capital Requirement of the insurance or reinsurance subsidiary is calculated on the basis of an internal model approved at group level in accordance with article 207-octies and the supervisory authority having authorised the insurance or reinsurance subsidiary considers that its risk profile deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in article 47-sexies, propose to:

a) impose a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model, or

b) in exceptional circumstances where the capital add-on under point a) would not be appropriate, require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula.

3. The supervisory authority shall discuss the proposals referred to in paragraph 2 within the college of supervisors and communicate the grounds for such proposals to both the insurance or reinsurance subsidiary and the college of supervisors.

4. Where the Solvency Capital Requirement of the insurance or reinsurance subsidiary is calculated on the basis of the standard formula and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may propose that the undertaking:

a) in exceptional circumstances, replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in article 45-terdecies, or

b) in the cases referred to in article 47-sexies, set a capital add-on to the Solvency Capital Requirement of that subsidiary.

5. The supervisory authority shall discuss the proposal referred to in paragraph 4 within the college of supervisors and communicate the grounds for such proposal to both the subsidiary and the college of supervisors.

6. The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority having authorised the insurance or reinsurance subsidiary or on other possible measures. That agreement shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

7. In case of disagreement, either supervisor may, within one month from the proposal of the supervisory authority, refer the matter to EIOPA in accordance with article 19 of Regulation (EU) No 1094/2010, which shall take its decision within one month of such referral. The matter shall

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<sup>868</sup> Article inserted by article 1 (155) of legislative decree n. 74 of 12 May 2015.

not be referred to EIOPA after the end of the one-month period or after an agreement has been reached within the college in accordance with paragraph 3.

8. The supervisory authority having authorised the insurance or reinsurance subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with article 19 of that Regulation and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The decision shall state the full reasons and be submitted to the subsidiary and to the college of supervisors.

Article 217-quinquies  
(Centralised risk management: non-compliance with the Solvency and Minimum Capital Requirements)<sup>869</sup>

1. In the event of non-compliance with the Solvency Capital Requirement and without prejudice to article 222, the supervisory authority having authorised the insurance or reinsurance subsidiary shall, without delay, forward to the college of supervisors the recovery plan submitted by the subsidiary in order to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

2. The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority regarding the approval of the recovery plan within four months from the date on which non-compliance with the Solvency Capital Requirement was first observed. In the absence of such agreement, the supervisory authority having authorised the subsidiary shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

3. Where the supervisory authority having authorised the subsidiary identifies, in accordance with article 220-bis, deteriorating financial conditions, it shall notify the college of supervisors without delay of the proposed measures to be taken. Save in emergency situations, these measures shall be discussed within the college of supervisors. The college of supervisors shall do everything within its power to reach an agreement on the proposed measures to be taken within one month of notification. In the absence of such agreement, the supervisory authority having authorised the subsidiary shall decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

4. In the event of non-compliance with the Minimum Capital Requirement and without prejudice to article 222-bis, the supervisory authority having authorised the insurance or reinsurance subsidiary shall, without delay, forward to the college of supervisors the short-term finance scheme submitted by the subsidiary in order to achieve, within three months from the date on which non-compliance with the Minimum Capital Requirement was first observed, the reestablishment of the level of eligible own funds covering the Minimum Capital Requirement or the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement. The college of supervisors shall also be informed of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

5. The supervisory authority of the subsidiary and the group supervisor may refer the matter to EIOPA and request its assistance in accordance with article 19 of Regulation (EU) No 1094/2010 if they disagree on:

a) the approval of the recovery plan, also with regard to the possible extension of the recovery period, within the four-month period referred to in paragraph 2; or

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<sup>869</sup> Article inserted by article 1 (155) of legislative decree n. 74 of 12 May 2015.

b) the approval of the proposed measures within the one-month period referred to in paragraph 3.

6. In the cases referred to in paragraph 5, EIOPA shall take its decision within one month of the referral.

7. The matter shall not be referred to EIOPA:

a) after the end of the four-month period or of the one-month period as set out in paragraphs 2 and 3;

b) after an agreement has been reached within the college in accordance with paragraphs 2 and 3;

c) in the emergency situations referred to in paragraph 3.

8. The four-month period and the one-month period set out in paragraphs 2 and 3 shall be deemed the conciliation period within the meaning of article 19 (2) of Regulation (EU) No 1094/2010. The supervisory authority having authorised the insurance or reinsurance subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with article 19(3) of that Regulation and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The decision shall state the full reasons and be submitted to the subsidiary and to the college of supervisors.

#### Article 217-sexies

(Centralised risk management: end of derogations for a subsidiary)<sup>870</sup>

1. The rules provided for in articles 217-quater and 217-quinquies shall cease to apply where:

a) the condition referred to in article 217-bis (1, a) is no longer complied with;

b) the condition referred to in article 217-bis (1, b) is no longer complied with and the ultimate insurance or reinsurance parent undertaking does not restore compliance with this condition in an appropriate period of time;

c) the conditions referred to in article 217-bis (1, c and d) are no longer complied with.

2. In the case referred to in point (a) of paragraph 1, where the group supervisor decides, after consulting the college of supervisors, no longer to include the insurance or reinsurance subsidiary in the group supervision, it shall immediately inform the supervisory authority concerned and the ultimate parent undertaking.

3. For the purposes of article 217-bis (1, b, c and d), the ultimate insurance or reinsurance parent undertaking shall be responsible for ensuring that the conditions are complied with on an ongoing basis. In the event of non-compliance, the parent undertaking shall inform the group supervisor and the supervisor of the insurance or reinsurance subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

4. Without prejudice to paragraph 3, the group supervisor shall verify at least annually, on its own initiative, that the conditions referred to in article 217-bis (1, b, c and d) continue to be complied with. The group supervisor shall also perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions. Where the verification performed identifies weaknesses in the compliance with those conditions, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

5. Where, after consulting the college of supervisors, the group supervisor determines that the plan referred to in paragraphs 3 and 4 is insufficient or subsequently that it is not being

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<sup>870</sup> Article inserted by article 1 (155) of legislative decree n. 74 of 12 May 2015.

implemented within the agreed period of time, the group supervisor shall conclude that the conditions referred to in article 217-bis (1, b), c) and d) are no longer complied with and it shall immediately inform the supervisory authority concerned.

6. Supervision of group solvency for groups with centralised risk management, as set out in articles 217-ter and 217-quinquies, shall be applicable again where the parent undertaking submits a new application and obtains the approval in accordance with the procedure set out in article 217-ter.

#### Article 217-septies

(Centralised risk management: insurance or reinsurance undertakings controlled by an insurance holding company or by a mixed financial holding undertaking)<sup>871</sup>

1. Articles 217-bis, 217-ter, 217-ter, 217-quinquies, 217-sexies shall apply to insurance or reinsurance undertakings controlled by an insurance holding company or by a mixed financial holding undertaking.

Art. 218  
(repealed)<sup>872</sup>

Art. 219  
(repealed)<sup>873</sup>

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<sup>871</sup> Article inserted by article 1 (155) of legislative decree n. 74 of 12 May 2015.

<sup>872</sup> Article repealed by article 1 (156) of legislative decree n. 74 of 12 May 2015. Article 218 laid down:

“Art. 218

(Parent undertaking solvency test)

1. The insurance or reinsurance undertakings referred to in article 210 (2) shall conduct a parent undertaking solvency test in compliance with the provisions established by ISVAP's regulation.

2. If an insurance holding undertaking, a mixed financial holding undertaking or an insurance or reinsurance undertaking with head office in a third State is the subsidiary of one or more insurance holding undertakings, a mixed financial holding undertakings or insurance or reinsurance undertakings with head office in a third State, the parent undertaking solvency test may only be conducted at the level of the ultimate parent undertaking which is an insurance holding undertaking, a mixed financial holding undertaking or an insurance or reinsurance undertaking with head office in a third State.

3. ISVAP may require that – in exceptional cases – the test referred to in paragraph 1 be conducted at all levels or at certain intermediate levels.

4. The test referred to in paragraph 1 shall include all subsidiaries or related undertakings of the insurance holding undertaking, mixed financial holding undertaking or insurance or reinsurance undertaking with head office in a third State.

5. The insurance or reinsurance undertakings referred to in article 210 (2) shall send ISVAP, along with their financial statement, a statement relating to the solvency situation of their parent undertaking in compliance with the model referred to in article 219 (1 d).”

<sup>873</sup> Article repealed by article 1 (156) of legislative decree n. 74 of 12 May 2015. Article 219 laid down:

“Art. 219

(Adjusted solvency calculation)

1. ISVAP shall, by its own regulation, lay down:

a) the methods used for the calculation of the adjusted solvency, the valuation criteria for assets and liabilities, the terms and procedures regarding reporting at regular intervals, the cases of exemption from the obligation to calculate the adjusted solvency of subsidiaries or related insurance or reinsurance undertakings;

b) the model of the statement relating to the adjusted solvency situation, the application criteria of the adjusted solvency calculation, the elimination of double or multiple use of solvency margin constituents, the treatment, transfer and restrictions on the use of the solvency margin constituents and the elimination of the intra-group creation of capital;

c) the treatment of intermediate insurance holding undertakings, intermediate mixed financial holding undertakings, insurance subsidiaries or related undertakings with head office in a third State and reinsurance subsidiaries or related undertakings with head office in a third State for the purposes of including them in the calculation of the adjusted solvency situation, while, for the same purposes, determining the consequences of the non-availability of the necessary information pertaining to subsidiaries or related undertakings with head office in another State;

Art. 220  
(repealed)<sup>874</sup>

**Chapter IV-bis**  
**NATIONAL SUB-GROUP OF A PARENT COMPANY OF A MEMBER STATE**<sup>875</sup>

Art. 220-bis  
(Supervision at the level of the national sub-group of a parent company of a Member State)<sup>876</sup>

1. If the ultimate Italian parent undertaking referred to in article 210 (2) is a subsidiary of another insurance undertaking or of a reinsurance undertaking or of another insurance holding or mixed financial holding undertaking with head office in another member State, IVASS shall apply to the national sub-group having as ultimate parent undertaking an Italian undertaking the provisions about group supervision referred to under this code, in accordance with the provisions of this Chapter and without prejudice to the agreements concluded pursuant to paragraph 4, if any.
2. Supervision at the level of the subgroup referred to in paragraph 1 shall, at any rate, be carried out by IVASS, after consulting the ultimate parent undertaking of the Member State and the group supervisor. IVASS shall explain to them the reasons for its decision to exercise supervision at the level of the subgroup and shall inform the college of supervisors in accordance with articles 207-bis and 207-septies (1, b).
3. IVASS may establish whether and what provisions on group supervision set out in this code it does not intend to apply to the national subgroup, also based on the coordination arrangements concluded with the authorities of the other member States.
4. Where there is a national subgroup in another member State, IVASS may conclude coordination arrangements with the supervisory authority of the member State where the subgroup has its head office in order to establish the terms and procedures for the exercise of supervision. IVASS may exercise supervision over the Italian national subgroup referred to in paragraph 1 according to the provisions of the coordination arrangement concluded with the supervisory authority of the other member State, including also the subgroup of the other State within the scope of supervision. In this case, IVASS shall explain the reasons for the agreement to both the ultimate parent undertaking of the group situated in another member State as set out

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*d) the model of the statement relating to the solvency margin of the parent undertaking of an insurance or reinsurance undertaking, the criteria and procedures for testing the parent undertaking's solvency, the general principles, the calculation methods, the treatment of the parent undertaking in relation to the theoretical solvency margin and the cases of exemption from the obligation to test the parent undertaking's solvency;*

*e) the technical procedures for the calculation of the adjusted solvency situation, while ensuring that the calculation methods remain substantially equivalent."*

<sup>874</sup> Article repealed by article 1 (156) of legislative decree n. 74 of 12 May 2015. Article 220 laid down:

"Art. 220

(Agreements on the granting of exemptions)

1. ISVAP may waive calculation of the adjusted solvency of the insurance or reinsurance undertaking referred to in article 210 (1) if it is a subsidiary of another insurance undertaking or of a reinsurance undertaking or of an insurance holding undertaking with head office in another member State, if the competent authorities of the member States concerned have agreed with ISVAP to grant the exercise of supplementary supervision to the supervisory authority of the other member State.

2. ISVAP may waive testing the solvency of the parent undertaking of an insurance or reinsurance undertaking referred to in article 210 (2) if the latter undertaking and another insurance or reinsurance undertaking with head office in another member State are subsidiaries of the same insurance holding company, the same mixed financial holding undertaking or the same insurance or reinsurance undertaking with head office in a third State, if the competent authorities of the other member States concerned have agreed with ISVAP to grant exercise of the supplementary supervision to the supervisory authority of the other member State".

<sup>875</sup> Chapter inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

<sup>876</sup> Article inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

in paragraph 1 and to the group supervisor. IVASS shall inform the college of supervisors in accordance with articles 207-bis and 207-septies (1, b).

#### Article 220-ter

(Rules applicable to the national sub-group of a parent company of a member State)<sup>877</sup>

1. The choice of the method for calculating the group solvency referred to in article 216-sexies (1, a) and b), taken by the supervisor of the group headed by an ultimate parent undertaking having its head office in another member State, shall be recognised as determinative and applied by IVASS.

2. Permission to calculate the group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, granted by the supervisor of the group headed by an ultimate parent undertaking having its head office in another member State, shall be recognised as determinative and applied by IVASS.

3. In regard to paragraph 2, where IVASS considers that the risk profile of the ultimate Italian parent undertaking referred to under article 210 (3) deviates significantly from the internal model approved at Community level, and as long as that undertaking does not properly address the concerns of this supervisory authority, IVASS may decide to impose a capital add-on to the group Solvency Capital Requirement resulting from the application of such model or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

4. IVASS shall explain the reasons for its decision set out in paragraph 3, both to the Italian parent undertaking referred to under article 210 (2) and to the group supervisor. IVASS shall inform the college of supervisors in accordance with articles 207-bis and 207-septies (1, b).

5. The ultimate Italian parent undertaking at the head of the national subgroup may submit an application for permission to be subject to the provisions on group supervision for groups with centralised risk management pursuant to article 217-ter, in relation to its insurance or reinsurance subsidiary undertakings, only if IVASS has decided not to apply to the national subgroup all or some of the provisions on supervision of group solvency as set out in this code in accordance with article 220-bis (3).

6. IVASS shall not apply, or shall cease to apply, the tools referred to in Chapter III of this Title, where the ultimate parent undertaking having its head office in another Member State has been granted permission for the application of the provisions on group supervision for groups with centralised risk management for the ultimate parent undertaking at the head of the national subgroup.

#### Chapter IV-ter

##### NATIONAL SUB-GROUP OF A PARENT COMPANY OF A THIRD STATE<sup>878</sup>

#### Art. 220-quater

(Supervision over the national sub-group of a parent company of a third State)<sup>879</sup>

1. Where the ultimate parent undertaking referred to under article 210 (2) is the subsidiary of another insurance or reinsurance undertaking or of an insurance holding undertaking or a mixed

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<sup>877</sup> Article inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

<sup>878</sup> Chapter inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

<sup>879</sup> Article inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

financial holding company with head office in a third State, IVASS shall apply to the national subgroup of an ultimate Italian parent undertaking the provisions on group supervision referred to in this code, as set out in this Chapter.

2. IVASS may establish whether and what provisions on group supervision set out in this code it does not intend to apply to the national subgroup, also based on an assessment of whether the companies belonging to the national subgroup are subject to group supervision, by a third-country supervisory authority, which is equivalent to that carried out on Italian insurance and reinsurance undertakings.

Article 220-quinquies  
(Assessment of equivalence of group supervision)<sup>880</sup>

1. In the case referred to in article 210(1)(c), IVASS shall verify whether the Italian insurance and reinsurance subsidiary undertakings are subject to group supervision, by a third-country supervisory authority, which is equivalent to that carried out on Italian insurance and reinsurance undertakings in accordance with this code.

2. IVASS shall assess the equivalence of the regime referred to in paragraph 1 also at the request of the parent undertaking or of the Italian insurance or reinsurance subsidiary undertaking referred to in article 210(1)(c).

3. IVASS shall be assisted by EIOPA in accordance with article 33(2) of Regulation (EU) No 1094/2010 and shall consult the other supervisory authorities concerned before taking a decision on equivalence.

4. IVASS may take a decision in relation to a third country that is in opposition to any previous decisions taken vis-à-vis that third country, where this decision is necessary to take into account significant changes to the supervisory regime for insurance or reinsurance undertakings laid down in this code or under the legislation of the third country.

5. Where supervisory authorities disagree with the decisions taken in accordance with paragraphs 3 and 4, they may refer the matter to EIOPA in accordance with article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the group supervisor. In that case, EIOPA may act in accordance with the powers conferred on it by that article.

6. For the purposes of articles 220-septies and 220-octies, the assessments on equivalence, including temporary equivalence, made by the European Commission shall also be taken into account.

Article 220-sexies  
(Verification of equivalence: levels)<sup>881</sup>

1. Where the parent undertaking referred to under article 210 (1, c) is the subsidiary of another insurance holding undertaking or a mixed financial holding company with head office in a third State or of an insurance or reinsurance undertaking with head office in a third State, IVASS shall carry out the verification of equivalence regarding the existence of group supervision provided for in article 220-septies, at the level of the third-country ultimate parent undertaking.

2. Where the verification referred to in paragraph 1 has shown the absence of an equivalent system of group supervision, IVASS may carry out a new verification at a lower level than the insurance holding undertaking or a mixed financial holding company with head office in a third State or third-country insurance undertaking or a third-country reinsurance undertaking, which is

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<sup>880</sup> Article inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

<sup>881</sup> Article inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

a parent company pursuant to article 210 (1, c) and a subsidiary pursuant to paragraph 1. In this case, IVASS shall explain the reasons for its decision to the group.

3. Article 220-octies shall apply, mutatis mutandis.

Article 220-septies  
(Existence of an equivalent system of group supervision)<sup>882</sup>

1. Where it has been established that there is an equivalent system of group supervision, IVASS, taking account of the guidelines and decisions adopted at Community level, may decide not to apply the provisions on group supervision set out in this code and shall rely on the supervision exercised by the third-country supervisory authority in accordance with this Title unless, in the event of temporary equivalence, there is an insurance or reinsurance undertaking situated in Italy which has a balance sheet total that exceeds the balance sheet total of the parent undertaking situated in a third State. In this case the task of group supervisor shall be exercised by IVASS, in accordance with article 212-bis.

Art. 220-octies  
(Absence of equivalence in group supervision)<sup>883</sup>

1. Where it has been established that there is no equivalent system of group supervision or where the other conditions referred to in article 220-septies are not met, the tools for group supervision referred to in this code shall apply, mutatis mutandis, to Italian insurance and reinsurance subsidiary undertakings referred to under article 210 (1, c), except for the solvency regime of insurance or reinsurance undertakings of groups with centralised risk management.

2. The general principles and methods set out in the articles referred to in this Chapter shall apply at the level of the parent undertaking referred to in article 210(1)(c).

3. For the sole purpose of group solvency calculation, the parent undertaking referred to under article 210 (1, c) shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in articles 44-ter, 44-quater, 44-quinquies as regards the own funds eligible for the Solvency Capital Requirement, and in article 216-quinquies as regards compliance with the consolidated group Solvency Capital Requirement.

4. IVASS may, after consulting the other supervisory authorities concerned, apply further methods which ensure appropriate supervision of the Italian insurance and reinsurance undertakings in a group. Those methods must be agreed by the group supervisor, after consulting the other supervisory authorities concerned. Where there is no ultimate Italian parent undertaking referred to under article 210 (2), IVASS may in particular require the establishment of an insurance holding company or a mixed financial holding undertaking which has its head office in Italy or in another Member State, and apply the provisions on group supervision set out under this Title to the undertakings in the group headed by that insurance holding company or mixed financial holding undertaking.

5. IVASS shall notify to the other supervisory authorities concerned and the European Commission the methods referred to in paragraph 4, which allow the objectives of the group supervision as defined in this Title to be achieved.

## Chapter IV-quater

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<sup>882</sup> Article inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

<sup>883</sup> Article inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.



## **CORRECTIVE MEASURES<sup>884</sup>**

### **Article 220-novies (Corrective measures for the group)<sup>885</sup>**

1. Without prejudice to article 227, where the insurance or reinsurance undertakings in the group do not comply with the requirements referred to in this Title or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance or reinsurance undertakings, the necessary measures, including those envisaged by article 188, in order to rectify the situation as soon as possible shall be adopted without delay:

- a) by IVASS, in its capacity as group supervisor, with respect to parent insurance holding undertakings and mixed financial holding undertakings referred to in article 210 (2);
- b) by IVASS with respect to insurance and reinsurance undertakings of the group with head office in the territory of the Italian Republic.

2. Where the measures referred to in paragraph 1 must be taken with respect to insurance holding undertakings and mixed financial holding undertakings with head office in another member State, IVASS shall inform the supervisory authorities of that State of its findings with a view to enabling them to take the necessary measures and shall cooperate with them to ensure an effective supervisory action.

3. Where the insurance or reinsurance undertaking in respect of which the remedial measures must be taken is situated in another member State, IVASS, in its capacity as group supervisor pursuant to article 207-sexies, shall inform the supervisory authority of the State where the undertaking has its head office with a view to enabling it to take the necessary measures and shall cooperate with it to ensure an effective supervisory action.

## **TITLE XVI**

### **SAFEGUARDS, REORGANISATION AND WINDING UP MEASURES**

#### **Chapter I SAFEGUARDS**

### **Article 220-decies (Identification and notification of deteriorating financial conditions)<sup>886</sup>**

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

#### **Art. 221 (Breach of regulations on technical provisions or their representative assets)**

1. Without prejudice to article 184 and when the insurance or reinsurance undertaking with head office in the territory of the Italian Republic does not comply with the provisions about technical provisions set out in articles 36, 36-bis, 36-ter, 36-quater, 36-quinquies, 36-sexies, 36-septies, 36-octies, 36-novies and 37 and their representative assets as set out in articles 37-ter, 38, 41, 42, 42-bis, 43, IVASS shall notify such breach and order that the undertaking comply with the violated regulations within a deadline which shall be appropriate for fulfilling the requirements but

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<sup>884</sup> Chapter inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

<sup>885</sup> Article inserted by article 1 (157) of legislative decree n. 74 of 12 May 2015.

<sup>886</sup> Article inserted by article 1 (158) of legislative decree n. 74 of 12 May 2015.

however not detrimental to the protection of the interests of insured persons and of those entitled to insurance benefits<sup>887</sup>.

2. In the cases referred to in paragraph 1 IVASS may prohibit the free disposal of the undertaking's assets located within the territory of the Italian Republic and may subsequently allow, based on specific authorisations, restrictions on the disposal of such assets, while giving anyhow prior notification to the host supervisory authorities of the other member States. Furthermore IVASS may ask the supervisory authorities of the other member States in which the undertaking owns assets to take the same measures and indicate the assets to be included in such measure.

3. If the undertaking does not abide by the order referred to in paragraph 1 within the deadline required, IVASS may:

a) appoint a commissioner charged with the tasks referred to in article 229 for the elimination of the breaches;

b) prevent the undertaking from commencing new business, for a period up to six months, for the purpose of safeguarding the interests of insured persons as well as of those entitled to insurance benefits or the interests of ceding insurance undertakings, with the effects referred to in article 167<sup>888</sup>;

c) order, with regard to the seriousness of the breach, that individual assets recorded in the register of assets representing technical provisions be frozen in compliance with the procedures envisaged in article 224.

4. The prohibition to commence new business shall be communicated to the host supervisory authorities of the other member States and be published in the Bulletin. The measure shall be withdrawn before the deadline if the undertaking has eliminated or remedied the notified breach in full. The withdrawal shall be communicated to the supervisory authorities of the other member States and the relevant measure be published in the Bulletin.

Art. 222  
(Breach of regulations on the Solvency Capital Requirement)<sup>889</sup>

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<sup>887</sup> Paragraph amended by article 18 (1, a) of legislative Decree n. 56 of 29 February 2008 and subsequently amended by article 1 (159, d) of legislative Decree n. 74 of 12 May 2015.

<sup>888</sup> Letter amended by article 18 (1, b), legislative decree n. 56 of 29 February 2008.

<sup>889</sup> Article replaced by article 1 (160) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

“Art. 222

*(Breach of the regulations on the solvency margin or the guarantee fund)*

*1. In case the insurance or reinsurance undertaking with head office in the territory of the Italian Republic does not possess the necessary solvency margin, ISVAP shall require that a restoration plan be submitted, for its approval, within a deadline which shall be appropriate but however not detrimental to the interests of insured persons and of those entitled to insurance benefits.*

*2. If the solvency margin falls below the guarantee fund, or if the guarantee fund is no longer set up in compliance with the relevant laws or the implementing measures, ISVAP shall require that a short-term finance scheme indicating the measures which the undertaking proposes to take in order to restore its financial situation be submitted, for its approval, within an appropriate deadline.*

*3. In the cases referred to in paragraphs 1 and 2 ISVAP may prohibit the disposal of the undertaking's assets located within the territory of the Italian Republic and may allow, based on specific authorisations, restrictions on the free disposal of such assets, while giving anyhow prior notification to the host supervisory authorities of the other member States. Furthermore ISVAP may ask the supervisory authorities of the other member States in which the undertaking owns assets to take the same measures and indicate the assets to be included in such measure.*

*4. In the cases referred to in paragraph 2 ISVAP may also order that individual assets recorded in the register of assets representing technical provisions be frozen in compliance with the procedures envisaged in article 224.*

*5. If an undertaking is authorised to carry on simultaneously life and non-life insurance and does not have – in one of the two activities – the solvency margin available for the amount required for each activity, ISVAP may authorise the transfer*

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

2. Within two months from the observation of non-compliance with the Solvency Capital Requirement or, in the absence of a notification by the undertaking, at the request of IVASS, the insurance or reinsurance undertaking shall submit to IVASS a realistic recovery plan for approval.

2-bis. IVASS shall require the insurance or reinsurance undertaking to take the necessary measures to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

2-ter. Where it considers it appropriate IVASS may grant an extension of three months.

2-quater. In the event of exceptional adverse situations affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, as declared by EIOPA, and where appropriate after consulting the ESRB, IVASS may extend, for affected undertakings, the period set out in paragraph 2-ter by a maximum period of seven years, taking into account all relevant factors including the average duration of the technical provisions.

2-quinquies. IVASS may request EIOPA to declare the existence of exceptional adverse situations.

2-sexies. IVASS may make a request if insurance or reinsurance undertakings representing a significant share of the market or of the affected lines of business are unlikely to meet one of the requirements set out in paragraph 2-bis. Exceptional adverse situations exist where the financial situation of some of these undertakings is seriously or adversely affected by one or more of the following conditions:

- a) a fall in financial markets which is unforeseen, sharp and steep;
- b) a persistent low interest rate environment;
- c) a high-impact catastrophic event.

2-septies. IVASS shall cooperate with EIOPA in assessing whether the conditions referred to in paragraph 2-quinquies and 2-sexies still apply. EIOPA shall, after consulting IVASS, declare when an exceptional adverse situation has ceased to exist.

2-octies. The insurance or reinsurance undertaking concerned shall, every three months, submit a progress report to IVASS setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with that requirement.

2-novies. The extension referred to in paragraph 2-quater shall be withdrawn where that report shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with that requirement between the date of the observation of non-

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*of those explicit items exceeding the solvency margin from one activity to the other with a view to implementing the restoration plans or short-term finance schemes.*

*6. If the restoration plan or finance scheme concerns a cooperative company and envisage an increase in the company's capital the individual limit of capital subscription shall be increased by up to three times. In that case, to register in the registrar of companies the resolution by the shareholders' meeting on the increase in the corporate capital, the cooperative company shall be required to produce the measure taken by ISVAP".*

compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

3. In exceptional circumstances, where IVASS is of the opinion that the financial situation of the undertaking will deteriorate further, it may prohibit the free disposal of the undertaking's assets located within the territory of the Italian Republic and may subsequently allow, based on specific authorisations, restrictions on the disposal of such assets, while giving anyhow prior notification to the host supervisory authorities of the other member States. Furthermore IVASS may ask the supervisory authorities of the other member States in which the undertaking owns assets to take the same measures and indicate the assets to be included in such measure.

4. IVASS may also order that individual assets recorded in the register of assets representing technical provisions be frozen in compliance with the procedures envisaged in article 224.

5. If the restoration plan or finance scheme concerns a cooperative company and envisage an increase in the company's capital the individual limit of capital subscription shall be increased by up to three times. In that case, to register in the registrar of companies the resolution by the shareholders' meeting on the increase in the corporate capital, the cooperative company shall be required to produce the measure taken by IVASS.

Art. 222-bis  
(Breach of regulations on the Minimum Capital Requirement)<sup>890</sup>

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

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

3. IVASS may prohibit the free disposal of the undertaking's assets located within the territory of the Italian Republic and may subsequently allow, based on specific authorisations, restrictions on the disposal of such assets, while giving anyhow prior notification to the host supervisory authorities of the other member States. Furthermore IVASS may ask the supervisory authorities of the other member States in which the undertaking owns assets to take the same measures and indicate the assets to be included in such measure.

4. IVASS may also order that individual assets recorded in the register of assets representing technical provisions be frozen in compliance with the procedures envisaged in article 224.

Article 222-ter  
(Restrictions on the distribution of own funds)<sup>891</sup>

1. Without prejudice to the derogations envisaged by the provisions of the European Union which are directly applicable, in the event of non-compliance with the Solvency Capital Requirement or the Minimum Solvency Requirement or where the distribution is the cause of that non-compliance, the undertaking shall not make any distribution of own-fund items, including profit distributions, until compliance with the requirements is restored and the distribution does not lead to non-compliance.

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<sup>890</sup> Article inserted by article 1 (162) of legislative decree n. 74 of 12 May 2015.

<sup>891</sup> Article inserted by article 1 (162) of legislative decree n. 74 of 12 May 2015.

2. The prohibition referred to in paragraph 1 shall also apply where the non-compliance with the capital requirement is observed only after the declaration of the dividend but before its effective implementation.

Art. 223  
(repealed)<sup>892</sup>

Art. 223-bis  
(Intervention measures in case of deteriorating financial conditions in an insurance or reinsurance undertaking)<sup>893</sup>

1. Notwithstanding articles 222 and 222-bis, where the solvency position of the undertaking continues to deteriorate, IVASS shall have the power to take all measures necessary to safeguard the interests of policy holders in the case of insurance contracts, or the obligations arising out of reinsurance contracts. Those measures shall be proportionate and reflect the level and duration of the deterioration of the solvency position of the insurance or reinsurance undertaking.

Article 223-ter  
(Recovery plan and finance scheme)<sup>894</sup>

1. IVASS shall, by its own regulation, lay down the implementing rules concerning, in particular, the data and information to be shown in the recovery plan referred to in article 222 and in the finance scheme referred to in article 222-bis which shall, at least, include the following information:

- a) estimates of management expenses, in particular current general expenses and commissions;
- b) estimates of income and expenditure in respect of direct business, reinsurance acceptances and reinsurance cessions;
- c) a forecast balance sheet;

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<sup>892</sup> Article repealed by article 1 (161) of legislative decree n. 74 of 12 May 2015. Article 223 laid down:  
"Art. 223  
(Intervention measures for the protection of an insurance undertaking's prospective solvency)

1. Except for the cases referred to in article 222, if the rights of insured persons and of those entitled to insurance benefits are threatened because the financial position of the insurance undertaking is deteriorating, or if the rights of ceding insurance undertakings are threatened because the financial position of the reinsurance undertaking is deteriorating, ISVAP shall require, in order to ensure that the undertaking is able to fulfil the solvency requirements in the near future, that a higher solvency margin than that of the last approved balance sheet be established after taking into account the financial recovery plan prepared by the undertaking and referred to the three subsequent financial years.

2. ISVAP shall, by its own regulation, lay down the implementing rules concerning, in particular, the data and information to be shown in the financial recovery plan, which must include, at any rate, a balance sheet and a profit and loss account for each of the financial years considered, the forecasts pertaining to premium income, to claims to be settled and written in the technical provisions and to the operating expenses, a forecast balance sheet, a description of the financial resources intended to cover the solvency margin and technical provisions and a description of the overall reinsurance or retrocession policy as well as the most significant forms of reinsurance cover.

3. Once assessed the situation of the insurance or reinsurance undertaking ISVAP may reduce the value of all the available solvency constituents, and this also where there has been a significant reduction in the market value of these constituents since the end of the last financial year.

4. In case of significant changes to the content or quality of reinsurance or retrocession contracts since the last financial year or in case reinsurance or retrocession contracts do not envisage any risk transfer or envisage a limited transfer ISVAP may decrease the reduction to the required solvency margin.

5. ISVAP shall not issue any solvency certificate for the insurance undertaking from which it has required a financial recovery plan as long as it thinks that the rights of insured persons and of those entitled to insurance benefits are in jeopardy.

5-bis. ISVAP shall not issue any solvency certificate for the reinsurance undertaking from which it has required a financial recovery plan as long as it thinks that the undertaking's obligations arising out of reinsurance contracts are in jeopardy".

<sup>893</sup> Article inserted by article 1 (162) of legislative decree n. 74 of 12 May 2015.

<sup>894</sup> Article inserted by article 1 (162) of legislative decree n. 74 of 12 May 2015.

d) estimates of the financial resources intended to cover the technical provisions and the Solvency Capital Requirement and the Minimum Capital Requirement;  
(e) the overall reinsurance policy.

2. Once assessed the situation of the insurance or reinsurance undertaking IVASS may reduce the value of all the constituents of the Solvency Capital Requirement, and this also where there has been a significant reduction in their market value since the end of the last financial year.

3. IVASS shall not issue any solvency certificate for the insurance or reinsurance undertaking from which, in accordance with paragraph 1, it has required the financial recovery plan referred to in article 222 (2) or a finance scheme referred to in article 222-bis (2), as long as it thinks that the rights of insured persons and of those entitled to insurance benefits, or the contractual obligations of the reinsurance undertaking are threatened.

Art. 224  
(Procedure to freeze assets)

1. Where freeze regards real estate IVASS shall require that a mortgage on the insurance and reinsurance undertaking's real estate and rights to make use of immovable property situated in the territory of the Italian Republic be recorded in the land register in favour of insurance or reinsurance claims.

2. IVASS may order that any other asset other than those mentioned under paragraph 1 be frozen, as required by law for each type of property or rights. The authorities and the subjects responsible for implementing such measure shall be required to perform the acts and operations necessary to make the freeze imposed by IVASS effective and enforceable against third parties.

3. The supervisory authorities of the other member States in which the insurance or reinsurance undertaking carries out business or owns assets shall be informed of the measures taken<sup>895</sup>.

Art. 225  
(Safeguards in case of partial withdrawal of authorisation)

1. In case of partial withdrawal of authorisation and for the purpose of safeguarding the interests of insured persons, of those entitled to insurance benefits, of ceding insurance undertakings and of employees, IVASS may prohibit the disposal of properties by an insurance or reinsurance undertaking with head office in the territory of the Italian Republic in case such measure has not already been taken as per articles 221, 222, 222-bis<sup>896</sup>.

2. IVASS may also order that individual assets recorded in the register of assets representing technical provisions be frozen in compliance with the procedures envisaged in article 224.

3. The supervisory authorities of the other member States in which the undertaking carries out business or owns properties shall be informed of the measures taken in compliance with paragraphs 1 and 2. The same authorities may be requested to take the same measures and cooperate in the adoption of any measure necessary to safeguard the interests of insured persons and of those entitled to insurance benefits.

Art. 226

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<sup>895</sup> Article amended by article 18 (4), legislative decree n. 56 of 29 February 2008.

<sup>896</sup> Paragraph amended by article 18 (5), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (163) of legislative decree n. 74 of 12 May 2015.

(Undertakings with head office in other member States and in third States)<sup>897</sup>

1. If the supervisory authorities of the respective home member States have adopted the measures corresponding to those envisaged under articles 221, 222, 222-bis, 225, 240 and 242 IVASS shall prohibit the disposal of assets located within the territory of the Italian Republic belonging to insurance and reinsurance undertakings with head office in other member States which carry on business in the territory of the Italian Republic under the right of establishment or the freedom of services at the request of the supervisory authorities of the respective home member States and upon indication of the assets which must be the object of such measure. At the request by the same authorities IVASS shall also take the measures regarding the freeze of individual assets representing technical provisions according to the procedures referred to in article 224.

2. IVASS shall apply the provisions of this chapter to insurance and reinsurance undertakings with head office in third States in case of breach committed by the branch established in the territory of the Italian Republic.

3. If the breach regards the provisions about the Solvency Capital Requirement and is committed by an insurance or reinsurance undertaking from a third State established not only in the territory of the Italian Republic, but also in other member States and supervised by IVASS also as regards business carried out by the branches situated in the other member States, it shall be for IVASS to take the measures referred to in articles 221, 222, 222-bis 224 and 225, except in cases where supervision over solvency is to another Authority pursuant to article 51 (3). The supervisory authorities of the other member States in which the undertaking carries out business or owns assets shall be informed of the measures taken. The same authorities may be requested to take the same measures and cooperate in the adoption of any measure necessary to safeguard the interests of insured persons and of those entitled to insurance benefits.

4. In the case referred to in paragraph 3, if the state of solvency of the entire business pursued by the branches of the insurance or reinsurance undertaking from a third State is subject to the exclusive supervision of the supervisory authority of another member State the latter authority may avail itself of IVASS' cooperation for the adoption of the measures referred to in article 224 on the assets owned by the undertaking in the territory of the Italian Republic<sup>898</sup>.

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<sup>897</sup> Article replaced by article 1 (164) of legislative decree n. 74 of 12 May 2015. The previous version laid down:  
"Art. 226

*(Undertakings with head office in other member States and in third States)*

*1. ISVAP shall prohibit the disposal of assets located within the territory of the Italian Republic belonging to insurance and reinsurance undertakings with head office in other member States which carry on business in the territory of the Italian Republic under the right of establishment or the freedom of services at the request of the supervisory authorities of the respective home member States and upon indication of the assets which must be the object of such measure. At the request by the same authorities ISVAP shall also take the measures regarding the freeze of individual assets representing technical provisions according to the procedures referred to in article 224.*

*2. ISVAP shall apply the provisions of this chapter to insurance and reinsurance undertakings with head office in third States in case of breach committed by the branch established in the territory of the Italian Republic.*

*3. If the breach regards the provisions about the solvency margin and is committed by a non-EU insurance or reinsurance undertaking established not only in the territory of the Italian Republic, but also in other member States and supervised by ISVAP also as regards business carried out by the branches situated in the other member States, it shall be for ISVAP to take the measures referred to in article 222. The supervisory authorities of the other member States in which the undertaking carries out business or owns assets shall be informed of the measures taken. The same authorities may be requested to take the same measures and cooperate in the adoption of any measure necessary to safeguard the interests of insured persons and of those entitled to insurance benefits.*

*4. In the case referred to in paragraph 3, if the state of solvency of the entire business pursued by the branches of the non-EU insurance or reinsurance undertaking is subject to the exclusive supervision of the supervisory authority of another member State the latter authority may avail itself of ISVAP's cooperation for the adoption of the measures referred to in article 224 on the assets owned by the undertaking in the territory of the Italian Republic".*

<sup>898</sup> Article amended by article 18 (6), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (164) of legislative decree n. 74 of 12 May 2015.

Art. 226-bis  
(Detection and notification of deteriorating group financial conditions)<sup>899</sup>

1. The ultimate Italian parent undertaking referred to in article 210 (2) shall have in place procedures to detect deteriorating group financial conditions and immediately notify the detected deterioration to IVASS.

Art. 227  
(Measures in case of verification of group solvency situation)<sup>900</sup>

1. The ultimate Italian parent undertaking referred to in article 210 (2) shall immediately inform IVASS as soon as they observe that the group Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

2. Within two months of observing non-compliance of the group Solvency Capital Requirement, or if the notification is not made by the company, at the request of IVASS, the company referred to under paragraph 1 shall submit to IVASS a realistic recovery plan for approval.

3. IVASS shall require the company referred to under paragraph 1 to take the necessary measures to achieve, within six months from the observation of non-compliance with the group Solvency Capital Requirement, the re-establishment of the level of eligible own funds covering the group Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the group Solvency Capital Requirement.

4. Where it considers it appropriate IVASS may grant an extension of three months.

5. In the event of exceptional adverse situations having an impact, acknowledged by EIOPA pursuant to article 222 (2-quater), on insurance and reinsurance undertakings that represent a significant share of the market or of the lines of business concerned, IVASS may extend for the group concerned, where necessary also in consultation with CERS, the period referred to under paragraph 4 for a maximum period of seven years, taking into account all relevant factors, including the average duration of the technical provisions. Article 222 (2-octies and 2-novies) shall apply.

Art. 228

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<sup>899</sup> Article inserted by article 1 (165) of legislative decree n. 74 of 12 May 2015.

<sup>900</sup> Article replaced by article 1 (166) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

"Art. 227

(Measures in case of negative adjusted solvency situation)

1. When the calculation of the adjusted solvency situation referred to in article 217 shows a negative result ISVAP shall require that the insurance or reinsurance undertaking referred to in article 210 (1) submit, within a deadline which shall be appropriate but however not detrimental to the protection of the interests of insured persons and of those entitled to insurance benefits, an intervention plan illustrating the causes for the inadequacy and the initiatives which the undertaking is committed to take, within a given deadline, to restore the adjusted solvency and guarantee the future solvency.

2. The undertaking shall take account of any restoration plans or short-term finance schemes submitted by insurance or reinsurance subsidiaries or related undertakings.

3. ISVAP may indicate, for its approval, the supplementary or corrective measures necessary for the restoration of the adjusted solvency situation.

4. If ISVAP deems that the adjusted solvency situation is extremely negative it shall require that the undertaking referred to in article 210 (1) immediately takes measures aimed to eliminate or reduce the negative adjusted solvency situation.

5. The provisions under article 222 (3 and 4) shall apply in the cases referred to in paragraphs 1 and 4.

6. If there are serious breaches of the laws and administrative provisions on supplementary supervision or, if after the measure requested by ISVAP has been taken, the adjusted solvency situation of the undertaking referred to in paragraph 1 remains extremely negative, the restoration measures referred to in chapter II may be taken".



(repealed)<sup>901</sup>

## **Chapter II** **REORGANISATION MEASURES**

### Art. 229 (Commissioner for the fulfilment of individual acts)

1. In the event of serious non-compliance with the provisions of the law or with the relevant implementing measures, IVASS may arrange for the appointment of a commissioner to enable fulfilment of the individual acts required to ensure that management of the insurance or reinsurance undertaking is in accordance with the law<sup>902</sup>.
2. Such measure may take place after the deadline set to put an end to the facts charged and remove the effects has expired with no avail<sup>903</sup>.
3. Article 232 (1), article 233 (2, 3 and 4), article 236 (1) and article 237 (1, 2 and 3) shall apply mutatis mutandis.

### Art. 230 (Provisional administrator)

1. Should the conditions for extraordinary administration under article 231 be met and in case of extreme emergency IVASS may arrange for one or more commissioners to assume administrative powers in the insurance or reinsurance undertaking. In the meanwhile the administration and control functions shall be suspended. The commissioners are public officials while performing their duties<sup>904</sup>.
2. The provisional administration may not last more than two months. IVASS may establish special protections and limitations in the management of the undertaking. Article 232 (1), article 233 (2, 3 and 4), article 234 (3, 4 and 8), article 235 (1 and 2), article 236 (1) and article 237 (1, 2 and 3) shall apply as far as they are compatible.
3. If during the provisional administration the administrative and control bodies are dissolved in compliance with article 231 (1) the administrators shall assume the functions of the extraordinary commissioners until the extraordinary bodies are installed. In that case article 231 (4) shall apply.

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<sup>901</sup> Article repealed by article 1 (167) of legislative decree n. 74 of 12 May 2015. Article 228 laid down:

“Art. 228

*(Measures after the parent undertaking’s solvency test)*

1. *If after the parent undertaking’s solvency test referred to in article 218 ISVAP thinks that the solvency of the insurance or reinsurance undertaking referred to in article 210 (2) is, or may be, jeopardised, it shall request that the insurance or reinsurance undertaking or the insurance holding company or the parent mixed financial holding company submit an intervention programme adequate to ensure the undertaking’s solvency also in the future.*

2. *If the parent undertaking’s solvency conditions are not restored or in case of failure to submit or failure to execute the programme referred to in paragraph 1 ISVAP may – without prejudice to the application of the provisions under title VII, chapter III:*

*a) require that any operation referred to in article 215 as well as the operations between the subsidiaries of the insurance or reinsurance undertaking referred to in article 210 (2) and the undertakings referred to in article 211 (1, b and c), linked with that undertaking by control relationships, be subject to prior authorisation;*  
*b) require that the profit which might be distributed to the parent undertaking be set aside in a specific reserve of the net assets”.*

<sup>902</sup> Paragraph amended by article 19 (1), legislative decree n. 56 of 29 February 2008.

<sup>903</sup> Paragraph amended by article 1 (168) of legislative decree n. 74 of 12 May 2015.

<sup>904</sup> Paragraph amended by article 19 (2), legislative decree n. 56 of 29 February 2008.

4. At the end of the provisional administration the commissioners shall hand over the firm to the subsequent bodies in accordance with the terms set in paragraph 235 (1).

Art. 231  
(Extraordinary administration)

1. The Minister of Economic Development, upon IVASS' proposal, may establish by decree that the administrative and control bodies of the insurance or reinsurance undertaking be dissolved when<sup>905</sup>:

- a) there are serious irregularities in administration or serious violations of rules of law, administrative provisions or articles of association regulating the insurance or reinsurance undertaking's activity<sup>906</sup>;
- b) serious financial loss is foreseen.

The dissolution may be requested to IVASS on the basis of a reasoned application of the administrative bodies or of the insurance or reinsurance undertaking's extraordinary meeting, in compliance with the conditions referred to in letters a) and b) of this article<sup>907</sup>.

2. (*repealed*)<sup>908</sup>.

3. The functions of the shareholders' meetings and of the bodies other than those referred to in paragraph 1 shall be suspended by the extraordinary administration measure, without prejudice to the provisions of article 234 (7).

4. The decree of the Minister of Economic Development and IVASS' proposal shall be communicated by the extraordinary commissioners to the parties concerned which so request, not before the installation referred to in article 235 (1).

5. Extraordinary administration shall last one year from the date when the decree referred to in paragraph 1 is issued, unless the decree envisages a shorter deadline or IVASS authorises its earlier closure. The proceedings may be extended by the Minister of Economic Development, upon IVASS' proposal, for a period of no more than twelve months.

Art. 232  
(Effectiveness of restoration measures in the Community territory)

1. The measures and the procedures regarding the provisional administration and extraordinary administration shall also be effective in relation to branches or any other presence of Italian insurance and reinsurance undertakings in the other member States' territory<sup>909</sup>.

2. IVASS shall promptly inform the supervisory authorities of the other member States that it has adopted the measure of provisional administration or extraordinary administration, and mention its possible effects.

3. The restoration measures adopted in relation to insurance undertakings with head office in another member State shall be effective – further to the notification to IVASS and without further

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<sup>905</sup> As amended by article 19 (3), legislative decree n. 56 of 29 February 2008.

<sup>906</sup> Letter amended by article 19 (3), legislative decree n. 56 of 29 February 2008.

<sup>907</sup> Sentence amended by article 19 (3), legislative decree n. 56 of 29 February 2008.

<sup>908</sup> Paragraph repealed by article 1 (169) of legislative decree n. 74 of 12 May 2015. Paragraph 2 laid down:

*"The proposal shall be preceded by ISVAP's notification of charges, in which the undertaking shall be given an appropriate deadline for submitting its justifications or remove said charges".*

<sup>909</sup> Paragraph amended by article 19 (4), legislative decree n. 56 of 29 February 2008.

formalities – in relation to the branches of undertakings operating in the territory of the Italian Republic also in relation to third parties, even if Italian regulations do not envisage these restoration measures or make their application conditional on pre-requisites other than those upon which they have been taken by the supervisory authority of the other member State.

#### Art. 233

(Bodies in the extraordinary administration proceedings)

1. IVASS shall appoint one or more extraordinary commissioners for the administration of the insurance or reinsurance undertaking and a supervisory committee made up of from three to five members, with the chairman designated in the deed of appointment<sup>910</sup>.
2. IVASS may revoke or replace commissioners and members of the supervisory committee in the interests of the best functioning of the proceedings and whenever there is loss of the requirements referred to in paragraph 4.
3. The emoluments payable to commissioners, chairman and members of the supervisory committee shall be established by IVASS. The relevant costs shall be borne by the undertaking subject to the proceedings.
4. The professional, good repute and independence requirements established in implementation of article 76 shall apply to the bodies in the proceedings<sup>911</sup>.

#### Art. 234

(Powers and functioning of extraordinary bodies)

1. The extraordinary commissioners shall perform the functions and assume the powers for the administration of the undertaking. They shall examine the company's situation, eliminate the irregularities and manage the undertaking in the interest of insured persons and of those entitled to insurance benefits. The conventional provisions or the provisions about the articles of association of the civil code pertaining to the control powers of the holders of qualifying holdings shall not apply to the acts of the commissioners. In case of challenge of the commissioners' decisions shareholders may not request that the court suspend the execution of the commissioners' decisions subject to IVASS' authorisation or which anyhow implement IVASS' measures. The commissioners are public officials while performing their duties.
2. The supervisory committee shall perform the control functions and issue opinions to commissioners in the cases envisaged by this chapter or set out by IVASS by way of regulation.
3. The functions of the extraordinary bodies shall commence with the installation pursuant to article 235 (1 and 2) and terminate with the transfer of the tasks to the subsequent bodies, without prejudice to the steps referred to in article 236.
4. IVASS, in general by way of regulation or in particular by way of specific instructions given to commissioners and members of the supervisory committee, may establish special protections and limitations in the management of the undertaking. Members of extraordinary bodies shall be personally liable for non-compliance with IVASS' instructions. At any rate said instructions shall not be enforceable against third parties who did not know of them. The extraordinary commissioners shall first acquire the opinion of the supervisory committee and IVASS' authorisation for the implementation of restoration plans involving transfers of portfolios, of an enterprise or of lines business or of participations in other companies.
5. It shall be for the extraordinary commissioners, after hearing the opinion of the supervisory committee and subject to IVASS' prior authorisation, to start actions of liability against members

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<sup>910</sup> Paragraph amended by article 19 (5), legislative decree n. 56 of 29 February 2008.

<sup>911</sup> Paragraph amended by article 1 (170) of legislative decree n. 74 of 12 May 2015.

of the dissolved administrative and control bodies as well as against the general manager, the auditing firm and the auditing actuary. The bodies which have replaced the extraordinary administration shall continue the actions of liability and regularly inform IVASS thereof.

6. After hearing the opinion of the supervisory committee and subject to IVASS' prior authorisation commissioners may, in the interest of the proceedings, replace the auditing firm. The latter subjects shall receive only consideration for the remainder of their assignment and, at any rate, for no more than three months. The new assignment may last up to the end of the extraordinary administration<sup>912</sup>.

7. Subject to IVASS's prior authorisation commissioners may call the shareholders' meetings and the other bodies referred to in article 231 (3), with an agenda which may not be amended by the body which is called.

8. When there is more than one commissioner they shall decide by majority vote and their representative powers shall be validly exercised by two of them with joint signature. Delegating powers, also by categories of operations, to one or more commissioners shall be allowed.

9. The supervisory committee shall decide by majority vote, and in the event of a tie the deciding vote shall be cast by the chairman.

#### Art. 235 (Initial steps)

1. Extraordinary commissioners shall install themselves after the dissolved administrative bodies have handed over the company along with summary minutes. The commissioners shall acquire the accounts. At least one member of the supervisory committee shall attend such operations.

2. If it is not possible to transfer the tasks for failure by the dissolved administrative bodies or for other reasons, the commissioners shall install themselves in a high-handed manner with the support of a notary public and, if necessary, the assistance from law enforcement authorities.

3. The provisional administrator referred to in article 230 shall assume the administration of the undertaking and perform the tasks to be transferred to the extraordinary commissioners in accordance with the arrangements referred to in paragraphs 1 and 2.

4. If the financial statements pertaining to the financial year ending before the beginning of extraordinary administration has not been approved the commissioners shall file with the office of the registrar of companies a report on the financial and economic situation drawn up on the basis of the available information, instead of the balance sheet. The report shall be accompanied by a report by the supervisory committee. Profit sharing shall anyhow be excluded.

#### Art. 236 (Final steps)

1. The extraordinary commissioners and the supervisory committee shall, at the end of their tasks, prepare separate reports on the activity they have carried out and send them to IVASS

2. The close of the financial year under way at the beginning of the extraordinary administration shall be protracted, to all effects of law, until termination of the proceedings. The commissioners

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<sup>912</sup> Paragraph replaced by article 1 (171) of legislative decree n. 74 of 12 May 2015. The previous version laid down: "6. After hearing the opinion of the supervisory committee and subject to ISVAP's prior authorisation commissioners may, in the interest of the proceedings, replace the auditing firm and the actuary appointed by the latter as well as the appointed actuary for life assurance and the appointed actuary for compulsory insurance against civil liability in respect of the use of motor vehicles and craft. The latter subjects shall receive only consideration for the remainder of their assignment and, at any rate, for no more than three months. The new assignment may last up to the end of the extraordinary administration.

shall draw up a draft balance sheet, to be submitted to IVASS for its approval, within four months of closure of the extraordinary administration and then published according to the law.

3. Before termination of their tasks commissioners shall arrange that the corporate bodies be re-established. The commissioners shall hand the company over to the bodies performing administrative functions in accordance with the terms set out in paragraph 235 (1).

Art. 237  
(Publicity measures)

1. The ministerial decree making the commencement and the closure of extraordinary administration shall be published in the Gazzetta Ufficiale and then in IVASS's Bulletin. The measures regarding appointment, withdrawal or replacement of the bodies of the proceedings shall be published by IVASS in its Bulletin.

2. A partial text of the extraordinary administration measures shall also be published by IVASS in the Official Journal of the European Union.

3. Within fifteen days of the notification of their appointment the extraordinary commissioners shall file the deed of appointment for registration in the registrar of companies.

4. Should IVASS be informed by another member State that a restoration measure has been adopted vis-à-vis an undertaking which has a branch on the territory of the Italian Republic, it may publish the decision in accordance with the procedures it deems appropriate. The authority which issued the measure, the authority to which it is possible to appeal should the measure be challenged, the applicable law and the name of the extraordinary administrator, if any, shall be specified in the publication.

Art. 238  
(Exclusivity of restoration proceedings)

1. The provisions of chapters I and III of title IV of the Crisis and Insolvency Code<sup>913</sup> shall not apply to insurance or reinsurance undertakings.

2. Article 2409 of the civil code shall not apply to insurance or reinsurance undertakings. In case there are reasonable grounds for suspecting that the persons charged with the administration functions have, in violation of their duties, committed serious irregularities in the management which might be detrimental for the undertaking or for one or more subsidiaries, the body having control functions or the shareholders who, according to the civil code, can appeal to court may bring their complaint to IVASS. IVASS shall make a decision by reasoned order and in compliance with the principles of fair proceedings.

Art. 239  
(Insurance undertakings from third States and foreign reinsurance undertakings)

1. If an insurance undertaking with head office in a third State has set up a branch in the territory of the Italian Republic the restoration measures shall be taken in relation to the Italian office.

2. In relation to the branch the extraordinary commissioners shall perform the functions and assume the powers of administration pertaining to the administrative bodies of the parent undertaking. Likewise the supervisory committee shall perform the control functions.

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<sup>913</sup> Words amended by article 370 (1, a) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

3. In case the insurance undertaking has set up branches in other member States IVASS shall coordinate its functions with those of said member States' authorities. Commissioners shall collaborate with the bodies appointed in other States where there are branches subject to similar proceedings.

4. If a reinsurance undertaking with head office in a member State or in a third State has set up a branch in the territory of the Italian Republic the restoration measures shall be taken in relation to the Italian establishment. Paragraph 2 shall apply.

5. The provisions of this Chapter shall apply, *mutatis mutandis*.

### **Chapter III**

#### **LAPSE AND WITHDRAWAL OF AUTHORISATION**

#### Art. 240

(Lapse of the authorization issued to an insurance undertaking)

1. The authorization of an insurance undertaking shall lapse when such undertaking:

- a) does not start business within twelve months;
- b) expressly renounces it;
- c) does not carry on business for more than six months;
- d) transfers the whole portfolio to another insurance undertaking;
- e) a reason for the dissolution of the company arises.

If the undertaking has not started business within twelve months or has not carried on business for more than six months, if there are justified reasons and at the request of the undertaking concerned, IVASS may grant an extension of not more than six months.

2. If the insurance undertaking has not started business, has renounced authorisation or has ceased to carry on business in only some of the insurance classes for which it has been authorised, the authorisation shall lapse exclusively for these classes.

3. By order published in the Bulletin, IVASS shall ascertain that the authorization has lapsed and, when it concerns all the insurance classes pursued, it shall order that the undertaking be deleted from the register of insurance and reinsurance undertakings. IVASS shall notify the supervisory authorities of the other member States accordingly, so that they adopt measures to prevent the undertaking from continuing business in their territory<sup>914</sup>.

IVASS shall communicate to EIOPA every case when the granted authorisation of an insurance or reinsurance undertaking lapses, for publication in the list kept by the latter<sup>915</sup>.

4. The insurance undertaking shall limit its business to the management of current contracts and shall not commence any new operation starting from the date of publication of the lapse of authorisation. The same provision shall apply in case the lapse of authorisation is limited to one or more insurance classes.

5. Tacit renewal clauses shall lapse after publication of the lapse of authorisation. In case of contracts whose duration is more than one year the policyholder may withdraw from the contract, provided a written notification is made to the undertaking, with effect from the expiry date of the first annual premium following the publication of the lapse of authorisation.

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<sup>914</sup> Paragraph amended by article 1 (172, a) of legislative decree n. 74 of 12 May 2015.

<sup>915</sup> Paragraph inserted by article 1 (172, b) of legislative decree n. 74 of 12 May 2015.

6. If the lapse of authorisation results from the cases referred to in paragraph 1 b), c) and e), IVASS, when the conditions envisaged in article 245 are met, shall not adopt a measure providing for the lapse of authorisation but shall propose the Minister of Economic Development the withdrawal of authorization and the administrative compulsory winding up of the insurance undertaking.

7. The provisions of this article shall also apply to insurance undertakings with head office in a third State which have been authorised to pursue business in the territory of the Italian Republic through a branch. If the supervisory authority of the third State has adopted a measure providing for the lapse of an insurance undertaking's authorisation, the same measure shall be adopted against its branch.

#### Art. 241

##### (Ordinary winding up of an insurance undertaking)

1. The insurance undertaking shall immediately notify IVASS of any reasons for dissolving the company. After verifying that the conditions for ordinary winding up in the cases referred to in article 240 (1) are met, IVASS shall approve, with the measure providing for the lapse of authorization or with a subsequent measure, the appointment of the liquidators before registering the acts deciding or declaring the dissolution of the company in the registrar of companies. The acts deciding or declaring the dissolution of the company may not be registered in the registrar of companies if ISVAP has not verified the conditions under this paragraph.

2. Liquidators shall meet the professional and good repute requirements established in accordance with article 76. In case of loss of the above requirements, liquidators shall fall from office. If the general meeting fails to replace them within thirty days of the date when it has become aware of the loss of requirements, IVASS shall propose to the Minister of Economic Development the adoption of the measure of administrative compulsory winding up<sup>916</sup>.

3. Winding up shall be effected pursuant to the rules established by the civil code, without prejudice to the provisions on technical provisions and representative assets referred to in title III. Liquidators shall send IVASS the annual accounts drawn up according to the provisions laid down under title VIII. The undertaking shall remain subject to IVASS's supervision until it is deleted from the registrar of companies.

4. Without prejudice to the provisions of article 245, if the winding up proceedings is not carried out regularly and expeditiously IVASS may, by order published in the Bulletin, provide that the liquidators, as well as the members of the control bodies, be replaced. The replacement of these bodies shall not entail any change in the winding up proceedings.

5. The provisions of this article shall also apply to insurance undertakings with head office in a third State which have been authorised to pursue business in the territory of the Italian Republic by way of establishment, notwithstanding that the measures adopted shall only be effective for the branch.

#### Art. 242

##### (Withdrawal of the authorization issued to an insurance undertaking)

1. Authorisation shall be withdrawn when the insurance undertaking:

- a) does not, when pursuing business, comply with the restrictions imposed by the authorization or envisaged in the scheme of operations;
- b) no longer fulfils the conditions for taking up insurance business;
- c) fails seriously to comply with the provisions of this code;

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<sup>916</sup> Paragraph amended by article 1 (173) of legislative decree n. 74 of 12 May 2015.

d) does not comply with the Minimum Capital Requirement and has submitted, in the judgement of IVASS, a manifestly inadequate finance scheme or fails to comply with the approved scheme within three months from the observation of non-compliance with the Minimum Capital Requirement or, if it is subject to group supervision, has been unable, within the time allowed, to take the measures envisaged by article 227<sup>917</sup>;

e) has been subject to compulsory winding up or has been declared insolvent by the judicial authority.

e-bis) has not joined or has been excluded from the Life insurance guarantee fund.<sup>918</sup>

2. Without prejudice to the provisions of paragraph 1, authorization to the pursuit of insurance against civil liability in respect of the use of motor vehicles and craft shall be withdrawn also in case of repeated or systematic refusal to perform or circumvention of the obligation to insure referred to in article 132 (1), or in case of repeated or systematic violation of the provisions on claim settlement procedures envisaged in articles 148 and 149.

3. Authorisation may be withdrawn for all the insurance classes pursued by the insurance undertaking or only for some of them. The provisions under article 240 (4 and 5) shall apply.

4. Authorisation shall be withdrawn by decree of the Minister of Economic Development, upon IVASS' proposal. If the authorisation is withdrawn for all the insurance classes pursued, the undertaking immediately goes into compulsory winding up with the same measure and IVASS shall provide that the undertaking be deleted from the register of insurance undertakings. The Minister of Economic Development, upon IVASS' proposal, may however allow the undertaking to go into ordinary winding up, within a mandatory time limit, when the withdrawal has been decided for the reasons indicated in paragraph 1, a) and b).

5. The Minister of Economic Development, upon IVASS' proposal, shall also provide for compulsory winding up if the insurance undertaking, in case of withdrawal limited to some classes, does not comply with the provisions of article 240 (4 and 5), or when the resolution on the dissolution and the appointment of the liquidators are not registered in the registrar of companies within the deadline envisaged in paragraph 4.

6. The decrees by the Minister of Economic Development shall be published in the Italian Official Journal, in the Bulletin and shall be notified by IVASS to the supervisory authorities of the other member States accordingly, so that they adopt measures to prevent the insurance undertaking from continuing business in their territory<sup>919</sup>.

6-bis. IVASS shall communicate to EIOPA any case of withdrawal of authorisation for the publication in the list kept by the latter<sup>920</sup>.

#### Art. 243

(Withdrawal of the authorization issued to an insurance undertaking from a third State)

1. The authorisation issued to an insurance undertaking with head office in a third State for the business pursued by its branch in the territory of the Italian Republic, shall be withdrawn, in accordance with the provisions of article 264 (1), in the cases, under the terms and with the effects envisaged in article 242.

2. Authorisation shall also be withdrawn when the supervisory authority of a third State has adopted a measure withdrawing the undertaking's authorization to the pursuit of life or non-life

<sup>917</sup> Letter amended by article 1 (174, a) of legislative decree n. 74 of 12 May 2015.

<sup>918</sup> Letter inserted by article 1 (115) of law no. 213 of 30 December 2023.

<sup>919</sup> Paragraph amended by article 1 (174, b) of legislative decree n. 74 of 12 May 2015.

<sup>920</sup> Paragraph inserted by article 1 (174, c) of legislative decree n. 74 of 12 May 2015.



business or when the authorities of the member State supervising over the undertaking's solvency for the whole business pursued in the territory of the European Union have adopted the same measure on the grounds of the inadequacy in the Solvency and Minimum Capital Requirements. In the cases envisaged under this paragraph authorisation shall be withdrawn for all the insurance classes pursued<sup>921</sup>.

3. Authorisation shall also be withdrawn when the supervisory authorities of the State where the undertaking has its head office have violated the principles of reciprocity and equality of treatment vis-à-vis Italian insurance undertakings operating in their territories, or when these authorities have imposed restrictions on the free disposal of assets owned in Italy by the undertaking or have hindered the transfer of capitals required by the insurance undertaking for the normal conduct of business in the territory of the Italian Republic.

4. IVASS may however allow the undertaking, within a mandatory time limit, to ordinarily wind up its branch in the territory of the Italian Republic when the authorisation has been withdrawn for the reasons indicated in the above paragraph. The Minister of Economic development, upon IVASS' proposal, shall also provide for compulsory winding up of the branch when the appointment of the liquidators is not registered in the registrar of companies within the deadline set.

#### Art. 244

(Lapse and withdrawal of the authorization issued to a reinsurance undertaking)

1. The authorisation issued to the reinsurance undertaking shall lapse in the cases envisaged in article 240 (1). The provisions of articles 240 (2, 3, 3-bis, 4, 5 and 6), and 241 (1, 2, 3 and 4) shall apply, and the references shall be interpreted as referred to the corresponding regulation on reinsurance undertakings<sup>922</sup>.

2. The authorisation issued to the reinsurance undertaking shall be withdrawn in the cases envisaged in article 242 (1). The provisions of article 242 (3, 4, 5, 6 and 7) shall apply, and the references shall be interpreted as referred to the corresponding regulation on reinsurance undertakings<sup>923</sup>.

3. The provisions of this article shall also apply to reinsurance undertakings with head office in a third State which have been authorised to pursue business in the territory of the Italian Republic by way of establishment, notwithstanding that the measures adopted shall only be effective for the branch. If the supervisory authority of the reinsurance undertaking has provided for the authorisation to reinsurance business to lapse or be withdrawn, the same measure shall be adopted against its branch<sup>924</sup>.

### Chapter IV

#### ADMINISTRATIVE COMPULSORY WINDING UP

#### Art. 245

(Administrative compulsory winding up)

1. By its own decree the Minister of Economic Development, upon IVASS' proposal, may also provide for the withdrawal of authorization to pursue business in all the insurance classes and the administrative compulsory winding up of the undertaking, also when it is undergoing extraordinary administration or ordinary winding up, in cases of serious irregularities in administration or

<sup>921</sup> Paragraph amended by article 1 (175) of legislative decree n. 74 of 12 May 2015.

<sup>922</sup> Paragraph amended by article 1 (176) of legislative decree n. 74 of 12 May 2015.

<sup>923</sup> Paragraph amended by article 1 (176) of legislative decree n. 74 of 12 May 2015.

<sup>924</sup> Paragraph amended by article 20 (1), legislative decree n. 56 of 29 February 2008.

violations of rules of law, administrative provisions or articles of association or of exceptional expected losses.

2. Compulsory winding up may be proposed by IVASS, under the same proceedings indicated in paragraph 1, also at the reasoned request of the administrative bodies, the extraordinary meeting, the extraordinary commissioners or the liquidators, when the conditions under paragraph 1 are met.

3. The decree of the Minister of Economic Development and IVASS' proposal shall be communicated by the liquidators to the parties concerned which so request, not before they have been installed.

4. The functions of the administrative and control bodies, as well as of any other body of the undertaking which is still in office shall cease as from the date of issue of the decree. The functions of the shareholders' meeting shall cease as well, except for the cases provided for in articles 262 (1) and 263 (2).

5. The winding up shall be effected under the supervision of IVASS which, if the undertaking pursues business through branches established in other member States, shall avail itself of the cooperation of the supervisory authorities of these States. Administrative compulsory winding up proceedings and measures regarding Italian undertakings shall apply and be effective in the other member States.

6. In those cases where it is necessary or appropriate for the purpose of winding up, IVASS may authorize liquidators to continue to perform specifically identified operations.

7. Insurance and reinsurance undertakings shall not be subject to collective proceedings other than compulsory winding up as provided for by the provisions of this chapter. In the cases not expressly provided for, the provisions of the Crisis and Insolvency Code<sup>925</sup> shall apply, *mutatis mutandis*.

#### Art. 246 (Bodies in the proceedings)

1. IVASS shall appoint one or more liquidators and a supervisory committee made up of from three to five members, with the chairman designated in the deed of appointment. The liquidators and the supervisory committee shall be appointed for a term of three years, which may be renewed indefinitely taking account of the results and the actions of the bodies in the proceedings.

2. IVASS may revoke or replace liquidators and members of the supervisory committee.

3. The emoluments payable to the liquidators and members of the supervisory committee shall be established by IVASS on the basis of the criteria it has set out. The relevant costs shall be borne by the undertaking subject to the proceedings.

4. The professional, good repute and independence requirements established in implementation of article 76 shall apply to the bodies in the proceedings<sup>926</sup>.

#### Art. 247 (Publicity measures)

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<sup>925</sup> Paragraph amended by article 21 (1), legislative decree n. 56 of 29 February 2008, and by article 370 (1, b) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>926</sup> Paragraph amended by article 1 (177) of legislative decree n. 74 of 12 May 2015.

1. The measures on administrative compulsory winding up shall be published by IVASS in the Italian Official Journal; a partial text shall also be published in the Official Journal of the European Union and in the Bulletin.

2. Should IVASS be informed by the supervisory authority of the home member State of the winding up of an undertaking pursuing business in the territory of the Italian Republic either under the right of establishment or the free provision of services, it may publish the decision in accordance with the procedures it deems appropriate. The competent supervisory authority, the applicable law of the member State and the name of the liquidator shall be specified in the notice published. The notice shall be drawn up in Italian. Winding-up proceedings and measures regarding undertakings from other member States shall be governed by the legislation of their home State and shall be effective, without any further formalities, in the Italian legal system in accordance with that legislation.

3. Within fifteen days of the notification of their appointment the liquidators shall file a copy of the deed of appointment of the bodies in the proceedings for registration in the registrar of companies.

#### Art. 248

##### (Declaration of insolvency by the judicial authority)

1. If an undertaking not placed under compulsory winding up is insolvent, the court of the place where such undertaking has its centre of main interests<sup>927</sup>, at the request of one or more creditors or at the request of the public prosecutor or on its own motion, issues a declaration of insolvency by a judgement delivered in chambers after hearing the opinion of IVASS and of the undertaking's legal representatives. If an undertaking is placed under extraordinary administration, the court issues a declaration of insolvency also at the request of the extraordinary commissioners after hearing the opinion of said commissioners, of IVASS and of the outgoing legal representatives. The provisions of article 297 of the Crisis and Insolvency Code shall apply.<sup>928</sup>

2. If an undertaking is insolvent when the administrative compulsory winding up measure is adopted and it has not yet been declared insolvent pursuant to paragraph 1, the court of the place where such undertaking has its centre of main interests<sup>929</sup>, at the request of the liquidators or at the request of the public prosecutor or on its own motion, shall ascertain its state of insolvency by a judgement delivered in chambers after hearing the opinion of IVASS, of the undertaking's outgoing legal representatives and of the liquidators, if appointed. The provisions of article 297 of the Crisis and Insolvency Code shall apply.<sup>930</sup>

3. An insurance or reinsurance undertaking is deemed to be in state of insolvency not only when it is in one of the situations referred to in article 2 (1, b) of the Crisis and Insolvency Code<sup>931</sup>, but

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<sup>927</sup> Words amended by article 370, paragraph 1, letter c), number 1) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>928</sup> Words amended by article 370, paragraph 1, letter c), number 1) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>929</sup> Words amended by article 370, paragraph 1, letter c), number 2) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>930</sup> Words amended by article 370, paragraph 1, letter c), number 2) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>931</sup> Words amended by article 370, paragraph 1, letter c), number 3) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

also when it is in a situation of serious, evident and permanent insufficiency of the assets required to meet the commitments deriving from insurance or reinsurance claims.

4. The declaration of insolvency by the court shall have the effects described in article 299 of the Crisis and Insolvency Code.<sup>932</sup>

#### Art. 249

(Effects on the undertaking, creditors and existing legal relations)

1. No action and no enforcement or protective act may be promoted or brought, on any basis whatsoever, starting from the date of issue of the measure ordering the compulsory winding up of the undertaking. The court of the place where the undertaking has its centre of main interests<sup>933</sup> shall have exclusive competence for any form of civil action resulting from the winding up.

2. The provisions of title V, chapter I, sections III and IV of the Crisis and Insolvency Code, and of article 165 of the same Code<sup>934</sup> shall take effect starting from the date of the winding up measure.

#### Art. 250

(Powers and functioning of winding up bodies)

1. The liquidators shall have the legal representation of the undertaking, perform all the actions belonging to the latter and take steps for assessing liabilities and realising assets. The commissioners are public officials while performing their duties.

2. The supervisory committee shall assist the liquidators in the performance of their duties and issue opinions in the cases envisaged by the law or by the provisions set out in IVASS' regulation<sup>935</sup>. The supervisory committee shall ensure the regularity of the winding up and, to this purpose, it shall periodically check the adequacy of the administrative proceedings implemented by the liquidators and carry out investigations on the acts relating to the winding up, with special regard to those concerning proprietary relations.

3. IVASS, in general by way of regulation<sup>936</sup> or in particular by way of specific instructions, may issue directives for the implementation of the proceedings and may establish that some categories of acts or operations be subject to the prior opinion of the supervisory committee and to the prior authorization of IVASS. Members of winding up bodies shall be personally liable for non-compliance with IVASS' provisions. At any rate said instructions shall not be enforceable against third parties who did not know of them.

4. Every six months the liquidators shall provide IVASS with a technical report on the undertaking's accounting and financial situation and on the progress of the winding up, along with a report by the supervisory committee. IVASS shall provide the authorities of the other member States with any information they may request on the developments of the winding up proceedings of an undertaking for which they are the competent authority. Liquidators shall keep creditors

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<sup>932</sup> Words amended by article 370, paragraph 1, letter c), number 4) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>933</sup> Words amended by article 370, paragraph 1, letter d), number 1) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>934</sup> Words amended by article 370, paragraph 1, letter d), number 2) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>935</sup> IVASS Regulation n. 4 of 17 December 2013

<sup>936</sup> IVASS Regulation n. 4 of 17 December 2013.

regularly informed, in the manners established by IVASS's regulation<sup>937</sup>, regarding the progress of the winding up.

5. It shall be for the liquidators, after hearing the supervisory committee and subject to IVASS' prior authorisation, to start actions of liability and of enforcement for corporate creditors against members of the outgoing administrative and control bodies as well as against the general manager and the auditing firm, and to start the enforcement for corporate creditors against the company or entity in charge of its direction and coordination<sup>938</sup>.

6. Article 234 (8 and 9) shall apply to liquidators and the supervisory committee.

7. Subject to IVASS' authorisation and after obtaining the favourable opinion of the supervisory committee, liquidators may be supported by CONSAP in the performance of operations, subject to an agreement approved by the Minister of Economic Development, or by third parties but under their own responsibility, and the costs shall be charged to the winding up proceedings. In exceptional circumstances and subject to IVASS' authorisation liquidators may delegate the fulfilment of individual acts to third parties<sup>939</sup>.

#### Art. 251 (Initial steps)

1. Liquidators shall install themselves after the dissolved administrative or winding up bodies have handed over the company along with summary minutes. The liquidators shall acquire the accounts and draw up the inventory. At least one member of the supervisory committee shall attend such operations; a representative from IVASS may also be present.

2. Article 235 (2 and 4) shall apply.

#### Art. 252 (Assessment of liabilities)

1. Within sixty days of their appointment liquidators shall inform each creditor, by means of direct delivery, registered letter with advice of receipt or service by electronic techniques, of the amounts which, according to the undertaking's accounts and documents, should be credited to each of them. The communication shall be considered as delivered, subject to objections, if any.

2. The notification shall be effected to the last address as shown in the undertaking's records. The creditor concerned shall be under the obligation to immediately inform liquidators of any variation. The notification to creditors who cannot be found, or for whom there is no evidence of actual receipt at the last address shown in the undertaking's records, shall be effected at the registry of the court where the undertaking has its centre of main interests<sup>940</sup> by putting it in the file regarding the statement of liabilities. In that case the notification may be drawn up in one single document.

3. The initial notification to creditors who have their normal place of residence, domicile or head office in a member State other than the Italian Republic, including member States' public authorities, shall be effected in compliance with article 253.

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<sup>937</sup> IVASS Regulation n. 4 of 17 December 2013.

<sup>938</sup> Paragraph amended by article 1 (178) of legislative decree n. 74 of 12 May 2015.

<sup>939</sup> Paragraph amended by article 1 (211) of legislative decree n. 74 of 12 May 2015.

<sup>940</sup> Words amended by article 370, paragraph 1, letter e), number 1) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

4. IVASS may establish further forms of publicity for the purposes of making those who have not received the notification under paragraph 1 aware of the time limit for filing an application for lodgement of claims.

5. Within thirty days of receiving the registered letter creditors may submit or send their complaints to liquidators by registered letter with advice of receipt while enclosing the supporting documents. Creditors, including public authorities, who have their normal place of residence, domicile or head office in another member State, shall have the right to lodge their claims according to the same terms and procedures.

6. Within ninety days of publication of the winding up measure in the Official Journal, creditors who have not received the notification referred to in paragraphs 1 and 3 may apply to liquidators, by registered letter with advice of receipt, for recognition of their claims by submitting documentary evidence of the existence, type and scope of their rights. Creditors, including public authorities, who have their normal place of residence, domicile or head office in another member State, shall send liquidators copies of their supporting documents according to the same terms and procedures (unless they are automatically admitted), and shall indicate the nature of the claim, the date on which it arose and its amount. Furthermore creditors other than insured persons and other than those entitled to insurance benefits shall indicate whether they allege preference and what assets are covered by their collateral.

7. After the time limit envisaged under the previous paragraph has elapsed and within the subsequent ninety days liquidators shall provide IVASS with the list of admitted creditors and of the amounts owed to each of them, indicating their respective rights and ranking, and the list of applicants whose recognition as an interested party has been refused. Creditors, whether natural or legal persons and including public authorities, who have their normal place of residence, domicile or head office in another member State, shall be treated in the same way and accorded the same ranking as the claims of Italian creditors.

8. Once they have informed IVASS and according to the same terms referred to in paragraph 7 liquidators shall deposit the list of admitted creditors and of the amounts owed to them, and the list of applicants whose recognition as an interested party has been refused, with the registry of the court where the undertaking has its centre of main interests<sup>941</sup>, thus making them available to those entitled.

9. Afterwards, according to the same procedures referred to in paragraph 1, liquidators shall immediately inform applicants whose recognition as an interested party had been refused in full or in part, of the decision taken in relation to them. Notice of the filing of the statement of liabilities shall be published in IVASS' Bulletin.

10. Once the requirements referred to in paragraphs 7 and 8 have been met the statement of liabilities shall be enforceable.

#### Art. 253

(Initial information to known creditors from other member States)

1. When the winding up proceeding is opened liquidators shall without delay individually inform by registered letter with advice of receipt each known creditor who has its normal place of residence, domicile or head office in another member State.

2. The notice shall deal with the time limits for recognition of claims and preferences (if any), the consequences of failure to comply with said time limits, the subjects empowered to accept the

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<sup>941</sup> Words amended by article 370, paragraph 1, letter e), number 2) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

lodgement of claims (if required), the terms and procedures for filing complaints referred to in article 252 (5) and the objections referred to in article 254 (1). The notice shall also indicate that creditors whose claims are preferential or secured in rem shall have to lodge their claims. In the case of insurance claims, the notice shall further indicate the effects of the winding up proceedings on insurance contracts, in particular the date on which insurance contracts will cease to produce effects and the rights and duties of insured persons with regard to the contract.

3. The communications referred to in paragraphs 1 and 2 shall be made in Italian and show a heading in all the official languages of the European Union aimed at clarifying their nature and object.

4. For the subjects mentioned under paragraph 1 the time limits mentioned in articles 252 (5) and 254 (1) shall be doubled. The time limit indicated in article 252 (6) shall begin from the date of publication in the Official Journal of the European Union referred to in article 247 (1).

5. IVASS shall, by its own regulation<sup>942</sup>, establish the contents, language and the standard form to be used for information to creditors.

#### Art. 254

(Opposition to the statement of liabilities and action to challenge admitted claims)

1. Within fifteen days of receiving the communication referred to in article 252(9) creditors excluded, or admitted subject to a decision, may file an opposition to the statement of liabilities.

2. The opposition shall be regulated by articles 206 and 207 of the crisis and insolvency code<sup>943</sup>.

#### Art. 255

(Appeal)

1. Appeal against the sentence of the court deciding cases of opposition may be brought, also by liquidators, within fifteen days from the date on which the sentence is notified; the provisions of the crisis and insolvency code<sup>944</sup> and of the code of civil procedure shall apply.

#### Art. 256

(Delays in the lodgement of claims)

1. After filing the statement of liabilities and until all allocations are executed, creditors and those who have rights in rem over the undertaking's assets, who have not received the notification referred to in article 252 (1) and are not included in the statement of liabilities, may claim their rights in compliance with articles 206 and 207 of the crisis and insolvency code<sup>945</sup>.

2. These subjects shall bear the costs deriving from the delay in lodging their application, unless the delay is not ascribable to them. Article 260 (5) shall apply.

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<sup>942</sup> IVASS Regulation n. 4 of 17 December 2013.

<sup>943</sup> Paragraph amended by article 1 (179), legislative decree no. 74 of 12 May 2015, and by article 370 (1, f) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>944</sup> Words amended by article 370, paragraph 1, letter g), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>945</sup> Paragraph amended by article 1 (180), legislative decree no. 74 of 12 May 2015, and by article 370 (1, h) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

Art. 257  
(Realisation of assets)

1. Liquidators shall have all the powers necessary to realise assets, subject to the limitations established by the authority supervising over the winding up. As to the acts envisaged by article 132 of the crisis and insolvency code, notwithstanding the provisions of article 307 (2) of the same code,<sup>946</sup> liquidators shall first acquire the opinion of the supervisory committee and then perform them in compliance with the directives established by IVASS in general by way of regulation<sup>947</sup> or in particular by way of specific instructions.
2. Subject to IVASS's authorisation and after obtaining the favourable opinion of the supervisory committee, liquidators may transfer assets and liabilities, business, lines of business as well as properties and legal relations en bloc. The transfer may take place at any stage of the proceeding, also before the filing of the statement of liabilities. The transferee shall at any rate be liable for the sole liabilities shown in the deed of transfer.
3. Liquidators shall transfer the portfolio, in full or by single insurance classes, and such transfer shall not constitute grounds for terminating the insurance contracts transferred, to another undertaking which has adequate financial resources available within sixty days of publication of the winding up measure, based on an agreement approved by IVASS and published in the Bulletin. The risks shall be assumed by the accepting undertaking upon expiry of the sixty-day period.
4. Current insurance contracts may not be terminated by the accepting undertaking during the period for which premiums have been paid, and non-observance of that obligation shall render any termination void.
5. Also with a view to any execution of allocations to persons entitled liquidators may contract loans, effect other borrowing transactions and provide business assets as collateral according to the rules and protections laid down by the supervisory committee and subject to IVASS's prior authorisation.

Art. 258  
(Treatment of insurance or reinsurance claims)<sup>948</sup>

1. Assets representing technical provisions for life and non-life business which, on the date of the compulsory winding up measure, are recorded in the relevant book shall be used to reimburse as a matter of priority liabilities arising out of the contracts to which they refer.
2. Once the winding up measure has been published, or notified to the insurance or reinsurance undertaking if this happened before, the composition of the assets entered in the book and the book itself may not be changed by liquidators and no alteration other than the correction of purely clerical errors may be made, except with the authorisation of IVASS. By derogation from the previous sentence, the liquidators shall include in the book the yield on assets and the value of the premiums earned between the opening of the winding up and the payment of the insurance and reinsurance claims or, in case of portfolio transfer, until such transfer is effected. If the product

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<sup>946</sup> Words amended by article 370, paragraph 1, letter i), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>947</sup> IVASS Regulation n. 4 of 17 December 2013.

<sup>948</sup> Heading replaced by article 21 (2), legislative decree n. 56 of 29 February 2008.



of the realisation of assets is less than its estimated value shown in the book, the liquidators shall be required to justify this to IVASS<sup>949</sup>.

3. As regards assets representing technical provisions for life business, the claims of the following creditors shall take precedence over those of other creditors in respect of claims arisen before the winding up proceedings (though they are preferential claims or claims backed by a mortgage):

- a) those entitled to capitals or payments for expired policies or policies under which a claim has arisen within sixty days after the date of publication of the winding up measure and those entitled to annuities payable within the same time limit;
- b) the holders of claims deriving from capital redemption operations;
- c) persons entitled to surrender;
- d) the holders of current contracts on the date referred to in a), in proportion to the amount of mathematical provisions;
- e) the holders of contracts which do not envisage the setting up of mathematical provisions, in proportion to that part of premium corresponding to the risk not run. If assets representing life technical provisions are not sufficient to pay said claims, those under a), b), c) and d) shall take precedence over those under e).

4. As regards assets representing technical provisions for non-life business, the claims of the following creditors shall take precedence over those of other creditors in respect of claims arisen before the winding up proceedings (though they are preferential claims or claims backed by a mortgage):

- a) those entitled to capitals or payments for claims arisen within sixty days after the date of publication of the winding up measure;
- b) the holders of current contracts on the date referred to in a), in proportion to that part of premium corresponding to the risk not run. If assets representing non-life technical provisions are not sufficient to pay all said claims, those under a) shall take precedence over those under b).

4-bis. Liabilities arising from participation in Community co-insurance contracts shall be met in the same way as those arising under the other insurance contracts without distinction as to the nationality of the insured and of the other persons entitled to insurance benefits<sup>950</sup>.

5. If assets representing technical provisions pertaining to compulsory insurance against civil liability in respect of the use of motor vehicles and craft are not sufficient to pay all claims under paragraph 4 the provisions referred to in title XVII, chapter I shall apply.

6. The payment of the claims under paragraphs 3 and 4 shall be effected after that of the expenses referred to in article 221 (1, a) of the crisis and insolvency code<sup>951</sup>. The same expenses shall be borne, in proportion, by any assets, though they are preferential or backed by a mortgage.

6-bis. In the event of a reinsurance undertaking's being wound up, the commitments arising out of contracts underwritten through a branch or under the freedom to provide services shall be met in the same way as those arising out of that undertaking's other reinsurance contracts<sup>952</sup>.

#### Art. 259

(Further provisions for the treatment of reinsurance claims)<sup>953</sup>

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<sup>949</sup> Paragraph amended by article 21 (3, a), legislative decree n. 56 of 29 February 2008.

<sup>950</sup> Paragraph inserted by article 1 (181) of legislative decree n. 74 of 12 May 2015.

<sup>951</sup> Words amended by article 370, paragraph 1, letter l), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>952</sup> Paragraph added by article 21 (3, b), legislative decree n. 56 of 29 February 2008.

<sup>953</sup> Heading replaced by article 21 (4), legislative decree n. 56 of 29 February 2008.

1. Article 1930 of the civil code shall apply in case of administrative compulsory winding up of the reinsured.

2. Article 1931 of the civil code shall apply in case of administrative compulsory winding up of the reinsurer's or of the reinsured's undertaking.

Art. 260  
(Allocation of assets)

1. Liquidators shall allocate the realised assets according to the order of precedence laid down in article 221 of the crisis and insolvency code<sup>954</sup>. The emoluments and reimbursements payable to the bodies in the extraordinary administration proceeding and to the provisional administrators which have preceded the administrative compulsory winding up shall be treated as the expenses referred to in article 221 (1, a) of the crisis and insolvency code<sup>955</sup>.

2. After hearing the opinion of the supervisory committee and subject to IVASS's prior authorisation liquidators may make partial payments or execute partial allocations either to all persons entitled or only some categories of them, even before all assets are realised and all liabilities established.

3. When executing allocations, and if there are claims from creditors or from other subjects concerned for whom admission to the statement of liabilities has not yet been defined, liquidators shall set aside the sums corresponding to the allocations not executed for the benefit of each of those subjects, so that they can be allocated to them in case their rights are recognised or, if not, they can be released to the other persons entitled.

4. Subject to IVASS's authorization and after obtaining the favourable opinion of the supervisory committee, in the cases referred to in paragraph 3 liquidators may acquire adequate collateral instead of setting aside said sums.

5. If the complaints and applications referred to in article 252 (5 and 6) are submitted after the time limit it shall be possible to apply only for the subsequent allocations, if any, in so far as they are accepted by liquidators or, after the statement of liabilities has been filed, by the court if there is opposition.

6. In case of delay in the lodgement of a claim as per article 256, it shall be possible to apply only for the allocations executed after the appeal has been submitted.

Art. 261  
(Final steps)

1. After assets have been realised and before executing the last allocation to creditors liquidators shall submit IVASS the final winding up balance-sheet, the financial statement and the allocation plan along with a report drawn up by them and a report by the supervisory committee, and ISVAP shall authorise that it be filed with the registry of the court.

2. Notice of the filing shall be published in IVASS' Bulletin. IVASS may establish supplementary forms of publicity.

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<sup>954</sup> Words amended by article 370, paragraph 1, letter m), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>955</sup> Words amended by article 370, paragraph 1, letter m), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

3. Appeals against the above acts may be brought before the court within twenty days of publication in IVASS' Bulletin. The provisions of article 254 (1 and 2) shall apply.

4. If the time limit has elapsed and no appeal has been brought, or if appeals have been defined by a judgment which has the force of *res judicata*, liquidators shall execute the final allocation in compliance with article 260.

5. The amounts which cannot be allocated shall be deposited according to the terms established by IVASS, so that they can subsequently be paid to those entitled, without prejudice to the power envisaged by article 260 (4).

6. The provisions of the civil code on the winding up of companies pertaining to the removal of the company and the filing of the corporate books shall apply.

7. Appeals and proceedings which may be pending, including that regarding the insolvency recognition, shall not affect the execution of the final steps envisaged under the paragraphs 1-6 and the closure of the administrative compulsory winding up proceeding. Such closure shall be subject to the execution of allocations or acquisition of collateral in compliance with article 260 (3 and 4).

8. After closure of the compulsory winding up proceeding liquidators shall continue to participate in the subsequent stages and levels of the pending legal proceedings. Article 233 (2 and 3), article 234 (8) and article 250 (1, 3 and 7) shall apply to liquidators in the performance of the activities connected to legal proceedings.

9. In the cases of transfers pursuant to article 257 (2 and 3) liquidators shall be excluded – upon their request – from the legal proceedings pertaining to the relations subject to transfer which have been transferred to the transferee.

#### Art. 262 (Composition)

1. At any stage of the compulsory winding up proceeding, liquidators, after hearing the opinion of the supervisory committee, or the undertaking pursuant to article 265 (2) of the crisis and insolvency code, after hearing the bodies in the winding up, may propose a composition to the court of the place where the undertaking has its centre of main interests<sup>956</sup>. The proposal for composition shall be authorised by IVASS.

2. The proposal for composition shall indicate the percentage offered to unsecured creditors, the schedule of payments and the collateral, if any.

3. The proposal for composition and the opinion of the bodies in the winding up shall be deposited with the registry of the court. IVASS may establish other forms of publicity.

4. Within thirty days of the filing the persons concerned may deposit with the registry of the court a statement opposing the proposal for composition, and the liquidators shall be informed thereof. If there is no opposition the composition shall come into force.

5. In case of opposition the court shall make a decision about the proposal for composition by a judgement delivered in chambers, after hearing the opinion of IVASS. The decision shall be published by lodging it at the registry and in the other forms established by the court. Liquidators and opposing parties shall be informed by registrar's notification. Article 254 shall apply.

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<sup>956</sup> Words amended by article 370 (1, n) of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

6. During the composition procedure liquidators may allocate part of the assets as per article 260.

7. CONSAP shall be empowered to submit the proposal for the composition and act as the accepting party in the composition, subject to authorisation by the Minister of Economic Development.

#### Art. 263

(Execution of the composition and closure of the proceeding)

1. Liquidators, with the assistance of the supervisory committee, shall monitor the execution of the composition in compliance with the directives established by IVASS in general by way of regulation<sup>957</sup> or in particular by way of specific instructions.

2. Once the composition has been executed liquidators shall call the shareholders' meeting, so that a resolution be passed on the change of the objects in relation to the withdrawal of authorisation to the pursuit of insurance or reinsurance business. If the objects are not changed liquidators shall start the procedure for removal of the company and the filing of corporate books envisaged by the civil code in relation to the dissolution and winding up of companies.

3. The opposition shall be regulated by articles 250 and 251 of the crisis and insolvency code<sup>958</sup>.

#### Art. 264

(Insurance undertakings from third States and foreign reinsurance undertakings)

1. If an insurance undertaking with head office in a third State has set up a branch in the territory of the Italian Republic the compulsory winding up measure shall be taken against the Italian office. Article 240 (3) shall apply.

2. If a reinsurance undertaking with head office in a member State or in a third country has set up a branch in the territory of the Italian Republic the winding up measure shall be taken against the Italian office. Article 240 (3) shall apply<sup>959</sup>.

3. The provisions of this chapter shall apply, mutatis mutandis.

#### Art. 265

(Compulsory winding up of unauthorised undertakings)

1. The Minister of Economic Development, upon IVASS' proposal, shall provide for the compulsory winding up of the undertaking carrying on insurance or reinsurance business without authorisation.

2. In case there are no assets to be realised IVASS shall appoint the liquidators only after creditors or other subjects concerned have submitted a reasoned request within a mandatory period of not more than sixty days of the date of publication of the winding up measure. In that case liquidators,

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<sup>957</sup> ISVAP Regulation n. 8 of 13 November 2007, in particular Title IV, I and IVASS Regulation n. 4 of 17 December 2013.

<sup>958</sup> Words amended by article 370, paragraph 1, letter o), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>959</sup> Paragraph amended by article 21 (5), legislative decree n. 56 of 29 February 2008, as last amended by article 1 (182) of legislative decree n. 74 of 12 May 2015.

after filing the statement of liabilities, may ask IVASS for the authorisation to close the winding up without any further formalities.

3. The provisions of article 313 of the Crisis and Insolvency Code shall be observed.<sup>960</sup>

## **Chapter V**

### **STATE LIABILITY FOR ADMINISTRATIVE OFFENCE CONSEQUENT TO A CRIME**

#### **Art. 266**

(Liability for administrative offence consequent to a crime)

1. The public prosecutor who, pursuant to article 55 of legislative decree n. 231 of 8 June 2001, enters in the register of suspected offences an administrative offence committed by an insurance or reinsurance undertaking shall inform IVASS thereof. During the proceedings, when the public prosecutor so requests, IVASS may be heard and may present written reports.

2. At any stage of the proceedings before each court, before the judgement, the court shall, also on its own motion, provide that IVASS furnish up-to-date information on the undertaking's situation, with special regard to its organisation and control structure.

3. The final judgement imposing on an insurance or reinsurance undertaking the prohibitive sanctions envisaged by article 9 (2, a and b) of legislative decree n. 231 of 8 June 2001, after the expiry of the period for converting such sanctions, shall be notified for enforcement by the judicial authority to IVASS. To this end IVASS may propose or adopt the measures envisaged in chapters II, III and IV, keeping in mind the characteristics of the sanction imposed and the main purpose of safeguarding stability and protecting policyholders and those entitled to insurance benefits.

4. The prohibitive sanctions envisaged by article 9 (2, a and b) of legislative decree n. 231 of 8 June 2001 may not be applied on a precautionary basis to insurance or reinsurance undertakings. Article 15 too of legislative decree n. 231 of 8 June 2001 shall not apply to the afore-mentioned undertakings.

5. This article shall also apply mutatis mutandis to the Italian branches of undertakings of other member States or third States.

## **Chapter VI**

### **EFFECTS OF THE REORGANISATION MEASURES AND WINDING UP PROCEEDINGS RELATING TO AN INSURANCE UNDERTAKING ADOPTED BY OTHER MEMBER STATES**

#### **Art. 267**

(Employment relationships, contracts relating to immovable property ships and aircraft, financial instruments)

1. In case another member State adopts a reorganisation measure or winding-up proceedings vis-à-vis an insurance undertaking with head office in that State, the Italian law shall continue to be applicable to:

a) employment relationships with the insurance undertaking entered into in Italy;

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<sup>960</sup> Words amended by article 370, paragraph 1, letter p), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

- b) contracts concluded with the insurance undertaking conferring the right to make use or acquire immovable property situated in the territory of the Italian Republic;
- c) the insurance undertaking's rights on immovable property, ships or aircraft subject to registration in an Italian public register.

2. Acts for a consideration concluded after the adoption of a reorganisation measure or the opening of a winding-up proceedings under which the insurance undertaking disposes of an immovable asset, a ship or aircraft subject to registration in a public register or of financial instruments whose existence or transfer presupposes entry in a public register or central deposit system, shall be governed by the Italian law respectively if the immovable asset is situated in the territory of the Italian Republic, the public registers of the ship or aircraft or the register or central deposit system of financial instruments are governed by the Italian law.

#### Art. 268

(Third parties' rights in rem over assets situated in the territory of the Italian Republic)

1. The opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State shall not affect the rights in rem of third parties in respect of movable or immovable assets - both specific assets and collections of indefinite assets as a whole - belonging to the insurance undertaking which are situated within the territory of the Italian Republic.
2. The right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph 1 may be obtained, shall be considered a right in rem.
3. The provision under paragraph 1 shall not preclude any action for voidness, voidability or unenforceability of legal acts detrimental to all the creditors envisaged by the legislation of the member State of the undertaking for which the reorganisation measure or winding-up proceedings has been opened.

#### Art. 269

(Seller's rights based on a reservation of title of the asset situated within the territory of the Italian Republic)

1. The opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State which has signed a preliminary purchase contract or a purchase contract under reservation of title, shall not affect the seller's rights based on a reservation of title where at the time of the opening of such measures or proceedings the asset is situated within the territory of the Italian Republic.
2. The opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State which has concluded a contract referred to in paragraph 1 and delivered before the opening of such measures or proceedings, shall not constitute grounds for terminating the contract and shall not prevent the purchaser from acquiring title in return for a consideration or the fulfilment of agreed obligations, where at the time of the opening of such measures or proceedings this asset is situated within the territory of the Italian Republic.
3. The provisions laid down in the preceding paragraphs shall not preclude any action for voidness, voidability or unenforceability of legal acts detrimental to all the creditors envisaged by the legislation of the member State of the undertaking for which the reorganisation measure or winding-up proceedings has been opened.

Art. 270

(Set-off in the relationships with the insurance undertaking)

1. The opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State shall not affect the right of the creditor to demand the set-off in the relationships with the insurance undertaking in compliance with the provisions of article 155 of the crisis and insolvency code<sup>961</sup>.
2. The provision under paragraph 1 shall not preclude any action for voidness, voidability or unenforceability of legal acts detrimental to all the creditors envisaged by the legislation of the member State of the undertaking for which the reorganisation measure or winding-up proceedings has been opened.

Art. 271

(Operations dealt with in Italian regulated markets)

1. Without prejudice to the provisions of article 268, in case of opening of reorganisation measures or winding-up proceedings by another member State against an insurance undertaking with head office in that State, the rights and obligations vis-à-vis the insurance undertaking arising from novation and netting agreements, repurchase agreements, as well as any other operation in financial instruments authorized in Italy dealt with in regulated markets in accordance with the consolidated law on financial mediation, shall remain subject to the Italian law, including the possibility to start any action for voidness, voidability or unenforceability of payments or transactions detrimental to all the creditors.

Art. 272

(Requirements as to the admissibility of actions relating to detrimental legal acts)

1. Actions for voidness, voidability, or unenforceability, based on provisions envisaged by the legislation of the home member State of the undertaking against which reorganisation measures or winding-up proceedings have been opened, are not admissible or enforceable against those who, having benefited from the legal act detrimental to all the creditors, provide proof that this act is subject to the law of a member State other than that where the undertaking has its head office and that the law applicable in the relevant case does not allow any means of challenging that act.

Art. 273

(Pending lawsuits concerning the divestment of the insurance undertaking's assets)

1. The effects of a reorganisation measure or winding-up proceedings, adopted by another member State against an insurance undertaking with head office in that State, on a lawsuit pending in Italy concerning an asset, or a right on that asset, of which the insurance undertaking has been divested, shall be governed by the Italian law.

Art. 274

(Recognition and powers of commissioners and liquidators)

1. The commissioners or liquidators, appointed by the authority of the home member State of the insurance undertaking against which reorganisation measures or winding-up proceedings have been opened, who wish to act within the territory of the Italian Republic, in the performance of

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<sup>961</sup> Words amended by article 370, paragraph 1, letter q), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

their tasks shall show proof of their appointment by submitting a certified copy of the original decision of the authority appointing them or by any other certificate issued by the competent authority of that State. A translation into Italian of the documents provided for in this paragraph may be required from the commissioners or liquidators.

2. Persons to assist or, where appropriate, represent commissioners or liquidators in the performance of their tasks resulting from the reorganisation measure or winding-up proceedings may be appointed, according to the legislation of the insurance undertaking's home member State, in the territory of the Italian Republic, specifically as concerns relations with Italian creditors.

3. Without prejudice to the provisions of paragraph 4, commissioners and liquidators shall exercise within the territory of the Italian Republic all the powers which they are entitled to exercise within the territory of the undertaking's home member State, but they may not carry out tasks reserved to the law enforcement authorities or to the judiciary authorities.

4. The commissioners or liquidators, appointed by the authority of the undertaking's home member State shall, in the performance of their tasks within the territory of the Italian Republic, comply with the Italian law, in particular with regard to procedures for the realisation of assets, rules on employment relationships and the provision of information to employees. The commissioners or liquidators, appointed by the authority of the undertaking's home member State, as well as any other person authorized by the same authority, may request, without prejudice to any specific publicity requirements envisaged by the Italian law, that a reorganisation measure or the decision to open winding-up proceedings be registered in the land register, the registrar of companies and any other Italian public register.

#### CHAPTER VI-bis LIFE INSURANCE GUARANTEE FUND<sup>962</sup>

##### Art. 274-bis (Definitions)

1. For the purpose of this Chapter, the following definitions shall apply:

- a) "Life insurance guarantee fund" or "Fund": association established among member insurance undertakings and intermediaries for the purpose of intervening to protect those entitled to insurance benefits against member undertakings in the cases referred to in article 274-sexies (1);
- b) "protected benefits": credit rights of policyholders or beneficiaries of life insurance policies by way of indemnification, capital repayment, payment of an annuity or otherwise;
- c) "member undertakings": the insurance undertakings referred to in article 274-ter (1 and 2);
- d) "member intermediaries": the subjects recorded in the register referred to in article 109, specified in article 274-ter (1);
- e) "members": the member insurance undertakings and intermediaries.

##### Art. 274-ter (Members and nature of the Life insurance guarantee fund)

1. Italian insurance companies authorized to carry on business in one or more life insurance classes and subjects recorded in the register referred to in article 109, shall join the Life insurance guarantee fund when the amount of annual premiums, whether directly collected or mediated, in the life classes is 50 million euros or more.

2. The branches of non-EU insurance undertakings authorized to carry on business in one or more life insurance classes in Italy shall join the Life insurance guarantee fund except when they

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<sup>962</sup> Chapter inserted by article 1 (113) of law no. 213 of 30 December 2023.



join an equivalent foreign insurance guarantee system, at least as regards the level and scope of the coverage.

3. The Life insurance guarantee fund is a private law subject; the financial resources for the pursuit of its purposes shall be provided by the members in accordance with the provisions of this chapter.

4. IVASS shall, by its own regulation, define the advertising and communications that members are required to make to inform customers of the guarantee on the insurance coverage issued.

5. The Life insurance guarantee fund may accept as members branches of EU insurance companies operating in Italy in one or more life classes or EU companies operating in Italy in one or more life classes under the freedom to provide services.

Art. 274-quater  
(Financial means of the Life insurance guarantee fund)

1. The Fund shall have financial means proportionate to its liabilities and in any case equal to at least 0.4 percent of the amount of life insurance technical provisions, calculated in accordance with the provisions of Title III, Chapter II, or in accordance with a solvency regime deemed equivalent in accordance with European Union law, held by member undertakings as of 31 December of the previous year.

2. Upon initial application, the target level specified in paragraph 1 shall be achieved, in a phased manner, over the period from 1 January 2024 to 31 December 2035. The deadline may be further extended, up to a maximum of two years, by decree of the Ministry of Economy and Finance.

3. If, after the date stipulated in paragraph 2, the financial means have been reduced below the level specified in paragraph 1, they shall be restored through periodic contributions. Restoration of the financial means shall take place within three years, whenever they have been reduced to less than two-thirds of the level specified in paragraph 1.

4. The financial means shall represent independent assets, separate for all purposes from the assets of the Life insurance guarantee fund and from those of each member, as well as from any other funds that may be established in the same Fund. For obligations incurred in connection with the interventions and financing regulated by this Chapter, the Fund shall be liable only to the extent of its financial means. Except as provided for in this Chapter, no actions may be carried out on its financial means by creditors of the Fund or in the interest of the Fund, nor actions by creditors of individual members or other funds that may be established in the same Fund.

Art. 274-quinquies  
(Financing of the Life insurance guarantee fund and investment of resources)

1. In order to set up the financial means of the Life insurance guarantee fund, the members shall make contributions at least annually, in the amount determined by the Fund itself in accordance with paragraph 2 and as communicated to the members each year. Contributions may take the form of irrevocable payment commitments which become due in the cases provided for in the Fund's by-laws, if so authorized by the Fund and in the amount determined by it, but not exceeding:

- a) 50 percent of the total amount of the Fund's financial means until the latter are less than 75 percent of the target level referred to in paragraph 1 of article 274-quater;
- b) 60 percent once the financial means have reached 75 percent of the target level referred to in paragraph 1 of article 274-quater.

2. Contributions due from member undertakings are proportionate to the amount of commitments made to policyholders and the undertakings' risk profile and represent at least four-fifths of the

members' annual contributions. They may be determined by the Fund on the basis of its own internal risk assessment methods. IVASS shall approve the internal methods. Upon initial application, the contributions due from member insurance undertakings shall be 0.4 per thousand of the amount of life insurance technical provisions, calculated in accordance with the provisions of Title III, Chapter II, or in accordance with a solvency regime deemed equivalent pursuant to European Union law.

3. The contributions due from member intermediaries shall be determined in relation to the total volume of mediated life products and associated revenues and represent no more than one-fifth of the annual contribution. Upon initial application, the contributions due from intermediaries under article 109, (2, d), shall be 0.1 per thousand of the amount of mediated life insurance technical provisions, and the contributions due from member intermediaries under article 109 (2, a), b) and c)), shall be 0.1 per thousand of life premium income mediated in the previous year.

4. The Life insurance guarantee fund, if it has to proceed with the payment of protected benefits and the financial means are insufficient, shall ask the members to supplement them through the payment of extraordinary contributions not exceeding 0.5 percent of the life insurance technical provisions for member undertakings and not exceeding 0.5 per thousand of the same technical provisions for member intermediaries.

5. IVASS may defer, in whole or in part, the payment of the contributions referred to in paragraphs 2, 3 and 4 by members, if the payment would jeopardize their liquidity or solvency. Such deferral shall not be granted for a longer period than twelve months and may be renewed upon the request of the member. Deferred contributions shall in any case be paid if IVASS ascertains that the conditions for deferral have ceased to exist.

6. The Life insurance guarantee fund shall ensure that it has access to alternative short-term funding to meet its obligations and may resort to additional financing provided in any form by other sources.

7. The financial means shall be invested in low-risk and sufficiently diversified assets.

Art. 274-sexies  
(Interventions of the Life insurance guarantee fund)

1. The Life insurance guarantee fund shall protect those entitled to protected benefits with respect to member undertakings, including those that have joined the Fund under article 274-ter (5). To this end, the Fund shall:

- a) subject to the limits and the conditions specified in articles 274-septies and 274-octies, make payments in cases of administrative compulsory winding up of member insurance undertakings;
- b) if provided for in the by-laws, also intervene in transactions involving the transfer of assets, liabilities, business, lines of business, properties and legal relationships identifiable en bloc referred to in article 257 (2), including through the provision of guarantees, if the cost of the intervention does not exceed the cost that the Fund, according to what is reasonably foreseeable on the basis of the information available at the time of the intervention, would have to bear for the provision of the protected benefits;
- c) if provided for in the by-laws, make interventions with member insurance undertakings to prevent or overcome a crisis situation that could result in their being placed under administrative compulsory winding up, if the cost of the interventions does not exceed the cost that the Fund, according to what is reasonably foreseeable on the basis of the information available at the time of the intervention, would have to bear for the provision of the protected benefits.

2. The by-laws of the Life insurance guarantee fund shall define the terms and conditions of the interventions referred to in paragraph 1 (c), with particular regard to:

- a) the commitments to be made by the insurance undertaking receiving the intervention to strengthen its risk safeguards also in order not to jeopardize the provision of protected benefits;

- b) check on compliance with the commitments made by the insurance company under a);
- c) the cost of the intervention, which shall not exceed the cost that the Fund would reasonably be expected to incur in making other interventions in the cases provided for by the law or the by-laws;
- d) the bearing of losses primarily by participants in the capital of the insurance undertaking in current or future crises.

3. The intervention referred to in paragraph 1 (c) may be made if IVASS has ascertained that the members of the Life insurance guarantee fund are able to make extraordinary contributions in accordance with article 274-quinquies (4).

4. After the Fund has made an intervention under paragraph 1 (c), the members shall provide the Fund, without delay, with resources equal to those used for the intervention, where necessary in the form of extraordinary contributions, if, alternatively:

- a) the Fund's financial means fall below 50 percent of the target level referred to in article 274-quater (1);
- b) the Fund's financial means amount to less than two-thirds of the target level referred to in article 274-quater (1), and there is the need to pay protected benefits.

5. As long as the target level referred to in article 274-quater (1) is not reached, the thresholds referred to in paragraph 4 shall refer to the actual available financial means.

Art. 274-septies  
(Eligible protected benefits)

1. Without prejudice to the provisions of paragraph 3, the Life insurance guarantee fund shall pay protected benefits within the maximum amount of 100,000 euros per claimant.

2. For the purpose of calculating the maximum amount referred to in paragraph 1:

- a) protected benefits to which two or more subjects are entitled as members of an entity without legal personality shall be treated as if a single subject were entitled;
- b) if the protected benefit is to be provided to more than one subject, the share to which each subject is entitled shall be considered in the calculation;
- c) account shall be taken of the set-off of any debts of the person entitled to the protected benefit owed to the insurance undertaking, if payable on the date on which the effects of the administrative compulsory winding-up measure take effect, to the extent the set-off is possible under applicable legal or contractual provisions.

3. The maximum amount referred to in paragraph 1 shall not apply to protected benefits related to life insurance contracts referred to in article 1, paragraph 1, letter ss-bis), numbers 2), 3), 4) and 5).

Art. 274-octies  
(Arrangements for the provision of protected benefits in cases of administrative compulsory winding up)

1. Payment shall be made within ninety working days from the date of publication of the administrative compulsory winding up measure pursuant to article 247, without the need to submit any application to the Fund. For this purpose, the member undertaking placed in administrative compulsory winding up shall promptly transmit to the Fund the necessary information about the protected benefits upon the Fund's request. Reimbursement shall be made in euros or in the currency of the State where the claimant is resident.

2. The Fund may defer payment in cases:

- a) of uncertainty about the existence or entitlement to the protected benefit or the amount due;

b) referred to in article 274-septies (3), if the amount of the benefit to be paid exceeds 100,000 euros; the deferral applies only for the surplus and the payment, by way of derogation of the provisions of paragraph 1, is made within six months from the date of publication of the administrative compulsory winding up measure.

3. By way of derogation of paragraph 1, if the person entitled to payment is subject to criminal proceedings, prevention measures or seizure orders related to money laundering, the Life Insurance Guarantee Fund may suspend payments in respect of the protected benefits until the res judicata effect of the judgements ordering acquittals or dismissals.

4. The right to the payment of the protected benefit shall lapse after ten years from the publication of the measure initiating the administrative compulsory winding up. Lapse may be prevented by lodging a document instituting the proceedings, unless the trial is extinguished, or by the recognition of the right by the Fund.

5. When the Fund provides the protected benefit under article 274-sexies (1, a), it shall acquire by subrogation the rights of the persons entitled with respect to the insurance undertaking in administrative compulsory winding up, up to the sum of the payments made, benefiting from the precedence referred to in article 258 (3).

Art. 274-novies  
(Obligations of the Life insurance guarantee fund)

1. The Life insurance guarantee fund shall:

- a) have in place governance, organisational and control structures that are adequate for the conduct of its activities;
- b) perform, on a regular basis and at least every five years, stress tests of its ability to perform the operations referred to in article 274-sexies. For this purpose it may request information from the members, which shall be kept for the time strictly necessary for the performance of those tests;
- c) draw up any correspondence with the persons entitled to the protected benefits in the language or languages used by the insurance undertaking in the communications with policyholders, insured persons and beneficiaries or in one of the official languages of the State where the branch which issued the insurance cover to which the protected benefit relates is established;
- d) ensure the confidentiality of news, information and data in its possession as a result of its institutional activity;
- e) draw up its own financial statements, which are subject to statutory audit;
- f) have its own assets in order to provide for its operating expenses;
- g) establish in its by-laws the methods for determining the membership fee paid by the members to cover its management and operating expenses.

2. The members of the bodies of the Life insurance guarantee fund and those who work for them shall be bound by professional secrecy with respect to the news, information and data referred to in paragraph 1 (d).

3. Article 76 shall apply to the persons charged with administrative, management and control functions at the Life insurance guarantee fund.

4. With regard to the acts performed for the provision of the protected benefits, the liability of the Fund, of the persons charged with administrative, management and control functions and of their employees, shall be limited to cases of wilful misconduct or gross negligence.

Art. 274-decies  
(Information to be provided to the Life insurance guarantee fund)

1. The Life insurance guarantee fund may request from its members the information necessary for providing protected benefits.

Art. 274-undecies  
(IVASS' powers)

1. Having regard to the protection of the persons entitled to insurance benefits and to the Fund's capacity to provide the protected benefits, IVASS shall:

a) approve the by-laws, provided that the Fund itself has adequate characteristics to perform the functions set forth in this Chapter and to ensure a balanced allocation of the risks of insolvency for the Fund; if the by-laws provide that the interventions referred to in article 274-sexies (1, c) may be implemented, verify that the Fund has appropriate procedures and systems in place to select the type of intervention, implement it and monitor its risks;

b) monitor compliance with the provisions of this Chapter;

c) verify that the protection offered by foreign guarantee schemes of which the Italian branches of non-EU insurance undertakings authorised to pursue life business in Italy are members, is equivalent to that offered by the Italian Life insurance guarantee fund;

d) define any coordination procedures with the authorities of the States concerned regarding the membership of branches of non-EU insurance undertakings to an Italian guarantee fund and their exclusion from it;

e) inform the Life insurance guarantee fund without delay if it finds that a member undertaking raises concerns that could lead to the activation of the Fund;

f) may issue provisions implementing the rules contained in this Chapter, also for the purposes of article 274-quater.

2. The Fund shall promptly inform IVASS of the most important acts and events relating to the performance of its functions and shall transmit, by 31 March of each year, a detailed report on the activities carried out in the preceding year and the plan of activities prepared for the current year.

Art. 274-duodecies  
(Exclusion from the Life insurance guarantee fund)

1. Members may be excluded from the Life insurance guarantee fund in case of exceptionally serious non-compliance with the obligations arising from membership in the Fund.

2. Non-compliance shall be challenged by the Fund, subject to the consent of IVASS, granting members a period of six months to comply. After the expiration of the deadline, which may be extended for a period no longer than three months, the Fund shall notify the member undertaking or intermediary of the exclusion.

3. In the case of exclusion of an undertaking, the benefits relating to the commitments undertaken until the date of receipt of the notice of exclusion by the member undertaking shall be protected by the Fund. The excluded insurance undertaking shall immediately notify policyholders and those entitled to insurance benefits of such notice, according to the methods specified by IVASS.

4. Failure to join or exclusion from the Fund shall entail the withdrawal of the authorization to carry on life insurance business or, for the intermediaries referred to in article 274-ter (1), the removal from the register referred to in article 109. This does not prejudice to the possibility of ordering the administrative compulsory winding up of the undertaking in accordance with article 245.

Art. 274-terdecies  
(Interventions financed on a voluntary basis)

1. Without prejudice to the provisions of article 274-sexies (1, c), and for the purposes indicated therein, the Life insurance guarantee fund may, if provided for in the by-laws and according to the procedures agreed by the members, carry out interventions through resources paid on a voluntary basis by the members themselves and without recourse to the financial means provided for in article 274-quater.

Article 274-quater (4) shall apply to these resources.

Art. 274-quaterdecies  
(Establishment of additional Life insurance guarantee funds)

1. Twenty-four months after the establishment of the Life insurance guarantee fund, the entities referred to in article 274-ter may establish and join additional guarantee schemes, having the same purposes and characteristics as the Fund provided for in article 274-sexies.

2. Membership in one of the schemes referred to in paragraph 1 is equivalent to that prescribed in article 274-ter.

3. The provisions of this Chapter shall apply to the schemes referred to in paragraph 1.

**Chapter VII**  
**PROVISIONS ON REORGANISATION AND WINDING UP IN AN INSURANCE GROUP<sup>963</sup>**

Art. 275  
(Extraordinary administration of the ultimate Italian parent undertaking)<sup>964</sup>

1. Without prejudice to the provisions of this article, the provisions of chapter II of this title shall apply to the ultimate Italian parent undertaking referred to in article 210 (2).

2. The undertaking referred to under paragraph 1 may be placed under extraordinary administration, in addition to the cases provided for in article 231, when:

a) there are serious failures in the performance of management and coordination activities for the implementation of the supervisory instructions given by IVASS;

b) one of the undertakings of the group referred to under article 210-ter has been subject to judicial winding up<sup>965</sup> proceedings, composition to avoid bankruptcy, administrative compulsory winding up, extraordinary administration or any other similar proceedings envisaged by special laws or by the legislation of other member States, or when an administrator has been appointed by the court according to the provisions of the civil code on the reporting to the court of serious irregularities in the management, and the group's financial or management stability may be seriously undermined.

3. The extraordinary administration of the company referred to under paragraph 1 shall last one year from the date when the decree of the Minister of Economic Development is issued, unless

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<sup>963</sup> Chapter replaced by article 1 (183) of legislative decree n. 74 of 12 May 2015.

<sup>964</sup> Article amended by article 1 (183) of legislative decree n. 74 of 12 May 2015.

<sup>965</sup> Words amended by article 349 of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

the decree envisages a shorter deadline or its earlier closure. In exceptional cases the proceedings may be extended for a period of no more than one year.

4. The extraordinary commissioners, after hearing the supervisory committee and subject to IVASS' prior authorisation, may dismiss or replace all or part of the directors of the companies of the group referred to under article 210-ter (2) in order to make the necessary changes to management policies. The new directors shall not continue in office beyond the end of the extraordinary administration of the undertaking referred to under paragraph 1. The dismissed directors shall be exclusively entitled to a consideration corresponding to their ordinary remuneration for the remainder of their assignment and, at any rate, for no more than six months.

5. The extraordinary commissioners may, subject to IVASS' prior authorisation and after hearing the outgoing company's directors, apply to the court for a declaration of insolvency of the group companies referred to under article 210-ter (2).

6. The extraordinary commissioners may ask the group companies referred to under article 210-ter (2) for data, information and any other useful element to carry out their tasks.

#### Art. 276

(Administrative compulsory winding up of the ultimate Italian parent undertaking)<sup>966</sup>

1. Without prejudice to the provisions of this article, the provisions of chapter IV of this title shall apply to the ultimate Italian parent undertaking referred to in article 210 (2).

2. In addition to the cases provided for in article 245, the company referred to under paragraph 1 may be placed under administrative compulsory winding up when the failures in the performance of management and coordination activities for the implementation of the supervisory instructions given by IVASS are exceptionally serious.

3. Every year the liquidators shall file a report on the accounting situation and on the progress of the winding up for registration in the registrar of companies, along with information on the developments of the proceedings to which other Italian subsidiaries referred to under article 210-ter may be subject as well as on any measure adopted to safeguard the interests of insured persons and of those entitled to insurance benefits. The report shall be accompanied by a report by the supervisory committee. IVASS may require that special publicity measures be adopted to make known that the report has been deposited.

4. The provisions of article 275 (5 and 6) shall apply.

5. When the court has issued a declaration of insolvency, it shall be for the liquidators to start the action for revocation against the other group companies referred to under article 210-ter (2), envisaged by article 166 of the crisis and insolvency code. The action may be brought against the acts indicated under article 166 (1, a, b and c) of the crisis and insolvency code, which have been committed in the five years preceding the compulsory winding up, and against the acts indicated under article 166 (1, a, b and c) and (2) of the crisis and insolvency code, which have been committed in the three previous years.<sup>967</sup>

#### Art. 277

(Extraordinary administration of the insurance group companies)<sup>968</sup>

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<sup>966</sup> Article amended by article 1 (183) of legislative decree n. 74 of 12 May 2015.

<sup>967</sup> Words amended by article 370, paragraph 1, letter r), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>968</sup> Article amended by article 1 (183) of legislative decree n. 74 of 12 May 2015.

1. Without prejudice to the provisions of this article, when the ultimate Italian parent undertaking referred to in article 210 (2) is placed under extraordinary administration or administrative compulsory winding up, the provisions of chapter II of this title shall apply to the group companies referred to under article 210-ter (2), when the relevant conditions are met. Extraordinary commissioners and liquidators of the ultimate Italian parent undertaking referred to in article 210 (2) too may apply to IVASS for extraordinary administration.

2. When a receiver has been appointed for the group companies referred to under article 210-ter (2) according to the provisions of the civil code on the reporting to the court of serious irregularities in the management, the proceeding shall be converted into extraordinary administration. The competent court, also on its own motion, shall make declaration by a judgement delivered in chambers that the company has been placed under extraordinary administration and shall order the transmission of the documents to IVASS. The bodies of the former proceeding and those of the extraordinary administration shall immediately hand over their responsibilities and take the relevant publicity measures required by IVASS. The effects of acts legally carried out shall remain unaffected.

3. When the group companies to be placed under extraordinary administration are subject to supervision, the relevant measure shall be adopted after hearing the opinion of the competent supervisory authority which, in cases of urgency, will be given a time limit to express its opinion.

4. The duration of the extraordinary administration of the group companies shall be independent of the duration of the proceedings under which the ultimate Italian parent undertaking referred to in article 210 (2) has been placed.

#### Art. 278

(Administrative compulsory winding up of the insurance group companies)<sup>969</sup>

1. Without prejudice to the provisions of this article, when the ultimate Italian parent undertaking referred to in article 210 (2) is placed under extraordinary administration or administrative compulsory winding up, the provisions of chapter IV of this title shall apply to the group companies referred to under article 210-ter (2), when they have been declared insolvent by the court. The provisions of chapter IV shall at any rate remain applicable to insurance and reinsurance undertakings. Extraordinary commissioners and liquidators of the ultimate parent undertaking too may apply to IVASS for compulsory winding up.

2. When the group companies referred to under article 210-ter have been placed under judicial winding up<sup>970</sup> proceedings, compulsory winding up or other collective proceedings, these are converted into compulsory winding up as regulated by this article. Without prejudice to the state of insolvency already declared, the competent court, also on its own motion, shall make declaration by a judgement delivered in chambers that the company has been placed under winding up proceedings as provided for in this article and shall order the transmission of the documents to IVASS. The bodies of the former proceeding and those of the winding up shall immediately hand over their responsibilities and take the relevant publicity measures required by IVASS. The effects of acts legally carried out shall remain unaffected.

3. Liquidators shall be vested with the powers envisaged by article 276 (5).

#### Art. 279

(Proceedings applicable to each individual company of the insurance group)<sup>971</sup>

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<sup>969</sup> Article amended by article 1 (183) of legislative decree n. 74 of 12 May 2015.

<sup>970</sup> Words amended by article 349 of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

<sup>971</sup> Article amended by article 1 (183) of legislative decree n. 74 of 12 May 2015.



1. When the ultimate Italian parent undertaking referred to in article 210 (2) is not placed under extraordinary administration or administrative compulsory winding up, the group companies referred to under article 210-ter (2) shall be subject to the proceedings envisaged by the laws applicable to them. IVASS shall be informed of any such measure by the judicial or administrative authority who has issued it. The judicial or administrative authorities supervising over these proceedings shall inform IVASS of any fact found out during the proceedings, which may be of relevance for the supervision over the insurance group.

2. By way of derogation from paragraph 1, a group company referred to under article 210-ter (2) shall not be subject to the proceedings which would otherwise be applicable to it and, should such proceedings be started, it shall be converted into extraordinary administration or compulsory winding up, if it performs essential instrumental functions on behalf of the ultimate Italian parent undertaking referred to in article 210 (2). Articles 277 and 278 shall apply, *mutatis mutandis*.

#### Art. 280

(Provisions common to the bodies in the proceedings)<sup>972</sup>

1. Without prejudice to the provisions of articles 233 and 246, the same persons may be appointed members of the bodies administering the extraordinary administration and the administrative compulsory winding up of group companies referred to under article 210-ter (2), when this is deemed useful to facilitate the smooth running of the proceedings.

2. The commissioner or liquidator who, in a given operation, has an interest which conflicts with that of the company, in his capacity as commissioner or liquidator of another group company shall notify this to the other commissioners or liquidators, if any, as well as to the supervisory committee and IVASS. In case of failure, such notification must be made by the members of the supervisory committee who are aware of this situation of conflict. The supervisory committee may lay down special protective measures and issue instructions on the operation, and the commissioners or liquidators shall be held personally liable for any non-compliance. Without prejudice to the power to revoke or replace the members of the bodies administering the proceedings, IVASS may give directives or, where appropriate, provide for the appointment of a commissioner for the fulfilment of specific acts.

3. The emoluments payable to the commissioners or liquidators and members of the supervisory committee shall be established by IVASS on the basis of the criteria it has set out and shall be borne by the companies. The emoluments shall be established on the basis of an overall assessment of the services provided in relation to any other post which they may hold in other group proceedings.

#### Art. 281

(Common rules on jurisdiction)<sup>973</sup>

1. When the ultimate Italian parent undertaking referred to in article 210 (2) has been placed under extraordinary administration or administrative compulsory winding up, the court where the ultimate parent undertaking has its centre of main interests<sup>974</sup> shall be competent for the action for revocation envisaged in article 276 (5), as well as for all the disputes between group companies.

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<sup>972</sup> Article amended by article 1 (183) of legislative decree n. 74 of 12 May 2015.

<sup>973</sup> Article amended by article 1 (183) of legislative decree n. 74 of 12 May 2015.

<sup>974</sup> Words amended by article 370, paragraph 1, letter s), of legislative decree no. 14 of 12 January 2019, which entered into force on 15 July 2022 pursuant to Article 42 of decree law no. 36 of 30 April 2022, converted with amendments by law no. 79 of 29 June 2022.

2. When the ultimate Italian parent undertaking referred to in article 210 (2) has been placed under extraordinary administration or administrative compulsory winding up, the Tribunale amministrativo regionale del Lazio (regional administrative court in Latium) based in Rome shall be competent for appeals filed against the administrative measures concerning or anyhow related to extraordinary administration and administrative compulsory winding up of the ultimate parent undertaking and of the group companies referred to under article 210-ter (2).

Art. 282  
(Unregistered groups and companies)<sup>975</sup>

1. The provisions of the articles under this chapter shall apply also to the companies which, although unregistered, meet the conditions for being registered in the register referred to under article 210-ter.

**TITLE XVII  
COMPENSATION SCHEMES**

**Chapter I**

**GENERAL PROVISIONS ON THE COMPENSATION SCHEME FOR DAMAGE RESULTING FROM THE USE OF  
MOTOR VEHICLES AND CRAFT**

Art. 283  
(Accidents occurred in the territory of the Italian Republic)

1. The Fondo di garanzia per le vittime della strada (National guarantee fund for road accident victims), set up within CONSAP, shall pay compensation for damages caused by motor vehicles and craft for which insurance is compulsory, when:

- a) the accident has been caused by an unidentified vehicle or craft;
- b) the vehicle or craft is not insured;
- c) the undertaking insuring the vehicle, at the time of the accident occurred in the territory of the Italian Republic, is subject to insolvency or winding-up proceedings, as defined in accordance with Article 268 (1, d) of Directive 2009/138/EC, or is subject to such proceedings at a later date, and the injured party too is resident in the territory of the Italian Republic. In the event that the person responsible for the accident is insured with an undertaking of another member state, the Fondo di garanzia per le vittime della strada has the right to recover from the equivalent guarantee body the sums paid to the injured parties;<sup>976</sup>
- c-bis) the craft is insured with an undertaking pursuing business in the territory of the Italian Republic by way of establishment or of free provision of services, which has been placed under compulsory winding up at the time of the accident or afterwards;<sup>977</sup>
- d) the vehicle has been used against the will of the owner, usufructuary, buyer under reservation of title or leasee of an operating or financial leasing;
- d-bis) the vehicle has been dispatched to the territory of the Italian Republic from a State referred to in article 1 (1, bbb) and in the period referred to in article 1 (1, fff, 4-bis) it is involved in an accident while being uninsured<sup>978</sup>;

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<sup>975</sup> Article amended by article 1 (183) of legislative decree no. 74 of 12 May 2015.

<sup>976</sup> Letter amended by article 2 (1, m), 1) of legislative decree no. 184 of 22 November 2023. The previous version laid down: “c) the vehicle or craft is insured with an undertaking pursuing business in the territory of the Italian Republic by way of establishment or of free provision of services, which has been placed under compulsory winding up at the time of the accident or afterwards;”.

<sup>977</sup> Letter amended by article 2 (1, m), 2) of legislative decree no. 184 of 22 November 2023.

<sup>978</sup> Letter inserted by article 1 (9, a) of legislative decree n. 198 of 6 November 2007.

d-ter) the accident has been caused by a foreign vehicle bearing a registration plate which does not correspond or no longer corresponds to the vehicle<sup>979</sup>.

2. In the case referred to in paragraph 1 a), compensation shall be due only for personal injury. In case of very serious injuries compensation shall also be due for material damage amounting to more than 500 euros, for the part exceeding that amount. In the cases referred to in paragraph 1 b), d-bis) and d-ter) compensation shall be due for personal injury and for material damage. In the case referred to in paragraph 1 c) and c-bis)<sup>980</sup>, compensation shall be due for personal injury and for material damage. In the case referred to in paragraph 1 d), compensation shall be due for personal injury and for material damage, limited to third parties other than passengers and passengers against their will or who are not aware of the illegal use of the vehicle<sup>981</sup>.

3. In the case referred to in paragraph 1 a), damages shall be paid up to the minimum amounts of cover established, per each victim and claim, by the regulation referred to in article 128 relating to cars used for private purposes. The percentage of permanent incapacity, the status of cohabiting dependant and the percentage of the victim's income to be taken into account for each of the cohabiting dependants shall be determined according to the rules of the consolidated law on compulsory workmen's compensation and occupational diseases insurance.

4. In the cases referred to in paragraph 1 b), c), c-bis), d), d-bis) and d-ter), damages shall be paid up to the insured minimum amounts of cover referred to in article 128 and in the delegated acts of adjustment to the harmonised index of consumer prices (HICP) adopted by the European Commission<sup>982</sup>.

5. The Fondo di garanzia per le vittime della strada shall be subrogated, for the amount paid, to the policyholder and the injured party in their rights against the undertaking placed under compulsory winding up, and shall benefit of the same treatment envisaged for the insurance claims indicated in article 258 (4) a). In accordance with article 150 the insurance undertaking which has paid damages shall have a right of redress against the Fondo di garanzia per le vittime della strada in case of compulsory winding up of the insurance undertaking of the responsible vehicle.

5-bis. In case of voluntary winding up of the undertaking, the Fondo di garanzia per le vittime della strada shall have a right of recourse against the undertaking for the amount paid.<sup>983</sup>

#### Art. 283-bis

(Obligations on the Fondo di garanzia per le vittime della strada (Guarantee Fund for Victims of Road Accidents) to provide information)<sup>984</sup>

1. Without prejudice to any obligation under article 247, the Fondo di garanzia per le vittime della strada shall promptly inform the equivalent bodies in the Member States of the opening of the winding up proceedings of an undertaking with head office in the territory of the Italian Republic and authorised to provide insurance against civil liability in respect of the use of motor vehicles.

#### Art. 284

(Accidents caused by craft in another member State)<sup>985</sup>

<sup>979</sup> Letter inserted by article 1 (9, a) of legislative decree n. 198 of 6 November 2007.

<sup>980</sup> Period amended by article 2 (1, m), 3) of legislative decree no. 184 of 22 November 2023.

<sup>981</sup> Paragraph amended by article 1 (9, b) of legislative decree no. 198 of 06 November 2007.

<sup>982</sup> Paragraph amended by article 1 (9, c), legislative decree no. 198 of 6 November 2007, as last replaced by article 2 (1, m), 4) of legislative decree no. 184 of 22 November 2023.

<sup>983</sup> Paragraph introduced by article 2 (1) letter m, number 5) of legislative decree no. 184 of 22 November 2023.

<sup>984</sup> Article inserted by article 2 (1, n) of legislative decree no. 184 of 22 November 2023.

<sup>985</sup> Heading replaced by article 2 (1,) letter o, number 1) of legislative decree no. 184 of 22 November 2023.

1. The Fondo di garanzia per le vittime della strada shall also be required, in accordance with article 283 (1, c-bis), to pay compensation for damage resulting from accidents caused within the territory of another member State by craft registered there and insured with an undertaking having its head office in Italy and pursuing business in that State by way of establishment or of free provision of services which is placed under compulsory liquidation at the time of the accident or afterwards. Article 283 (5) shall apply.<sup>986</sup>

2. By decree to be published in the Italian Official Journal, the Minister of Enterprises and Made in Italy<sup>987</sup> shall authorise CONSAP to underwrite agreements with the guarantee funds of the other member States concerning compensation for damages resulting from the claims under paragraph 1.

Art. 285  
(National guarantee fund)

1. The Fondo di garanzia per le vittime della strada shall be managed by CONSAP under the supervision of the Ministry of Economic Development with the assistance of an ad-hoc committee.

1-bis. The Fund referred to in paragraph 1 shall cooperate, when necessary, with the equivalent bodies in other Member States, with compensation bodies set up under Article 25-bis of directive 2009/103/EC, with all other interested parties, including the competent authorities of the Member States. Such cooperation shall include requesting, receiving and providing information, including on the details of specific claims.<sup>988</sup>

1-ter. The appointed undertaking under article 286, par. 1, shall inform the Fund referred to in paragraph 1 that it has received the claim. When the party ultimately liable is the body of the home Member State of the insurance undertaking from another member State carrying on business in the territory of the Italian Republic under the right of establishment or the free provision of services, the Fund referred to in paragraph 1 shall inform the equivalent body in the home Member State of the insurance undertaking and the insurance undertaking of that Member State subject to winding-up proceedings, or its administrator or liquidator, as defined in Article 268, letters e) and f), of Directive 2009/138/EC, respectively, that it has received a claim. The insurance undertaking pursuing business in the territory of the Italian Republic by way of establishment or of free provision of services, which has been placed under bankruptcy or winding-up proceedings, as defined in accordance with Article 268 (1, d) of Directive 2009/138/EC, shall inform the Fund referred to in paragraph 1 when it compensates or denies liability with regard to a claim that has also been received by the Fund itself. The Fund referred to in paragraph 1, which has paid compensation to the injured party in advance, shall be entitled to claim full reimbursement of the sum paid from the equivalent body which is ultimately liable for the claim.<sup>989</sup>

1-quater. When the party ultimately liable is the body of the home Member State of the insurance undertaking from another member State, the Fund referred to in paragraph 1, which has compensated the injured party, shall be entitled to claim full reimbursement of the sum paid from the equivalent body in that Member State, which shall make the payment within six months, unless otherwise agreed.<sup>990</sup>

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<sup>986</sup> Amendments to paragraph 1 introduced by article 2 (1) letter o, number 2) of legislative decree no. 184 of 22 November 2023.

<sup>987</sup> Amendment introduced by article 2 (1) letter o, number 3) of legislative decree no. 184 of 22 November 2023.

<sup>988</sup> Paragraph introduced by article 2 (1) letter p, number 1) of legislative decree no. 184 of 22 November 2023.

<sup>989</sup> Paragraph introduced by article 2 (1) letter p, number 1) of legislative decree no. 184 of 22 November 2023.

<sup>990</sup> Paragraph introduced by article 2 (1) letter p, number 1) of legislative decree no. 184 of 22 November 2023.

2. The Minister of Enterprises and Made in Italy<sup>991</sup> shall, by regulation<sup>992</sup>, establish the conditions and arrangements for the administration, intervention and reporting of the Fondo di garanzia per le vittime della strada, as well as the composition of the committee under paragraph 1.

3. Undertakings authorized to pursue insurance against civil liability in respect of the use of motor vehicles and craft shall be required to pay CONSAP, autonomous management of the Fondo di garanzia per le vittime della strada, an annual contribution proportional to the premium earned for each contract concluded in compliance with the insurance obligation<sup>993</sup>.

3-bis. In the cases referred to in article 283 (1, c), the contribution referred to in paragraph 3 is paid exclusively by undertakings authorised by IVASS to provide insurance in the territory of the Italian Republic against civil liability in respect of the use of motor vehicles.<sup>994</sup>

4. The regulation under paragraph 2 shall establish the arrangements on how the amount of the contribution shall be calculated every year, up to a maximum of four per cent of the taxable premium, taking account of the results of the settlement of claims as determined in the annual report drawn up by the fund management committee<sup>995</sup>.

4-bis. CONSAP shall have the power to negotiate and conclude, by 23 December 2023, an agreement with the bodies equivalent to the Fondo di garanzia per le vittime della strada of other EU member States, in order to implement the reimbursement and recourse procedures envisaged in article 10-bis (13) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009. The agreement shall be immediately notified to the European Commission.<sup>996</sup>

## **Chapter II**

### **SETTLEMENT OF CLAIMS BY THE APPOINTED UNDERTAKING**

#### Art. 286

(Settlement of claims by the appointed undertaking)

1. The settlement of the claims referred to in article 283 (1) a), b), c), c-bis), d), d-bis) and d-ter) shall be arranged by an undertaking appointed by IVASS<sup>997</sup> in accordance with the provisions of the regulation<sup>998</sup> adopted by the Minister of Enterprises and Made in Italy. The undertaking shall also arrange for the settlement of the claims occurred after the period assigned has expired and until the date of the measure appointing another undertaking<sup>999, 1000</sup>.

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<sup>991</sup> Words replaced by article 2 (1,) letter p, number 2) of legislative decree no. 184 of 22 November 2023.

<sup>992</sup> Decree by the Minister of Economic Development no. 98 of 28 April 2008, in particular Chapter II.

<sup>993</sup> Decree by the Minister of Economic Development of 05 December 2011 (year 2012); Decree by the Minister of Economic Development of 12 December 2012 (year 2013); Decree by the Minister of Economic Development of 04 December 2013 (year 2014); Decree by the Minister of Economic Development of 22 December 2014 (year 2015); Decree by the Minister of Economic Development of 23 November 2015 (year 2016); Decree by the Minister of Economic Development of 02 December 2016 (year 2017); Decree by the Minister of Economic Development of 16 January 2018 (year 2018); Decree by the Minister of Economic Development of 22 December 2018 (year 2019); Decree of the Minister of Economic Development of 20 December 2019 (year 2020), Decree of the Minister of Economic Development of 28 December 2020 (year 2021), Decree of the Minister of Economic Development of 28 December 2021 (year 2022), Decree of the Minister of Enterprises and Made in Italy of 30 December 2022 (year 2023), Decree of the Minister of Enterprises and Made in Italy of 28 December 2023 (year 2024).

<sup>994</sup> Paragraph introduced by article 2 (1,) letter p, number 3) of legislative decree no. 184 of 22 November 2023.

<sup>995</sup> Paragraph amended by article 1 (209) of legislative decree n. 74 of 12 May 2015.

<sup>996</sup> Paragraph inserted by article 1 (1, a) of legislative decree no. 70 of 15 May 2023.

<sup>997</sup> IVASS Order n. 32 of 19 May 2015 (from 1 July 2015 to 1 July 2018).

<sup>998</sup> Decree by the Minister of Economic Development n. 98 of 28 April 2008, in particular Chapter II.

<sup>999</sup> Paragraph amended by article 1 (10) of legislative decree n. 198 of 06 November 2007.

<sup>1000</sup> Amendments introduced by article 2 (1,) letter q, number 1) of legislative decree no. 184 of 22 November 2023.

2. The amounts advanced by the appointed undertakings, including expenses and net of the amounts recovered pursuant to article 292, shall be reimbursed by CONSAP - Fondo di garanzia per le vittime della strada, on the basis of the agreements concluded between the undertakings and the Fondo di garanzia per le vittime della strada, which are subject to the approval by the Minister of Enterprises and Made in Italy<sup>1001</sup> upon IVASS' proposal<sup>1002</sup>.

3. As regards the activities which are the subject of the agreements, the appointed undertakings shall have to comply with the general or specific directives issued by CONSAP on the smooth running of claims settlement procedures.

Art. 287  
(Action for damages)

1. In the cases provided for in article 283 (1) a), b), c-bis),<sup>1003</sup> d), d-bis) and d-ter), the action for damages caused by motor vehicles and craft for which insurance is compulsory can be started only after sixty days have elapsed from the date when the injured party filed a claim for damages, by means of a registered letter, with the appointed undertaking and sent a copy of it to CONSAP – Fondo di garanzia per le vittime della strada. In the case provided for in article 283 (1) c), the action for damages can be started only after six months have elapsed from the date when the injured party filed a claim for damages<sup>1004</sup>.

2. The injured party who, in the case provided for in article 283 (1) a), has filed a claim for damages with the appointed undertaking and sent a copy of it to CONSAP - Fondo di garanzia per le vittime della strada, shall not be required to renew his claim if the insurance undertaking of the responsible party is later on identified<sup>1005</sup>.

3. The action for damages may only be brought against the appointed undertaking. CONSAP – Fondo di garanzia per le vittime della strada may however intervene in proceedings, also on appeal.

4. In the cases provided for in article 283 (1) b), d-bis) and d-ter), the person who caused the damage shall also be summoned as defendant in the proceedings<sup>1006</sup>.

5. The insurance undertaking's liquidator too, or any other entity managing the procedure to which the undertaking is subject, shall be summoned as defendant in the proceedings brought under article 283 (1) c) and c-bis)<sup>1007</sup>.

Art. 288  
(Policyholders' rights with respect to the National guarantee fund)<sup>1008</sup>

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<sup>1001</sup> Amendments introduced by article 2 (1,) letter q, number 2) of legislative decree no. 184 of 22 November 2023.

<sup>1002</sup> Paragraph amended by article 1 (211) of legislative decree n. 74 of 12 May 2015.

<sup>1003</sup> Amendment introduced by article 2 (1) letter r, number 1) of legislative decree no. 184 of 22 November 2023.

<sup>1004</sup> Paragraph amended by article 1 (11), legislative decree n. 198 of 6 November 2007 and afterwards by article 1 (210) of legislative decree n. 74 of 12 May 2015.

<sup>1005</sup> Paragraph amended by article 1 (210) of legislative decree n. 74 of 12 May 2015.

<sup>1006</sup> Paragraph replaced by article 1 (11, b) of legislative decree no. 198 of 6 November 2007.

<sup>1007</sup> Amendments introduced by article 2 (1), letter r, number 2) of legislative decree no. 184 of 22 November 2023.

<sup>1008</sup> Article replaced by article 2 (1, s) of legislative decree no. 184 of 22 November 2023. The previous version laid down:  
*1. Policyholders insured with undertakings carrying on motor liability insurance which have been placed under compulsory winding up may, within the limits of the amounts indicated in article 283 (4), claim their rights deriving from the contract against CONSAP - Fondo di garanzia per le vittime della strada by acting against the undertaking appointed for the territory where the accident has occurred."*

1. Parties injured by vehicles insured with undertakings with head office within the territory of the Italian Republic, carrying on motor liability insurance, which have been placed under the proceedings referred to in article 283 (1) c) and c-bis) may, within the limits of the amounts indicated in article 283 (4), claim their rights deriving from the contract against CONSAP - Fondo di garanzia per le vittime della strada by acting against the undertaking appointed for the territory where the accident has occurred.

2. Within three months of the claim referred to in paragraph 1, the appointed undertaking shall:

- a) make a reasoned offer of compensation, where it has established that it is liable to provide compensation, as the claim is not contested and the damages have been partially or fully quantified; or
- b) provide a reasoned reply, where it has established that it is not liable to provide compensation, or where liability is denied or has not been clearly determined or the damages have not been fully quantified.

3. Where compensation is due in accordance with paragraph 2 (a), the appointed undertaking shall pay the compensation to the injured party without undue delay and in any event within three months of the acceptance by the injured party of the reasoned offer of compensation. Where the damage has been only partially quantified, the appointed undertaking shall pay the compensation to the injured party within three months of the acceptance of the offer. The sum paid shall be charged to the ultimate settlement of the claim.

4. The appointed undertaking shall not make the payment of compensation subject to the requirement that the injured party establishes that the legal or natural person liable is unable or refuses to pay, or to any conditions other than those laid down in paragraphs 1, 2 and 3.

5. The provisions under article 146 (1) shall apply, *mutatis mutandis*.

#### Art. 289

(Effects of compulsory winding up on judgements having the force of *res judicata* and on pending proceedings)

1. The judgements obtained by the injured party against the insurance undertaking shall be enforceable, if they have become *res judicata* before the publication of the compulsory winding up decree, against the undertaking appointed for paying damages within the limits established by article 283 (4).

2. If the compulsory winding up decree is adopted before the sentence has become *res judicata*, the proceedings against the liquidator and the appointed undertaking shall continue after six months have elapsed from the publication of the compulsory winding up decree. In any case the judgements shall be enforceable against the appointed undertaking within the limits of compensation established by article 283 (4).

3. The provision under paragraph 1 shall also apply to ordinances obtained by injured parties who are in need.

#### Art. 290

(Limitation period for the direct right of action)

1. In the cases provided for in article 283 (1) a), b), d), d-bis) and d-ter) the direct right of action against the appointed undertaking to which the injured party is entitled shall be subject to the same limitation period applicable to any action against the person who caused the damage<sup>1009</sup>.

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<sup>1009</sup> Paragraph amended by article 1 (12) of legislative decree n. 198 of 06 November 2007.

2. In the case provided for in article 283 (1) c) and c-bis), the direct right of action against the appointed undertaking to which the injured party is entitled may be brought only within the limitation period applicable to the action against the undertaking<sup>1010</sup>.

#### Art. 291

(Cases where there is more than one injured party and the amounts of cover are exceeded)

1. In the cases where there is more than one injured party in the same accident and the compensation to be paid by the person liable exceed the insured amounts, the injured parties' rights vis-à-vis the appointed undertaking shall be proportionately reduced within the limits of compensation indicated in the paragraph 3 or 4 respectively of article 283.

2. When, after thirty days from the accident, the appointed undertaking is not aware of other injured parties, despite the due diligence used for their identification, and has paid to some of them an amount higher than the portion owed to them, it shall be liable to the other injured parties only within the limits of the difference between the insured amount and the amount paid.

3. In the case referred to in paragraph 2, the other injured parties whose claim has remained unsatisfied, shall be entitled to claim the amount due to them in accordance with paragraph 1 from those who have received compensation from the insurance undertaking.

4. In the legal proceedings between the appointed insurance undertaking and injured parties compulsory joinder shall be required, in application of article 102 of the code of civil procedure. The appointed insurance undertaking may deposit an amount, within the limit of the minimum amount of cover, which has the effect of releasing it in regard of all persons entitled to compensation, provided that it is an irrevocable blocked deposit in favour of all injured parties.

#### Art. 292

(Right of redress and subrogation of the appointed undertaking)

1. The appointed undertaking which, also through an out of court composition, has paid damages in the cases provided for in article 283 (1) a), b), d), d-bis) and d-ter), shall have a right of redress against the persons who caused the damage in order to recover the damages paid as well as interest and costs<sup>1011</sup>.

2. In the case provided for in article 283 (1) c) and c-bis), the appointed undertaking which has paid damages, also on an out of court basis, shall be subrogated, for the amount paid, to the policyholder and the injured party in their rights against the undertaking. If the undertaking is placed under compulsory winding up - they shall have the same rank granted to them by the law.<sup>1012</sup>

### **Chapter III CLAIMS SETTLEMENT BY THE LIQUIDATOR OF THE UNDERTAKING IN COMPULSORY WINDING UP**

#### Art. 293

(Claims settlement by the liquidator of the undertaking in compulsory winding up)

1. In the decree ordering the compulsory winding up the liquidator of the undertaking subject to winding up may be authorised, also on behalf of the Fondo di garanzia per le vittime della strada

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<sup>1010</sup> Amendments introduced by article 2 (1, t) of legislative decree no. 184 of 22 November 2023

<sup>1011</sup> Paragraph amended by article 1 (13) of legislative decree n. 198 of 06 November 2007.

<sup>1012</sup> Amendments introduced by article 2 (1, u) of legislative decree no. 184 of 22 November 2023.



and by way of derogation from article 286 (1), to settle the damages caused by motor vehicles and craft occurred before the date of publication of the winding up decree of the undertaking and those occurred after such date but before the expiry date of the existing insurance contracts or of the period for which the premium has been paid.

2. The Guarantee Fund for the Victims of Road Accidents (CONSAP-Fondo di Garanzia per le vittime della strada) shall advance to the liquidator the sums needed for the costs of the claims settlement procedure within the limits of the regulation referred to in article 285 (2). In case of insufficiency of assets the sums allocated shall be definitively debited to CONSAP - Fondo di garanzia per le vittime della strada.

3. To carry out the task referred to in paragraph 1 the liquidator shall take on again the former staff of the undertaking subject to compulsory winding up. Staff shall be paid the minimum wage envisaged by the relevant collective agreements in relation to the duties performed.

Art. 294  
(Action for damages)

1. The persons entitled to compensation shall file their claim for compensation with the liquidator by means of a registered letter, even if a copy has already been sent to the undertaking placed under compulsory winding up.

2. No action for damages can be started against the proceedings before six months have elapsed from the date when the claim for damages has been filed. The decisions and other measures regarding compensation are enforceable against the Fondo di garanzia delle vittime della strada. CONSAP - Fondo di garanzia delle vittime della strada may intervene in proceedings, also on appeal.

3. If the decree ordering the compulsory winding up is published before the final judgement has been pronounced article 289 (1) shall apply.

Art. 295  
(Policyholders' rights with respect to the National guarantee fund)

1. The persons insured with undertakings carrying on insurance against civil liability in respect of the use of motor vehicles and craft which are placed under compulsory winding up may, within the limits of the amounts indicated in 283 (4), claim their rights deriving from the contract against CONSAP - Fondo di garanzia per le vittime della strada by acting against the liquidator.

**Chapter IV**  
**CLAIMS SETTLEMENT BY THE ITALIAN COMPENSATION BODY**

Art. 296  
(Italian compensation body)

1. CONSAP, in its capacity as administrator of the Fondo di garanzia per le vittime della strada, shall act as Italian compensation body. In the exercise of the functions referred to in article 297 (1-bis), CONSAP shall use the contribution provided for in article 285 (3-bis).<sup>1013</sup>

2. In the performance of its tasks the Italian compensation body may be assisted by Ufficio centrale italiano (the national bureau) on the basis of the terms and conditions established in a specific agreement.

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<sup>1013</sup> Sentence added by article 2 (1), letter v, number 1) of legislative decree no. 184 of 22 November 2023.

2-bis. CONSAP shall have the power to negotiate and conclude, by 23 December 2023, an agreement with the equivalent bodies of the other EU member States, in order to implement the reimbursement and recourse procedures envisaged in article 25-bis (13) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009. The agreement shall be immediately notified to the European Commission.<sup>1014</sup>

2-ter. The provisions under article 146 (1) shall apply, *mutatis mutandis*<sup>1015</sup>.

Art. 297  
(Scope of the Italian compensation body)

1. The Italian compensation body shall be responsible for providing compensation to persons resident in the territory of the Italian Republic in respect of any loss or injury resulting from accidents occurring in another member State and caused by the use of:

- a) a vehicle insured through an establishment in another member State and based in another member State;
- b) a vehicle which is impossible to identify;
- c) a vehicle in relation to which, within two months following the accident, it is impossible to identify the insurance undertaking.

1-bis. The Italian compensation body shall also be responsible for providing compensation to entitled persons resident in the territory of the Italian Republic in respect of any loss or injury resulting from accidents occurring in another member State when the insurance undertaking is subject to winding-up proceedings, or any other equivalent proceedings, regardless of whether there has been a declaration of insolvency, or is subject to such proceedings at a later date.<sup>1016</sup>

1-ter. In the cases referred to in article 297 (1-bis), the contribution referred to in article 285 (3-bis) is paid exclusively by the undertakings authorised by IVASS to provide insurance in the territory of the Italian Republic against civil liability in respect of the use of motor vehicles.<sup>1017</sup>

1-quater. Without prejudice to any obligation under article 247, the Italian compensation body shall promptly inform the equivalent bodies in the Member States of the opening of the administrative compulsory winding up proceedings of an undertaking authorised by IVASS to provide insurance in the territory of the Italian Republic against civil liability in respect of the use of motor vehicles.<sup>1018</sup>

2. In the case under paragraph 1 (a) the Italian compensation body shall take action also in case the accident occurred in a third State whose national bureau has joined the green card system.

Art. 298  
(Accidents caused by regularly insured vehicles)

1. In the cases referred to in article 297 (1, a and 2) those entitled to compensation may present a claim for compensation to the Italian compensation body:

- (a) if, within three months of the date when the persons entitled presented their claim for compensation to the insurance undertaking of the vehicle the use of which caused the accident

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<sup>1014</sup> Paragraph inserted by article 1 (1, b) of legislative decree n. 70 of 15 May 2023.

<sup>1015</sup> Paragraph added by article 2 (1), letter v, number 2) of legislative decree no. 184 of 22 November 2023.

<sup>1016</sup> Paragraph added by article 2 (1, z) of legislative decree no. 184 of 22 November 2023.

<sup>1017</sup> Paragraph added by article 2 (1, z) of legislative decree no. 184 of 22 November 2023.

<sup>1018</sup> Paragraph added by article 2 (1, z) of legislative decree no. 184 of 22 November 2023.

or to its claims representative, the insurance undertaking or its claims representative in the territory of the Italian Republic has not provided a reasoned reply to the points made in the claim; b) if the insurance undertaking has failed to appoint a claims representative in the territory of the Italian Republic; in this case, the persons entitled to compensation may not present a claim to the Italian compensation body if they have presented a claim for compensation directly to the insurance undertaking of the vehicle the use of which caused the accident and if they have received a reasoned reply within three months of presenting the claim.

1-bis. Those entitled to compensation may also present a claim for compensation to the Italian compensation body in the cases referred to in article 297 (1-bis).<sup>1019</sup>

2. The Italian compensation body shall refrain from or terminate taking action in favour of the persons entitled to compensation who have taken or are going to take legal action directly against the insurance undertaking or the person who caused the accident.

3. The compensation by the Italian compensation body shall be regarded as subsidiary to the claim against the person or the persons who caused the accident or the insurance undertaking or its claims representative. The Italian compensation body may not make the payment of compensation conditional on establishing that the person liable is unable or refuses to pay.

4. The persons entitled to compensation shall submit their claim with the Italian compensation body according to the rules established by the regulation<sup>1020</sup>, adopted by the Minister of Economic Development, implementing this title.

5. The injured party resident in Italy may, within two months of the date of the accident, apply for compensation from the Italian compensation body in the cases referred to in article 297 (1, b) and c)). The Italian compensation body shall terminate its action if the insurance undertaking, or its claims representative, subsequently makes a reasoned reply to the claim, on condition that such reply is sent within two months of presenting the claim to the Italian compensation body.<sup>1021</sup>

6. The Italian compensation body shall immediately inform the following subjects that it has received a claim from the persons entitled to compensation and that it will intervene within two months of the presentation of that claim:

- a) the insurance undertaking of the vehicle the use of which caused the accident or its claims representative;
- b) the compensation body of the member State of the insurance undertaking's establishment which issued the policy;
- c) if known, the person who caused the accident;
- d) the national bureau of the State where the accident occurred, if the accident was caused by a vehicle based in a State other than that where the accident occurred.
- d-bis) the administrator or liquidator, when the undertaking has been placed under extraordinary administration or administrative compulsory winding up, respectively.<sup>1022</sup>

6-bis. The insurance undertaking of the vehicle responsible for the accident shall inform the Italian compensation body when it compensates or denies liability with regard to a claim that has also

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<sup>1019</sup> Paragraph added by article 2 (1), letter aa, number 1) of legislative decree no. 184 of 22 November 2023.

<sup>1020</sup> Decree by the Minister of Economic Development n. 98 of 28 April 2008, in particular article 24.

<sup>1021</sup> Paragraph replaced by article 2 (1), letter aa, number 2) of legislative decree no. 184 of 22 November 2023. The previous version laid down: "5. *The Italian compensation body shall intervene within two months of the date when the persons entitled present a claim for compensation to it but shall terminate its action if the insurance undertaking, or its claims representative, subsequently makes a reasoned reply to the claim, on condition that such reply is sent within two months of presenting the claim to the compensation body.*".

<sup>1022</sup> Letter added by article 2 (1), letter aa, number 3) of legislative decree no. 184 of 22 November 2023.

been received by the compensation body itself in accordance with paragraph 1-bis of the same article.<sup>1023</sup>

6-ter. Within three months of the claim, the Italian compensation body shall:

- a) make a reasoned offer of compensation, where it has established that it is liable to provide compensation, as the claim is not contested and the damages have been partially or fully quantified; or
- b) provide a reasoned reply, where it has established that it is not liable to provide compensation, or where liability is denied or has not been clearly determined or the damages have not been fully quantified.<sup>1024</sup>

6-quater. Where compensation is due in accordance with paragraph 6-ter (a), the Italian compensation body shall pay the compensation to the person entitled without undue delay and in any event within three months of the acceptance by the person entitled of the reasoned offer of compensation. Where the damage has been only partially quantified, the Italian compensation body shall pay the compensation to the person entitled within three months of the acceptance of the offer. The sum paid shall be charged to the ultimate settlement of the claim.<sup>1025</sup>

6-quinquies. The Italian compensation body shall cooperate, when necessary, with the equivalent bodies in other Member States, with the guarantee funds envisaged in article 10-bis of Directive 2009/103/EC, as well as with the other compensation bodies referred to in article 24 of directive 2009/103/EC, with the competent authorities of the Member States and with the other interested parties. Such cooperation shall include requesting, receiving and providing information, including on the details of specific claims.<sup>1026</sup>

7. For the determination of the liability and the damage assessment the Italian compensation body to which the claim was submitted shall have to comply with the legislative provisions applicable in the State where the accident occurred.

#### Art. 299

##### (Reimbursements between compensation bodies)

1. If the Italian compensation body has compensated the persons entitled to compensation pursuant to article 298 it shall be entitled to claim reimbursement of the sum paid by way of compensation from the compensation body in the member State of the insurance undertaking's establishment which issued the policy for the vehicle which caused the accident, in relation to the advances made as compensation and in relation to the direct and indirect expenses pertaining to the claims settlement, to the extent and in the manner established by the agreement between compensation bodies and between compensation bodies and guarantee funds.

2. In case of accidents occurred in a member State other than the member State of residence of those entitled to compensation, or in case of accidents occurred in a third State which has joined the green card system and caused by motor vehicles insured with undertakings established in the territory of the Italian Republic, the Italian compensation body shall be required to reimburse the amount paid, if any, by the compensation body of the State of residence of those entitled to compensation for the loss or injury suffered by the latter.

3. The Italian compensation body shall be subrogated to those entitled to compensation in their rights against the person who caused the accident or his insurance undertaking in so far as the compensation body in the member State of residence of the persons entitled to compensation has provided compensation for the loss or injury suffered. Within thirty days the undertaking shall

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<sup>1023</sup> Paragraph added by article 2 (1), letter aa), number 4) of legislative decree no. 184 of 22 November 2023.

<sup>1024</sup> Paragraph added by article 2 (1), letter aa), number 4) of legislative decree no. 184 of 22 November 2023.

<sup>1025</sup> Paragraph added by article 2 (1), letter aa), number 4) of legislative decree no. 184 of 22 November 2023.

<sup>1026</sup> Paragraph added by article 2 (1), letter aa), number 4) of legislative decree no. 184 of 22 November 2023.

be required to reimburse the Italian compensation body of the sum paid by way of compensation and of the direct and indirect expenses referred to in paragraph 1, upon a request to which the proof of payment shall be enclosed. The undertaking may make objections to the amount to be reimbursed exclusively when the foreign compensation body has failed to inform the Italian insurance undertaking that it has received a claim from the persons entitled to compensation.

#### Art. 300

(Accidents caused by unidentified or uninsured vehicles)

1. In the cases referred to in article 297 (1, b and c), the Italian compensation body, after it has received the claim for compensation, shall immediately inform:

- a) the guarantee fund of the member State where the vehicle which caused the accident is normally based, in case it is an uninsured vehicle, and the guarantee fund of the member State where the accident occurred if other than that where the vehicle is normally based;
- b) the guarantee fund of the member State in which the accident occurred, in case it was caused by an unidentified vehicle or by an uninsured vehicle from a third State.

2. For the determination of liability and the damage assessment the Italian compensation body – once it has received the claim – shall have to comply with the current legislative provisions of the State where the accident occurred.

3. If the Italian compensation body has compensated the persons entitled to compensation pursuant to paragraph 1 it shall be entitled to claim reimbursement of the sum paid by way of compensation, and of the direct and indirect expenses, to the extent and in the manner established by the agreement between compensation bodies and between compensation bodies and guarantee funds:

- a) from the guarantee fund in the member State where the vehicle is normally based, in the case where the insurance undertaking cannot be identified;
- b) from the guarantee fund of the member State in which the accident occurred, in the case of an unidentified vehicle;
- c) from the guarantee fund of the member State in which the accident occurred, in the case of uninsured vehicles from a third State.

#### Art. 301

(Reimbursements to be borne by the Guarantee Fund for Victims of Road Accidents)

1. The Fondo di garanzia per le vittime della strada shall reimburse the compensation body of the member State where those entitled to compensation are resident the sum paid to said persons entitled as well as the direct and indirect expenses referred to in article 300 (3) in the following cases:

- a) accidents occurred in a member State other than the member State of residence of those entitled to compensation and caused by a vehicle normally based in the territory of the Italian Republic for which it is impossible to identify the insurance undertaking;
- b) accidents occurred in the territory of the Italian Republic and caused by an unidentified vehicle or by an uninsured vehicle from a third State.

2. Once the Fondo di garanzia per le vittime della strada has reimbursed the compensation body it may exercise the right of redress envisaged by article 292.

### Chapter V

## COMPENSATION SCHEME FOR DAMAGES CAUSED BY THE PRACTICE OF HUNTING

### Art. 302 (Scope)

1. The Fondo di garanzia per le vittime della caccia (National guarantee fund for hunting victims), set up within CONSAP, shall pay compensation for damages caused by the practice of hunting for which insurance is compulsory, when:

- a) the hunter is unidentified;
- b) the hunter liable for damage is not covered by compulsory insurance against civil liability;
- c) the hunter is insured with an undertaking pursuing business in the territory of the Italian Republic by way of establishment or of free provision of services, which has been placed under compulsory liquidation at the time of the accident or afterwards.

2. In the case referred to in a) compensation shall be due only for personal injury resulting in death or permanent disability higher than twenty per cent. In the case referred to in b), compensation shall be due for personal injury and for material damage exceeding the amount established in the regulation<sup>1027</sup> implementing this chapter. In the case referred to in c), compensation shall be due for personal injury and for material damage amounting to more than five hundred euros. The percentage of permanent incapacity, the status of cohabiting dependant and the percentage of the victim's income to be taken into account for each of the cohabiting dependants shall be determined according to the rules of the consolidated law on compulsory workmen's compensation and occupational diseases insurance.

3. In all the cases referred to in paragraph 1, damages shall be paid up to the minimum amounts of cover established by the hunting law.

### Art. 303 (Fondo di garanzia per le vittime della caccia – Guarantee fund for hunting victims)

1. The Fondo di garanzia per le vittime della caccia shall be managed by CONSAP under the supervision of the Ministry of Economic Development with the assistance of an ad-hoc committee.

2. The Minister of Economic Development shall, by regulation<sup>1028</sup>, establish the conditions and arrangements for the administration, intervention and reporting of the Fondo di garanzia per le vittime della caccia, as well as the composition of the committee under paragraph 1.

3. Undertakings authorized to pursue hunting liability insurance shall be required to pay CONSAP, independent management of the Fondo di garanzia per le vittime della caccia, an annual contribution proportional to the premium earned for each contract concluded in compliance with the insurance obligation.

4. The regulation under paragraph 2 shall establish the arrangements on how the amount of the contribution shall be calculated every year, up to a maximum of fifteen per cent<sup>1029</sup> of the taxable premium, taking account of the results of the settlement of claims as determined in the annual report drawn up by the fund management committee<sup>1030</sup>.

<sup>1027</sup> Decree by the Minister of Economic Development n. 98 of 28 April 2008, in particular article 35.

<sup>1028</sup> Decree by the Minister of Economic Development n. 98 of 28 April 2008, in particular Chapter III.

<sup>1029</sup> Paragraph amended by article 1 (28, c) of law n. 124 of 4 August 2017.

<sup>1030</sup> Decree by the Minister of Economic Development of 05 December 2011 (year 2012); Decree by the Minister of Economic Development of 12 December 2012 (year 2013); Decree by the Minister of Economic Development of 04 December 2013 (year 2014); Decree by the Minister of Economic Development of 22 December 2014 (year 2015); Decree

Art. 304  
(Right of redress and subrogation)

1. The Fondo di garanzia per le vittime della caccia which, also through an out of court composition, has paid damages in the cases provided for in article 302 (1, a and b), shall have a right of redress against the person who caused the damage in order to recover the damages paid as well as interest and costs.

2. In the case referred to in article 302 (1, c) the Fondo di garanzia per le vittime della caccia which has paid damages shall be subrogated, for the amount paid, to the policyholder and the injured party in their rights against the undertaking placed under compulsory winding up, and shall benefit of the same treatment envisaged for the insurance claims indicated in article 258 (4, a).

**TITLE XVIII  
SANCTIONS AND SANCTIONING PROCEDURES**

**Chapter I  
UNAUTHORISED BUSINESS AND IMPEDIMENTS TO THE EXERCISE OF SUPERVISORY FUNCTIONS<sup>1031</sup>**

Art. 305  
(Business pursued without authorisation)

1. Anyone pursuing insurance or reinsurance business without authorization shall be punished with imprisonment from two to four years and with a financial penalty varying from twenty thousand to two hundred thousand euros.

2. Anyone pursuing the activity of insurance or reinsurance mediation without being registered in the register under article 109 shall be punished with imprisonment from six months to two years and with a financial penalty varying from ten thousand to one hundred thousand euros.

3. In case there are reasonable grounds for suspecting that a company pursues insurance or reinsurance business in breach of paragraph 1 or the activity of insurance or reinsurance mediation in breach of paragraph 2, IVASS shall apply to the court for the adoption of the measures envisaged in article 2409 of the civil code or, for the same purpose, shall report this to the public prosecutor.

4. (repealed)<sup>1032</sup>.

5. The pursuit of the activity of loss adjuster without being registered in the list under article 156 shall be punished under article 348 of the penal code.

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by the Minister of Economic Development of 04 November 2015 (year 2016); Decree by the Minister of Economic Development of 02 December 2016 (year 2017); Decree by the Minister of Economic Development of 21 December 2017 (year 2018); Decree by the Minister of Economic Development of 22 December 2018 (year 2019); Decree of the Minister of Economic Development of 20 December 2019 (year 2020), Decree of the Minister of Economic Development of 28 December 2020 (year 2021), Decree of the Minister of Economic Development of 28 December 2021 (year 2022), Decree of the Minister of Enterprises and Made in Italy of 30 December 2022 (year 2023), Decree of the Minister of Enterprises and Made in Italy of 15 December 2023 (year 2024).

<sup>1031</sup> Heading replaced by article 1 (39) of legislative decree n. 68 of 21 May 2018.

<sup>1032</sup> Paragraph repealed by article 1 (40) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "4. Except where provided for in paragraph 1 and in article 2638 of the civil code, anyone not complying with IVASS' instructions within the deadline set or delaying the exercise of its functions shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros."

Art. 306  
(Impediments to the exercise of supervisory functions)

1. Except where provided for in article 2638 of the civil code, anyone hindering supervision by denying access to the premises or by refusing to obey the order to produce the documents concerning insurance or reinsurance business or the activity of insurance or reinsurance mediation, given by IVASS's officials charged with ascertaining the facts which may constitute a breach of article 305, shall be punished with imprisonment up to two years and with a financial penalty varying from ten thousand to one hundred thousand euros.

2. (repealed)<sup>1033</sup>.

Art. 307  
(Collaboration with the Guardia di finanza)

1. In the performance of its supervisory functions IVASS may be assisted by the Guardia di finanza, which carries out the requested checks and inspections by making use of the powers of investigation available to it for the assessment of value added tax and income tax.

2. All the news, information and data acquired by Guardia di finanza in the performance of the tasks envisaged in paragraph 1 shall be notified to IVASS.

Art. 308  
(Unauthorised use of insurance name)

1. The use, in the corporate name or in any other act of communication to the public, of the words *assicurazione* (insurance), *riassicurazione* (reinsurance), *impresa* or *compagnia di assicurazione* (insurance undertaking or company), *impresa* or *compagnia di riassicurazione* (reinsurance undertaking or company), *mutua assicuratrice* (mutual insurance undertaking), or any other words or phrases, including those in a foreign language, which may be misleading as to the legitimacy to exercise insurance or reinsurance business shall be prohibited to anyone other than the subjects authorized, respectively, to the pursuit of insurance or reinsurance business<sup>1034</sup>.

2. The use, in the corporate name or in any other act of communication to the public, of the words *intermediario di assicurazione* (insurance intermediary), *intermediario di riassicurazione* (reinsurance intermediary), *produttore di assicurazione* (insurance canvasser), *intermediario di assicurazione a titolo accessorio* (ancillary insurance intermediary), *agente di assicurazione* (insurance agent), *broker*, *mediatore di assicurazione* (insurance broker), *mediatore di riassicurazione* (reinsurance broker), *produttore diretto di assicurazione* (direct insurance canvasser), *perito di assicurazione* (loss adjuster), or any other words or phrases, including those in a foreign language, which may be misleading as to legitimacy to exercise insurance or reinsurance mediation or the activity of loss adjuster shall be prohibited to anyone other than the subjects registered in the register of insurance and reinsurance intermediaries referred to in article 109 or in the list of loss adjusters referred to in article 156<sup>1035</sup>.

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<sup>1033</sup> Paragraph repealed by article 1 (41) of legislative decree n. 68 of 21 May 2018. The previous version laid down: *"Except where provided for in paragraph 1 and in article 2638 of the civil code, anyone not complying with IVASS' instructions within the deadline set or delaying the exercise of its functions shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros."*

<sup>1034</sup> Paragraph amended by article 1 (42, a) of legislative decree n. 68 of 21 May 2018.

<sup>1035</sup> Paragraph amended by article 1 (42, b) of legislative decree n. 68 of 21 May 2018.



3. IVASS shall, by its own regulation<sup>1036</sup>, establish the cases when, in light of administrative controls or of other factual elements, the words or phrases indicated in paragraphs 1 and 2 may be used by subjects other than undertakings or intermediaries.

4. Anyone breaching the provisions of paragraph 1 shall be punished, if they are a natural person, with a pecuniary administrative sanction varying from five thousand to five million euros and if, they are a legal person, with a pecuniary administrative sanction varying from thirty thousand euros to ten percent of the turnover. The amount of the sanction may be increased in accordance with the provisions of article 310 (2)<sup>1037</sup>.

4-bis. Anyone breaching the provisions of paragraph 2 shall be punished, if they are a natural person, with a pecuniary administrative sanction varying from one thousand to seven hundred thousand euros and if, they are a legal person, with a pecuniary administrative sanction varying from five thousand to five million euros or, if higher, to five percent of the turnover. The amount of the sanction may be increased in accordance with the provisions of article 310 (2)<sup>1038</sup>.

#### Art. 308-bis

(Non compliance with IVASS' requests or delay in the exercise of the supervisory functions)<sup>1039</sup>

1. Except where provided for in article 306 and article 2638 of the civil code, anyone not complying with IVASS' instructions within the deadline set or delaying the exercise of its functions shall be punished, if they are a natural person, with a pecuniary administrative sanction varying from five thousand to five million euros and if, they are a legal person, with a pecuniary administrative sanction varying from thirty thousand euros to ten percent of the turnover. The amount of the sanction may be increased in accordance with the provisions of article 310 (2).

### Chapter II

#### PECUNIARY ADMINISTRATIVE SANCTIONS AND OTHER

#### MEASURES APPLICABLE TO BREACHES NOT RELATING TO INSURANCE DISTRIBUTION<sup>1040</sup>

#### Art. 309

(repealed)<sup>1041</sup>

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<sup>1036</sup> ISVAP Regulation n. 9 of 14 November 2007.

<sup>1037</sup> Paragraph replaced by article 1 (42, c) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "4. Anyone breaching the provision of paragraph 1 or 2 shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros."

<sup>1038</sup> Paragraph inserted by article 1 (42, c) of legislative decree n. 68 of 21 May 2018.

<sup>1039</sup> Article inserted by article 1 (43) of legislative decree n. 68 of 21 May 2018.

<sup>1040</sup> Heading replaced by article 1 (44) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "Insurance and reinsurance undertakings".

<sup>1041</sup> Article repealed by article 1 (45) of legislative decree n. 68 of 21 May 2018. The previous version laid down:

"Art. 309

(Activity beyond the permitted limits)

1. Undertakings having their head office in the territory of the Italian Republic or in third States and pursuing insurance business beyond the limits of the authorisation in breach of articles 11, 12, 13, 15, 16, 18, 21, 22, 28 and 29 shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros. Undertakings having their head office in the territory of the Italian Republic or in third States and pursuing reinsurance business beyond the limits of the authorisation in breach of articles 57, 57-bis, 58, 59-bis, 59-ter, 59-quater, 59-quinquies and 60-bis shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros.

1-bis. The local undertakings referred to under Title IV, Chapter I pursuing insurance business beyond the limits referred to under article 51-quater shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros.

2. Particular mutual insurance undertakings referred to in article 52 pursuing insurance business beyond the limits of the authorization in breach of articles 53 and 55 shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros.

Art. 310  
(Pecuniary administrative sanctions)<sup>1042</sup>

1. A pecuniary administrative sanction varying from thirty thousand euros to ten percent of the turnover shall be applicable to the following infringements:

- a) non compliance with articles 11, 12, 13, 15, 16, 18, 21, 22, 28, 29, 30, 30-bis, 30-ter, 30-quater, 30-quinquies, 30-sexies, 30-septies, 30-octies, 30-novies, 32, 33, 35-bis, 35-ter, 35-quater, 36-bis, 36-ter, 36-quater, 36-quinquies, 36-sexies, 36-septies, 36-octies, 36-novies, 36-decies, 36-undecies, 36-duodecies, 36-terdecies, 37-bis, 37-ter, 38, 41, 42, 42-bis, 43, 44-ter, 44-quater, 44-quinquies, 44-sexies, 44-septies, 44-octies, 44-novies, 44-decies, 47-quater (1), 47-septies, 47-octies, 47-novies, 47-decies, 48, 48-bis, 49, 51-quater, 53, 55, 56, 57, 57-bis, 58, 59-bis, 59-ter, 59-quater, 59-quinquies, 60-bis, 62, 63, 64, 65, 65-bis, 66-sexies.1, 66-septies, 67, 73, 75 (1), 76 (2), 77 (1, 3 and 4), 88, 89, 90, 92, 93, 94, 95, 96, 98, 99, 100, 101, 188, 189 (1), 190 (1, 1-bis, 1-ter and 5-bis), 190-bis (1), 191, 196 (2), 197, 210, 210-ter (8), 213, 214-bis, 215-bis, 216 (1 and 2), 216-ter, 216-sexies, 216-octies, 216-novies, 220-novies (1), 348 and 349 (1), or with the relevant implementing provisions;
- b) non compliance with articles 10-quater, 132-ter, 133, or with the relevant implementing provisions<sup>1043</sup>;
- c) non compliance with articles 125 (5-bis), 127 (3), limited to the obligation to issue the insurance certificate, 134 except for paragraph 2, 146, 148, 149, 150, 152 (5) and 183, or with the relevant implementing provisions, and with article 8 of law no. 24 of 8 March 2017<sup>1044</sup>.

2. If the advantage obtained as a result of the breaches by the person responsible for the breaches referred to in paragraph 1, a) and b), exceeds the maximum amount of the sanction indicated in this article, the pecuniary administrative sanction shall be increased up to twice the amount of the advantage obtained, where that can be determined.

Art. 310-bis  
(Refusal to perform and circumvention of the obligation to insure)<sup>1045</sup>

3. *The pecuniary administrative sanction varying from five thousand to fifty thousand euros shall be applicable to intermediaries who, on their own or through collaborators or other auxiliary staff, carry on business on behalf or for the benefit of the undertakings referred to in paragraphs 1, 1-bis and 2*".

<sup>1042</sup> Article inserted by article 1 (46) of legislative decree n. 68 of 21 May 2018. The previous version laid down:

"Art. 310

(Conditions for exercise of business)

1. *Non compliance with the provisions of articles 30, 30-bis, 30-ter, 30-quater, 30-quinquies, 30-sexies, 30-septies, 30-octies, 30-novies, 32, 33, 35-bis, 35-ter, 35-quater, 36-bis, 36-ter, 36-quater, 36-quinquies, 36-sexies, 36-septies, 36-octies, 36-novies, 36-decies, 36-undecies, 36-duodecies, 36-terdecies, 37-bis, 37-ter, 38, 41, 42, 42-bis, 43, 44-ter, 44-quater, 44-quinquies, 44-sexies, 44-septies, 44-octies, 44-novies, 44-decies, 47-quater (1), 47-septies, 47-octies, 47-novies, 47-decies, 48, 49, 56, 57-bis, 62, 63, 64, 65, 65-bis, 66-sexies.1, 66-septies, 67, 76 (2), 90 (1, c and d), 119 (2, last sentence), 188, 189 (1), 190 (1, 1-bis, 1-ter and 5-bis), 190-bis (1), 191, 196 (2), 197, 210, 210-ter (8), 214-bis, 215-bis, 216-ter, and 216-sexies, 216-octies, 216-novies, 220-novies, (1), 348 and 349 (1), or with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros.*

2. *Non compliance with the provisions of articles 48-bis, 67 (1), 88, 89, 90 (1, a and b 2, 3 and 4), 92, 93, 94, 95, 96, 98, 99, 100 and 101 or with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.*

3. *In case of violation of the obligations referred to under Title XV the administrative sanctions referred to under this Title shall be adopted against the ultimate Italian parent undertaking as per article 210 (2)".*

<sup>1043</sup> Letter amended by article 1 (22, a) of legislative decree n. 187 of 30 December 2020.

<sup>1044</sup> Letter amended by article 1 (22, b) of legislative decree n. 187 of 30 December 2020.

<sup>1045</sup> Article inserted by article 1 (47) of legislative decree n. 68 of 21 May 2018.

1. Non compliance with the provisions of article 132 (1, 1-bis and 1-ter) shall be punished with a pecuniary administrative sanction varying from 2,500 to 15,000 euros.

2. The breach under paragraph 1 shall be punished with a pecuniary administrative sanction varying from one million to five million euros when it has been committed with respect to certain territorial areas or single categories of policyholders.

Article 310-ter  
(Black boxes and other electronic devices)<sup>1046</sup>

1. Non compliance, by the insurance undertaking or the insurance telematics provider, with the conditions laid down in the regulation envisaged in article 32 (1-bis) of decree-law n. 1 of 24 January 2012, converted, after amendment, into law n. 27 of 24 March 2012 and further amended, shall be punished with a pecuniary administrative sanction of 3.000 euros for each day of delay.

Art. 310-quater  
(Duties of notification to databases)<sup>1047</sup>

1. Failure to provide information or late, incomplete or erroneous information under article 134 (2), or article 135 (2) or article 154 (4 and 5) or with the relevant implementing provisions, verified every six months and notified with one single act within the deadline envisaged in article 311-septies (1), starting from sixty days after the expiry of the reference six-month period, shall be punished with a single pecuniary administrative sanction varying from ten thousand euros to one hundred thousand euros.

Article 310-quinquies  
(Non compliance with precautionary and prohibitory measures)<sup>1048</sup>

1. The breach of the precautionary and prohibitory measures adopted under articles 182 and 184 shall be punished with a pecuniary administrative sanction varying from thirty thousand euros to ten percent of the turnover. The amount of the sanction may be increased in accordance with the provisions of article 310 (2).

Art. 311  
(Ownership structure)<sup>1049</sup>

1. Failure to provide information or incomplete or erroneous information required under articles 69, 70 (1), 71, 74 (1) and 79, including also the intention to acquire controlling interests, or with the relevant implementing provisions, shall be punished, when committed by a natural person, with a pecuniary administrative sanction varying from five thousand to five million euros and, when committed by a legal person, with a pecuniary administrative sanction varying from thirty thousand euros to ten percent of the turnover. The amount of the sanction may be increased in accordance with the provisions of article 310 (2).

Art. 311-bis  
(Principle of the relevance of the breach)<sup>1050</sup>

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<sup>1046</sup> Article inserted by article 1 (47) of legislative decree n. 68 of 21 May 2018.

<sup>1047</sup> Article inserted by article 1 (47) of legislative decree n. 68 of 21 May 2018.

<sup>1048</sup> Article inserted by article 1 (47) of legislative decree no. 68 of 21 May 2018.

<sup>1049</sup> Article replaced by article 1 (48) of legislative decree no. 68 of 21 May 2018.

<sup>1050</sup> Article inserted by article 1 (49) of legislative decree n. 68 of 21 May 2018.

1. The sanctions prescribed by articles 310 (1), 310-bis (1), and by article 310-quater shall apply when the breaches are relevant in nature, according to the criteria defined by IVASS with its regulation<sup>1051</sup>, taking into account the incidence of the behaviours on the protection of policyholders and of parties entitled to insurance benefits, on the overall organisation and on the corporate risk profiles as well as on the exercise of the supervisory functions.

Article 311-ter  
(Order to cease the breaches)<sup>1052</sup>

1. For the breaches specified by article 310 (1) a), and for those under letter c), limited to article 183, IVASS may, in lieu of applying the pecuniary administrative sanctions, impose on the undertaking a sanction consisting of the order to eliminate the breaches also indicating the measures to be adopted and the deadline for compliance.<sup>1053</sup>

2. For non-compliance with the order by the set deadline, IVASS shall apply the pecuniary administrative sanctions prescribed by article 310 (1) according to the criteria set by article 311-quinquies; the amount of the sanctions thus determined shall be increased up to one third with respect to the amount prescribed for the original breach, without prejudice to the maximum amounts set by article 310.

Art. 311-quater  
(Unitary assessment for breaches of the same nature)<sup>1054</sup>

1. For failure to comply with articles 125 (5-bis), 127 (3), limited to the insurance certificate, 134, with the exception of paragraph 2, 146, 148, 149, 150, 152 (5), and 183, or of the relevant implementing rules, IVASS shall proceed with the unitary assessment for breaches of the same nature, as defined in article 8-bis, of Law n. 689 of 1981, carried out with reference to a determined time interval, and to giving formal notice of the charges with a single document to be notified within the deadline established in article 311-septies. In case of remote checks, the reference time interval and the deadline by which the assessment of the breaches noted in the course of the remote checks is considered concluded may not exceed twelve months. IVASS shall, by regulation<sup>1055</sup>, establish the deadline by which the assessment of the breaches observed in the course of inspections shall be considered concluded.

2. If the undertaking, in its defence, adequately demonstrates that the breaches notified in accordance with paragraph 1 depended on the same dysfunction of its own organisation, IVASS shall communicate to the undertaking the peremptory time limit, no longer than one hundred and eighty days, by which the interventions necessary to eliminate the dysfunction must be carried out. IVASS, upon receiving the communication related to the adoption of the corrective measures, shall verify that the measures have been adopted and shall communicate their outcome to the undertaking.

3. If the corrective measures adopted in accordance with paragraph 2 were found capable of eliminating the dysfunction, the measure of the pecuniary administrative sanction prescribed by article 310 (1) determined according to the criteria referred to in article 311-quinquies, shall be reduced by one third to two thirds, without prejudice to the minimum sanction available in law.

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<sup>1051</sup> IVASS Regulation n. 39 of 2 August 2018. The provisions laid down in IVASS regulations n. 1 and n. 2 of 8 October 2013 shall apply to sanctioning proceedings for breaches committed before 1 October 2018.

<sup>1052</sup> Article inserted by article 1 (49) of legislative decree n. 68 of 21 May 2018.

<sup>1053</sup> Paragraph amended by article 1 (23) of legislative decree n. 187 of 30 December 2020. The previous version laid down: "1. For the breaches specified by article 310 (1) a), when their level of offensiveness or danger is low, IVASS may, in lieu of applying the pecuniary administrative sanctions, impose on the undertaking a sanction consisting of the order to eliminate the breaches also indicating the measures to be adopted and the deadline for compliance."

<sup>1054</sup> Article inserted by article 1 (49) of legislative decree n. 68 of 21 May 2018.

<sup>1055</sup> IVASS Regulation n. 39 of 2 August 2018. The provisions laid down in IVASS regulations n. 1 and n. 2 of 8 October 2013 shall apply to sanctioning proceedings for breaches committed before 1 October 2018.

Any remarks formulated by IVASS on the corrective measures adopted do not preclude the application of the reduction, but shall be evaluated upon determining the sanction.

4. The undertaking may submit observations concerning any remarks by IVASS on the corrective measures adopted within sixty days from receipt of the related communication.

5. The reduction per paragraph 3 shall not be applied:

- a) if the undertaking has not adopted the corrective actions;
- b) if the actions adopted have proved to be inadequate to eliminate the dysfunction;
- c) if the undertaking has already benefited from it for breaches of the same nature on the basis of an executive measure issued in the three previous years.

Art. 311-quinquies  
(Criteria for the determination of the sanctions)<sup>1056</sup>

1. When determining the amount of pecuniary administrative sanctions or the duration of the ancillary sanctions applicable to breaches not relating to insurance distribution, IVASS shall take into account all relevant circumstances, in particular whether the sanction is imposed on a natural or legal person, including where appropriate:

- a) the gravity and the duration of the breach;
- b) the degree of responsibility;
- c) the financial strength of the person responsible for the breach;
- d) the importance of the advantage obtained or losses avoided because of the breach, in so far as they can be determined;
- e) the detriment for third parties caused by the breach, in so far as its amount can be determined;
- f) the level of cooperation of the person responsible for the breach with IVASS;
- g) any previous breaches in the insurance field committed by the same person;
- h) the measures taken after the breach to prevent its repetition in the future;
- i) in case of unitary assessment of a plurality of breaches of the same nature in accordance with article 311-quater, also the number and type of the breaches and the amount of the paid insurance benefit.

Art. 311-sexies  
(Administrative sanctions to corporate officers or personnel)<sup>1057</sup>

1. Without prejudice to the provisions of article 325 (1) concerning the liability of undertakings with respect to which the breaches are ascertained, for breaches of the rules referred to in article 310 (1) a), unless the offence is a criminal one, the pecuniary administrative sanction from five thousand euros to five million euros shall be applied against the persons who perform administration, management, control functions, as well as the employees or those who operate on the basis of relationships that determine their inclusion in the organisation of the undertaking even in a different form from the subordinate employment contract when non-compliance is a consequence of the violation of their own duties or of the duties of the body of which they are members and one or more of the following conditions are met:

- a) the conduct has had a significant impact on the organisation as a whole or on the company risk profiles;
- b) the conduct has contributed to determine the company's failure to comply with specific measures adopted in accordance with articles 188 (3-bis) a), b) and c) and 214-bis (1);
- c) the breaches pertain to obligations imposed in accordance with article 76, with article 79 (3), or with article 191 (1) g) or obligations relating to remuneration and incentives, when the corporate officer or personnel is the party concerned<sup>1058</sup>.

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<sup>1056</sup> Article inserted by article 1 (49) of legislative decree n. 68 of 21 May 2018.

<sup>1057</sup> Article inserted by article 1 (49) of legislative decree n. 68 of 21 May 2018.

<sup>1058</sup> Letter amended by article 3 (4) of legislative decree n. 84 of 14 July 2020.

2. If the conduct of the parties defined in paragraph 1 has contributed to determine the violation of the order provided in article 311-ter by the undertaking, the pecuniary administrative sanction from five thousand euros to five million euros shall be applied to said parties.

3. With the measure applying the sanction, taking into account the criteria established by article 311-quinquies, IVASS may apply the additional administrative sanction of prohibition to perform administration, direction and control functions with insurance and reinsurance undertakings, for a period no shorter than six months and no longer than three years.

4. The amount of the pecuniary administrative sanction may be increased in accordance with the provisions of article 310 (2).

#### Art. 311-septies

(Procedure for application of administrative sanctions to the undertakings and corporate officers or personnel)<sup>1059</sup>

1. Without prejudice to the provisions of articles 310-quater, 311-bis and 311-quater IVASS, within one hundred twenty days of establishing the infringement, or within one hundred eighty days for residents abroad, shall notify the charges against the persons allegedly responsible for the infringement.

2. Within sixty days of notification of the charges referred to in paragraph 1, the recipients may submit IVASS their defences and request for a hearing, where they may be assisted by a lawyer.

3. IVASS, taking into account the evidence acquired in the record, shall apply the sanctions or order the dismissal of the proceedings with a justified ruling.

4. The sanctioning proceedings shall be governed by the principles of cross-examination, of knowledge of the investigation acts, of the records and of the distinction between investigative functions and decision-making functions.

5. The judicial protection before the administrative judge is governed by the code of the administrative procedure. Appeals shall be notified to IVASS, which shall provide defence in court with their lawyers. Opposition does not suspend the execution of the ruling.

#### Art. 312

(repealed)<sup>1060</sup>

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<sup>1059</sup> Article inserted by article 1 (49) of legislative decree n. 68 of 21 May 2018.

<sup>1060</sup> Article repealed by article 1 (50) of legislative decree n. 68 of 21 May 2018. The previous version laid down:

“Art. 312

*(Notification for group supervision)*

1. Failure to provide the information required in article 213 or to comply with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros. The supply of incomplete or erroneous information shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

2. Failure to provide the notifications referred to in article 216 (2) or to comply with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros. When the failure to provide information concerns an operation which could undermine the interests of policyholders the pecuniary administrative sanction varying from five thousand to fifty thousand euros shall apply. Incomplete or erroneous prior notifications shall be punished with a pecuniary administrative sanction varying from one thousand to ten thousand euros.

3. Failure to provide the periodic notification referred to in article 216 (1) or to comply with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from one thousand five hundred to fifteen

### Chapter III (repealed)<sup>1061</sup>

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thousand euros. Incomplete or erroneous subsequent periodic notifications shall be punished with a pecuniary administrative sanction varying from five hundred to five thousand euros".

<sup>1061</sup> Chapter repealed by article 1 (50) of legislative decree n. 68 of 21 May 2018. The wording of this Chapter was: "Compulsory insurance for motor vehicles and craft" and contained the following articles:

Art. 313

(Premium and contract term disclosure)

1. Non compliance with the obligations set forth in article 131 shall be punished with a pecuniary administrative sanction varying from one thousand to ten thousand euros.

Art. 314

(Refusal to perform and circumvention of the obligation to insure and prohibition against tie-in sales)

1. The refusal to perform or circumvention of the obligation to insure set forth in article 132 (1), shall be punished with a pecuniary administrative sanction varying from two thousand five hundred to fifteen thousand euros.

2. The breach or circumvention of the obligation to insure set forth in article 132 (1), which has been committed with respect to certain territorial areas or single categories of policyholders, shall be punished with a pecuniary administrative sanction varying from one million to five million euros.

3. The breach of the prohibition against tie-in sales under article 170 shall be punished with a pecuniary administrative sanction varying from one thousand to three thousand euros.

Art. 315

(Settlement procedures)

1. In the cases provided for in articles 148, 149 and 150 or in the implementing provisions the offer made or the amount paid within one hundred twenty days after the expiry of the prescribed time limit or the failure to notify the refusal to make an offer within the same deadline shall be punished:

a) in case of delays of no more than thirty days, with the sanction varying from three hundred to nine hundred euros;

b) in case of delays of no more than sixty days, with the sanction varying from nine hundred to two thousand seven hundred euros;

Paragraph amended by article 1 (4) of law n. 124 of 4 August 2017. The previous version laid down: "one thousand five hundred to four thousand five hundred euros".

c) in case of delays of no more than ninety days, with the sanction varying from two thousand seven hundred to five thousand four hundred euros;

d) in case of delays of no more than one hundred twenty days, with the sanction varying from five thousand four hundred to ten thousand eight hundred euros;

2. When, after one hundred twenty days have passed from the expiry of the prescribed time limit, the offer has not been made, the reasons for not making an offer have not been disclosed or the amount has not been paid, the failure to comply with the obligations set forth in articles 148, 149 and 150 or with the implementing provisions shall be punished with a sanction varying from ten thousand eight hundred to thirty thousand euros for material damage and with the sanction varying from twenty thousand to six thousand euros for personal injury or death.

3. When the undertaking makes the offer after the prescribed time limit has elapsed and at the same time pays the amount, the failure to comply with the obligations set forth in articles 148, 149 and 150 or with the implementing provisions shall be punished with the sanctions envisaged respectively in paragraphs 1 and 2, reduced by thirty per cent.

Art. 316

(Obligations to give information)

1. Failure to provide information or late, incomplete or erroneous information under article 135 (2), verified every six months and notified with one single act within the deadline envisaged in article 326 (1), starting from sixty days after the expiry of the reference six-month period, shall be punished with a single pecuniary administrative sanction varying from five thousand euros to fifty thousand euros.

2. Failure to provide information or late, incomplete or erroneous information under article 154 (4 and 5), verified every six months and notified with one single act within the deadline envisaged in article 326 (1), starting from sixty days after the expiry of the reference six-month period, shall be punished with a single pecuniary administrative sanction varying from ten thousand euros to one hundred thousand euros.

Art. 317

(Other breaches)

## **Chapter IV** **(repealed)<sup>1062</sup>**

## **Chapter V** **DUTIES TOWARDS THE SUPERVISORY AUTHORITY**

### **Art. 321** **(Duties of the control bodies)**

1. The members of the control bodies of an insurance or reinsurance undertaking, who fail to provide the information required in article 190 (1 and 3), shall be punished with a pecuniary administrative sanction varying from five thousand to five million euros<sup>1063</sup>.

2. The same sanction shall be applicable to the members of the corresponding corporate bodies, including insurance holding undertakings or mixed financial holding companies which control or are controlled by an insurance or reinsurance undertaking, who fail to provide the information required in article 190 (1 and 3)<sup>1064</sup>.

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1. Non compliance with the provisions of articles 133, 134 (2 and 3), 146 and 148 (11), or with the implementing provisions shall be punished with a pecuniary administrative sanction varying from two thousand five hundred to seven thousand five hundred euros.

2. Non compliance with the obligation to deliver the insurance certificate or sticker or the certificate of claims experience shall be punished with a pecuniary administrative sanction varying from one thousand five hundred to four thousand five hundred euros.

3. Non compliance with the provisions of articles 125 (5-bis) and 152 (5) shall be punished with a pecuniary administrative sanction varying from 2,000 to 6,000 euros.

<sup>1062</sup> Chapter repealed by article 1 (50) of legislative decree n. 68 of 21 May 2018. The wording of this Chapter was: “Disclosure of operations and policyholder’s protection” and contained the following articles:

**Art. 318**  
**(Advertising of insurance products)**

1. Non compliance with the provisions of article 182 (1 and 3) or with the relevant implementing provisions shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

2. Advertising which is in breach of the protective and prohibitive measures adopted under article 182 (4 and 5) shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros, applicable to anyone making advertisements in breach of the prohibitive measures adopted under article 182 (4 and 5).

**Art. 319**  
**(Rules of conduct)**

1. Non compliance with the provisions of article 183 or with the relevant implementing provisions when the products marketed are those under article 2 (1), except for class VI, or article 2 (3), shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

2. The breach of the protective and prohibitive measures adopted under articles 182 (6) and 184 (1), shall be punished with a pecuniary administrative sanction varying from ten thousand to one hundred thousand euros.

**Art. 320**  
**(Information note)**

1. Anyone failing to deliver the information note referred to in article 185 before the conclusion of the contract shall be punished with a pecuniary administrative sanction varying from two thousand five hundred to twenty five thousand euros.

<sup>1063</sup> Paragraph amended by article 1 (51, a) of legislative decree n. 68 of 21 May 2018. The previous version laid down: “1. The members of the control bodies of an insurance or reinsurance undertaking, who fail to provide the information required in article 190 (1 and 3), shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros.”

<sup>1064</sup> Paragraph amended by article 1 (51, b) of legislative decree n. 68 of 21 May 2018. The previous version laid down: “2. The same sanction shall be applicable to the members of the corresponding bodies of the companies which control or are controlled by an insurance or reinsurance undertaking, who fail to provide the information required in article 190 (1 and 3).”



3. (repealed)<sup>1065</sup>

4. (repealed)<sup>1066</sup>

#### Art. 322

(Duties of the statutory auditor and of the statutory auditing firm)<sup>1067</sup>

1. IVASS shall report to CONSOB on the statutory auditor and the legal representatives of the statutory auditing firm of an insurance or reinsurance undertaking, who fail to provide the notifications required in article 190 (1, 2 and 4), for the purposes of adopting the measures falling within its province<sup>1068</sup>.

2. ISVAP shall also report to CONSOB on the statutory auditor and the legal representatives of the statutory auditing firm appointed by the companies which control or are controlled by an insurance or reinsurance undertaking, who fail to provide the notifications required in article 190 (1, 2, 4 and 5)<sup>1069</sup>.

3. CONSOB shall inform IVASS of any measure adopted.

#### Art. 323

(repealed)<sup>1070</sup>

### Chapter VI

#### PECUNIARY ADMINISTRATIVE SANCTIONS AND OTHER MEASURES APPLICABLE TO BREACHES RELATING TO INSURANCE DISTRIBUTION<sup>1071</sup>

#### Art. 324

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<sup>1065</sup> Paragraph repealed by article 1 (51, c) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "3. IVASS shall inform the Ministry of Economic and Financial Affairs and CONSOB of any sanction adopted against the statutory auditors and the statutory auditing firms. The Ministry of Economic and Financial Affairs and CONSOB shall inform IVASS of any measure adopted".

<sup>1066</sup> Paragraph repealed by article 41 (8, b), legislative decree n. 39 of 27 January 2010. Paragraph 4 laid down: "The Ministry of Justice shall inform ISVAP of any measure adopted".

<sup>1067</sup> Heading amended by article 41 (9), legislative decree n. 39 of 27 January 2010.

<sup>1068</sup> Paragraph amended by article 41 (10), legislative decree n. 39 of 27 January 2010, and by article 1 (52) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "1. IVASS shall report to CONSOB on the statutory auditor and the legal representatives of the statutory auditing firm of an insurance or reinsurance undertaking, who fail to provide the notifications required in article 190 (1, 2 and 4), for the purposes of adopting the measures envisaged in article 163 of the consolidated law on financial mediation."

<sup>1069</sup> Paragraph amended by article 41 (11), legislative Decree n. 39 of 27 January 2010.

<sup>1070</sup> Article repealed by article 1 (30) of legislative decree n. 74 of 12 May 2015. Article 323 laid down:

"Art. 323

(Duties of the auditing actuary and of the appointed actuary)

1. The actuary appointed by the auditing firm of an insurance or reinsurance undertaking, who fails to provide the notifications required in article 190 (1, 2 and 4), shall be punished with a pecuniary administrative sanction varying from five thousand to fifty thousand euros. The actuary appointed by the statutory auditor or by the statutory auditing firm of an insurance or reinsurance undertaking who violates article 103 (3), shall be punished with a pecuniary administrative sanction varying from one hundred thousand to five hundred thousand euros. The criminal sanctions for the offence of corruption involving the auditor also apply.

2. The actuary appointed by an insurance undertaking, who fails to provide the information required in article 31 or in article 34, shall be punished with a pecuniary administrative sanction varying from two thousand to twenty thousand euros.

3. The Actuaries' Association shall inform ISVAP of the measures taken following the notification of the sanction imposed in accordance with paragraphs 1 and 2.

4. When the cases provided for in paragraphs 1 and 2 are extremely serious ISVAP may revoke the actuary".

<sup>1071</sup> Heading replaced by article 1 (53) of legislative decree n. 68 of 21 May 2018.

(Sanctions for breaches of the provisions relating to the design and distribution of insurance products including insurance-based investment products, committed by intermediaries) <sup>1072 1073</sup>

1. Insurance or reinsurance intermediaries, including ancillary intermediaries, who, when designing and distributing insurance products and insurance-based investment products, breach the rules of articles 10-quater, 30-decies, 107 (5), 109 (2, last sentence, 3, 4, 4-bis, 4-sexies, 4-septies and 6), 109-bis, 110 (2 and 3), 111 (4 and 5), 112 (2, 3 and 5), 113 (2), 117, 118, 119 (2, last sentence), 119-bis, 119-ter, 120, 120-bis (1, 2, 3 and 6), 120-ter, 120-quater, 120-quinquies, 121, 121-bis, 121-ter, 131, 170, 185, 185-bis, 185-ter, 187.1, in the event that they have not joined those systems, 191 or the relevant implementing provisions, shall be punished with one of the following sanctions in accordance with the criteria laid down in article 324-sexies<sup>1074</sup>:

a) reproach;

b) censure;

c) pecuniary administrative sanction:

1) in the case of legal persons, from five thousand to five million euros or, if higher, up to 5 % of the total annual turnover according to the last available accounts approved by the management body;

2) in the case of natural persons, from one thousand to seven hundred thousand euros;

d) striking off or, where the intermediary is a legal person, withdrawal of the registration.

2. The reproach, consisting in a reasoned written reprimand, shall be adopted for instances of minor failures. Censure shall be adopted in serious cases. The striking off or withdrawal of the legal person's registration shall be adopted in extremely serious cases. The striking off implies the immediate termination of the mediation relationship and, in case of pursuit of business as legal entity, also the withdrawal of the company's registration in extremely serious cases or in the event of systematic repetition of the infringement.

3. The breach of the precautionary and prohibitory measures adopted under article 184 shall be punished with one of the sanctions envisaged in paragraph 1.

4. Intermediaries who, on their own or through collaborators or other auxiliary staff, carry on business on behalf or for the benefit of the insurance and reinsurance undertakings having their head office in the territory of the Italian Republic or in third States, of local undertakings referred to under Title IV, Chapter I and of particular mutual insurance undertakings under article 52, which pursue insurance and reinsurance business beyond the limits of the authorisation, shall be punished with one of the sanctions envisaged in paragraph 1.

5. When the breaches of articles 119-bis, 119-ter, 120, 120-bis, 120-ter, 120-quater, 120-quinquies, 121, concern an insurance-based investment products, IVASS shall apply the sanctions envisaged in paragraph 1 only with respect to the intermediaries referred to in article 109 (2), a) and b), and their collaborators under e), as well as intermediaries referred to under c). In this case, the maximum amount of the pecuniary sanction may be determined, as an alternative to the provisions of paragraph 1, c), up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined. IVASS, apart from the sanctions envisaged in paragraph 1, may adopt a public statement, which indicates the responsible natural

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<sup>1072</sup> Heading replaced by article 1 (24, a) of legislative Decree n. 187 of 30 December 2020.

<sup>1073</sup> Article replaced by article 1 (54) of legislative decree no. 68 of 21 May 2018. The previous version laid down: "Art. 324 (*Pecuniary administrative sanctions applicable to intermediaries*)"

1. *Non compliance with the provisions of articles 109 (4 and 6), 117 (1), 119 (2, last sentence), 120, 121, 131, 170, 182 (2 and 3), 183, 185 (1) and 191, or with the relevant implementing provisions by intermediaries recorded in the register envisaged in article 109, shall be punished with a pecuniary administrative sanction varying from one thousand to ten thousand euros, even when such non compliance is a result of an act on the part of their employees or other auxiliary staff.*

2. *In extremely serious cases or in the case of a repetition of the infringement the minimum and maximum amounts of the sanction under paragraph 1 shall be doubled*".

<sup>1074</sup> Paragraph amended by article 1 (24, b) of legislative decree n. 187 of 30 December 2020.

or legal person and the nature of the breach. The same sanctions envisaged in this paragraph shall apply in case of breach of articles 121-quinquies, 121-sexies and 121-septies.

6. When the breach of articles 30-decies and 121-bis concerns an insurance-based investment product, IVASS shall apply the sanctions envisaged in paragraph 1 with respect to all the intermediaries referred to in the same paragraph. The maximum amount of the pecuniary sanction may be determined, as an alternative to the provisions of paragraph 1, c), up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined. IVASS, apart from the sanctions envisaged in paragraph 1, may adopt a public statement, which indicates the responsible natural or legal person and the nature of the breach.

7. Article 193-quinquies of the consolidated law on financial mediation shall apply to the breaches of the provisions contained in article 24 (1) of Regulation (EU) n. 1286/2014 other than those envisaged in this article, committed by the subjects referred to in paragraph 5. The concept of turnover is defined in article 325-bis of this code.

7-bis. The provision under paragraph 1 shall also apply to the intermediaries enrolled in the Register when the violation was committed, even if they were subsequently removed.<sup>1075</sup>

#### Art. 324-bis

(Sanctions for breaches of the provisions relating to the design and distribution of insurance products including insurance-based investment products, committed by undertakings)<sup>1076 1077</sup>

1. Insurance or reinsurance undertakings which, when designing and distributing insurance products and insurance-based investment products, breach the rules of articles 10-quater, 30-decies, 107 (5), 109 (1-bis, 4, last sentence, 4-ter and 6), 111 (1 and 2), 114-bis, 119 (2, last sentence), 119-bis, 119-ter, 120 (2 and 3), 120-bis (4 and 5), 120-quater, 120-quinquies, 121, 121-bis, 121-ter, 131, 170, 185, 185-bis, 185-ter, 186, 187, 187.1, in the event that they have not joined those systems, 191 or the relevant implementing provisions, shall be punished, in accordance with the criteria in article 324-sexies, with a pecuniary administrative sanction varying from five thousand to five million euros or, if higher, up to 5 % of the total annual turnover according to the last available accounts approved by the management body.<sup>1078</sup>

2. The breach of the precautionary and prohibitory measures adopted under article 184 shall be punished with the sanction envisaged in paragraph 1.

3. Insurance or reinsurance undertakings using intermediaries not registered in the sections of the Register envisaged in article 109 (2), shall be punished with a pecuniary administrative sanction varying from five thousand to five million euros or, if higher, up to 5 % of the total annual turnover according to the last available accounts approved by the management body.

4. When the breaches of articles 30-decies, 119-bis, 119-ter, 120, 120-bis, 120-quater, 120-quinquies, 121 and 121-bis concern an insurance-based investment product, the maximum amount of the pecuniary sanction may be determined, as an alternative to the provisions of paragraph 1, up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined. IVASS, apart from the sanctions envisaged in paragraph 1, may adopt a public statement, which indicates the responsible natural or legal person within the organisation and the nature of the breach. The same sanctions envisaged in this paragraph shall apply in case of breach of articles 121-quinquies, 121-sexies and 121-septies.

<sup>1075</sup> Paragraph inserted by article 1 (24, c) of legislative decree n. 187 of 30 December 2020.

<sup>1076</sup> Heading replaced by article 1 (25, a) of legislative decree n. 187 of 30 December 2020.

<sup>1077</sup> Article inserted by article 1 (55) of legislative decree n. 68 of 21 May 2018.

<sup>1078</sup> Paragraph amended by article 1 (25, b) of legislative decree n. 187 of 30 December 2020.

5. Article 193-quinquies of the consolidated law on financial mediation shall apply to the breaches of the provisions contained in article 24 (1) of Regulation (EU) n. 1286/2014 other than those envisaged in this article. The concept of turnover is defined in article 325-bis of this code.

Article 324-ter  
(Principle of the relevance of the breach)<sup>1079</sup>

1. The sanctions prescribed by articles 324 and 324-bis shall apply when the breaches are relevant in nature, according to the criteria defined by IVASS with its regulation<sup>1080</sup>, taking into account the incidence of the behaviours on the protection of policyholders and of parties entitled to insurance benefits and on the exercise of the supervisory functions.

2. The provision in paragraph 1 shall not apply to breaches of articles 324 (3) and 324-bis (2).

Article 324-quater  
(Order to cease the breaches)<sup>1081</sup>

1. Subject to the provisions of article 324-ter, for the breaches specified by articles 324 and 324-bis, IVASS in relation to the type and manner of the breach may, in lieu of applying the administrative sanctions prescribed therein, impose on the undertaking or on the intermediary a sanction consisting of the order to eliminate the breaches, also indicating the measures to be adopted and the deadline for compliance.

2. For non-compliance with the order by the set deadline, IVASS shall apply to the undertakings the pecuniary administrative sanctions prescribed by article 324-bis (1) according to the criteria set by article 324-sexies and the amount of the sanctions thus determined shall be increased up to one third with respect to the amount prescribed for the original breach, without prejudice to the maximum amounts set by article 324-bis (1). With respect to intermediaries, IVASS shall apply the administrative sanctions specified by article 324 (1), according to the criteria set by article 324-sexies and, in case of pecuniary sanction, the increase up to one third with respect to the amount prescribed for the original breach.

Article 324-quinquies  
(Unitary assessment for breaches of the same nature)<sup>1082</sup>

1. For failure to comply with articles 119-bis (1), 119-ter, 120, 120-bis, 120-quater, 121, 131, 170, 185, 185-bis and 185-ter, or of the relevant implementing rules, by insurance and reinsurance undertakings, IVASS shall proceed with the unitary assessment for breaches of the same nature, as defined in article 8-bis of Law n. 689 of 24 November 1981, carried out with reference to a determined time interval, and to giving formal notice of the charges with a single document to be notified within the deadline established in article 311-septies. In case of remote checks, the reference time interval and the deadline by which the assessment of the breaches noted is considered concluded may not exceed twelve months. IVASS shall, by regulation<sup>1083</sup>, establish the deadline by which the assessment of the breaches observed in the course of inspections shall be considered concluded.<sup>1084</sup>

2. If the undertaking, in its defence, adequately demonstrates that the breaches notified in accordance with paragraph 1 depended on the same dysfunction of its own organisation, IVASS shall communicate to the undertaking the peremptory time limit, no longer than one hundred and

<sup>1079</sup> Article inserted by article 1 (55) of legislative decree n. 68 of 21 May 2018.

<sup>1080</sup> IVASS Regulation n. 39 of 2 August 2018. The provisions laid down in IVASS regulations n. 1 and n. 2 of 8 October 2013 shall apply to sanctioning proceedings for breaches committed before 1 October 2018.

<sup>1081</sup> Article inserted by article 1 (55) of legislative decree n. 68 of 21 May 2018.

<sup>1082</sup> Article inserted by article 1 (55) of legislative decree n. 68 of 21 May 2018.

<sup>1083</sup> IVASS Regulation n. 39 of 2 August 2018. The provisions laid down in IVASS regulations n. 1 and n. 2 of 8 October 2013 shall apply to sanctioning proceedings for breaches committed before 1 October 2018.

<sup>1084</sup> Paragraph amended by article 1 (26, a) of legislative decree n. 187 of 30 December 2020.

eighty days, by which the interventions necessary to eliminate the dysfunction must be carried out. IVASS, upon receiving the communication related to the adoption of the corrective measures, shall verify that the measures have been adopted and shall communicate their outcome to the undertaking.

3. If the corrective measures adopted in accordance with paragraph 2 were found capable of eliminating the dysfunction, the measure of the pecuniary administrative sanction prescribed by article 324-bis (1) applicable according to the criteria referred to in article 324-sexies, shall be reduced by one third to two thirds, without prejudice to the minimum sanction available in law. Any remarks formulated by IVASS on the corrective measures adopted do not preclude the application of the reduction, but shall be evaluated upon determining the sanction.

4. The undertaking may submit observations concerning any remarks by IVASS on the corrective measures adopted within sixty days from receipt of the related communication.

5. The reduction per paragraph 3 shall not be applied:

- a) if the undertaking has not adopted the corrective actions;
- b) if the actions adopted have proved to be inadequate to eliminate the dysfunction;
- c) if the undertaking has already benefited from it for breaches of the same nature on the basis of an executive measure issued in the three previous years.

6. The provisions contained in paragraphs 1, 2, 3, 4 and 5, shall also apply with respect to intermediaries in case of violation of articles 109, 117, 119-bis (1), 119-ter, 120, 120-bis, 120-ter, 120-quater, 121, 131, 170, 185, 185-bis and 185-ter, punished with one of the sanctions indicated in article 324 (1).<sup>1085</sup>

Article 324-sexies  
(Criteria for the determination of the sanctions)<sup>1086</sup>

1. When determining the type and the amount of administrative sanctions or the duration of the ancillary sanctions applicable to breaches relating to insurance distribution, IVASS shall take into account all relevant circumstances, in particular whether the sanction is imposed on a natural or legal person, including where appropriate:

- a) the gravity and the duration of the breach;
- b) the degree of responsibility;
- c) the financial strength of the person responsible for the breach;
- d) the importance of the advantage obtained or losses avoided because of the breach, in so far as they can be determined;
- e) the detriment for third parties caused by the breach, in so far as its amount can be determined;
- f) the level of cooperation of the person responsible for the breach with IVASS;
- g) any previous breaches in the insurance field committed by the same person;
- h) the measures taken after the breach to prevent its repetition in the future;
- i) in case of unitary assessment of a plurality of breaches of the same nature in accordance with article 324-quinquies, also the number and type of the breaches and the amount of any insurance benefit paid.

Article 324-septies  
(Administrative sanctions to the corporate officers or to the personnel of the undertakings and of the insurance or reinsurance mediation companies)<sup>1087</sup>

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<sup>1085</sup> Paragraph amended by article 1 (26, b) of legislative decree n. 187 of 30 December 2020.

<sup>1086</sup> Article inserted by article 1 (55) of legislative decree n. 68 of 21 May 2018.

<sup>1087</sup> Article inserted by article 1 (55) of legislative decree n. 68 of 21 May 2018.

1. Without prejudice to the provisions of article 325 (1) concerning the liability of undertakings with respect to which the breaches are ascertained, for breach of the rules referred to in article 324-bis (1), unless the offence is a criminal one, the pecuniary administrative sanction from one thousand euros to seven hundred thousand euros shall be applied against the persons who perform administration, management, control functions, as well as the employees or those who operate on the basis of relationships that determine their inclusion in the organisation of the undertaking even in a different form from the subordinate employment contract, when non-compliance is a consequence of the violation of their own duties or of the duties of the body of which they are members and the conduct had a significant impact on the protected legal interest.
2. If the conduct of the parties defined in paragraph 1 has contributed to determine the violation of the order provided in article 324-ter by the undertaking, the pecuniary administrative sanction from one thousand euros to seven hundred thousand euros shall be applied to said parties.
3. With the measure applying the sanction, taking into account the criteria established by article 324-sexies, IVASS may apply the additional administrative sanction of prohibition to perform administration, direction and control functions with insurance and reinsurance undertakings, for a period no shorter than six months and no longer than three years.
4. The amount of the pecuniary administrative sanction may be increased in accordance with the provisions of article 310 (2).
5. When the cases envisaged in paragraphs 1 and 2 pertain to non-compliance with the rules referred to in article 324 (1), by insurance or reinsurance mediation companies, the administrative sanction of temporary prohibition to exercise the management functions for the members of the board of directors deemed responsible shall be applied for the period indicated in paragraph 3.

#### Art. 324-octies

(Procedure for application of administrative sanctions to the intermediaries and the corporate officers or the personnel of the insurance or reinsurance mediation company)<sup>1088</sup>

1. Without prejudice to the provisions of articles 324-ter and 324-quinquies, for the purposes of imposing the administrative sanctions referred to under article 324, 324-quater with respect to intermediaries, and 324-septies (5)<sup>1089</sup>, IVASS, within one hundred twenty days of establishing the infringement, or within one hundred eighty days for residents abroad, shall notify the charges against the persons who are registered in the register of intermediaries, the collaborators and other auxiliary staff of the insurance or reinsurance intermediary allegedly liable for the infringement and shall submit the relevant documents to the Guarantee Committee.
2. The subjects referred to under paragraph 1 may, within sixty days of notification of the charges, submit defences and ask for a hearing before the Guarantee Committee, where they may be assisted by a lawyer.
3. The Guarantee Committee is set up within IVASS and is made up of one judge acting at least in a capacity as Counsellor to the Court of Cassation or in a similar capacity, even if retired, who holds the chair or of a tenured teacher, and of two experts in insurance matters, one of whom is appointed after hearing the most representative associations. The term of office shall last for a period of four years and may be renewed only once. The Guarantee Committee may be made up of more than one section, with a consequent increase in the number of its members, whenever IVASS deems it necessary to guarantee efficiency and timeliness in the determination of sanctioning proceedings. IVASS shall appoint the Guarantee Committee, lay down rules on the proceedings before the Committee in compliance with the principles of fair proceedings and establish the situations of incompatibility and the remuneration for the members, which shall be borne by IVASS.

<sup>1088</sup> Article inserted by article 1 (55) of legislative decree n. 68 of 21 May 2018.

<sup>1089</sup> Paragraph amended by article 1 (27, a) of legislative decree n. 187 of 30 December 2020.

4. If defences have been filed in accordance with paragraph 2 or the relevant deadline has expired without any defences being filed, the Guarantee Committee shall acquire the documents in the file, examine the defences and arrange for the hearing, where the parties may be assisted by independent lawyers and experts. If, in its opinion, no breach can be proven, the Guarantee Committee may propose to terminate proceedings or ask IVASS that the results of the investigations be supplemented. On the contrary, if in its opinion the breach is proven, it shall submit to IVASS for the part falling under their competence a reasoned proposal for imposing the sanction.<sup>1090</sup>

5. Once it has received the proposal made by the Guarantee Committee, IVASS shall, by order specifying the reasons for doing so, decide the sanction, which is then notified to the parties in the proceedings.

6. The sanctioning proceedings shall be governed by the principles of cross-examination, of knowledge of the investigation acts, of the records and of the distinction between investigative functions and decision-making functions.

7. Disputes concerning appeals against the measures applying the sanction shall be referred to the exclusive jurisdiction of the administrative courts. IVASS shall be represented by its own lawyers in legal proceedings. Opposition does not suspend the execution of the ruling.

8. The procedure defined in the present article shall also be applied in the case of breaches committed by corporate officers or by the personnel of the insurance or reinsurance mediation companies.

#### Article 324-novies

(Procedure for application of administrative sanctions to the undertakings and corporate officers or personnel)<sup>1091</sup>

1. Without prejudice to the provisions of articles 324-ter and 324-quinquies, for the purposes of imposing to undertakings the administrative sanctions referred to under articles 324-bis, 324 quater with respect to undertakings and 324-septies (1, 2, 3 and 4), the provisions of article 311-septies shall apply.<sup>1092</sup>

## Chapter VII

### GENERAL RULES ON ADMINISTRATIVE SANCTIONS<sup>1093</sup>

#### Art. 325

(Persons subject to pecuniary administrative sanctions)

1. 1. Except for the sanctions envisaged under Chapter V and without prejudice to the provisions of article 311, pecuniary administrative sanctions shall be applied against insurance or reinsurance undertakings, local undertakings and particular mutual insurance undertakings referred to under Title IV, the ultimate Italian parent undertaking as per article 210 (2) in case of breach of the obligations referred to under Title XV, insurance holding undertakings or mixed

<sup>1090</sup> Paragraph amended by article 1 (27, b) of legislative decree n. 187 of 30 December 2020.

<sup>1091</sup> Article inserted by article 1 (55) of legislative decree n. 68 of 21 May 2018.

<sup>1092</sup> Paragraph amended by article 1 (28) of legislative decree n. 187 of 30 December 2020.

<sup>1093</sup> Heading replaced by article 1 (56) of legislative decree n. 68 of 21 May 2018.

financial holding companies, intermediaries and other parties subject to the obligations referred to in this code or to the relevant implementing provisions<sup>1094</sup>, responsible for the breach<sup>1095</sup>.

2. *(repealed)*<sup>1096</sup>

3. The sanctions relating to breaches committed by persons who perform functions partly included in the operational cycle of insurance and reinsurance undertakings shall be applied against the undertakings themselves<sup>1097</sup>.

Art. 325-bis  
(Concept of turnover)<sup>1098</sup>

1. For the purpose of applying the pecuniary administrative sanctions envisaged in this Code, turnover shall mean the total annual turnover according to the last available accounts approved by the management body, as defined in the implementing provisions laid down by IVASS<sup>1099</sup>. Where the turnover cannot, for any reason, be determined, the applicable sanction shall vary between a minimum of euro 5,000.00 and a maximum of euro 5 million.

Article 325-ter  
(Publication of sanctions)<sup>1100</sup>

1. The orders imposing the sanctions, the judgements on appeals issued by the administrative courts and the decrees relating to extraordinary petitions to the President of the Italian Republic shall be published, in the form of a notice, in IVASS' Bulletin and website. On account of the infringement as well as of the interests involved, IVASS may establish further forms of publicity of the measure, and order the infringer to bear the relevant costs.

2. IVASS may decide to publish the sanctions on an anonymous basis where the ordinary publication:

- a) concerns personal data pursuant to legislative decree n. 196 of 30 June 2003, where the publication is considered to be disproportionate with respect to the breach;
- b) may jeopardise the stability of financial markets or an ongoing criminal investigation;
- c) may cause disproportionate damage to the parties involved, where that can be determined.

3. If the situations described in paragraph 2 are temporary in nature, publication may be deferred and carried out when said circumstances no longer apply.

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<sup>1094</sup> Regulation no. 39 of 02 August 2018. The provisions laid down in IVASS regulations n. 1 and n. 2 of 8 October 2013 shall apply to sanctioning proceedings for breaches committed before 1 October 2018.

<sup>1095</sup> Paragraph replaced by article 1 (57, a) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "1. *Except for the sanctions envisaged under chapter V, imposed against the natural persons liable for the infringement, pecuniary sanctions shall be applied against the undertakings and intermediaries liable for the infringement.*"

<sup>1096</sup> Paragraph repealed by article 1 (57, b) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "2. *When the subjects referred to in paragraph 1 prove that the breach has been committed by their employees or collaborators, by abusing official duties and to derive personal benefit, the sanction shall be imposed against the employee or collaborator to whose actions or failure to act the infringement may be attributed. The undertaking and the intermediary shall be held civilly liable, without prejudice to their right of recourse.*"

<sup>1097</sup> Paragraph replaced by article 1 (57, c) of legislative decree n. 68 of 21 May 2018. The previous version laid down: "3. *The undertakings shall be jointly and severally liable with the infringer if the infringement has been committed by persons who perform functions partly included in the operational cycle of insurance and reinsurance undertakings.*"

<sup>1098</sup> Article inserted by article 1 (58), legislative decree n. 68 of 21 May 2018, and then amended by article 1 (29) of legislative decree n. 187 of 30 December 2020.

<sup>1099</sup> IVASS Regulation n. 39 of 02 August 2018. The provisions laid down in IVASS regulations n. 1 and n. 2 of 8 October 2013 shall apply to sanctioning proceedings for breaches committed before 1 October 2018.

<sup>1100</sup> Article inserted by article 1 (58), legislative decree n. 68 of 21 May 2018, and then amended by article 1 (30) of legislative decree n. 187 of 30 December 2020.



4. IVASS may exclude the publication of the sanction if the options established by paragraphs 2 and 3 are deemed insufficient to ensure:

- a) that the stability of the financial markets is not jeopardised;
- b) the proportionality of the publication of the decisions with respect to the imposition of the prescribed sanctions.<sup>1101</sup>

Article 325-quater  
(Communication to EIOPA of the sanctions applied  
for breaches of the provisions relating to the design and distribution of insurance products  
including insurance-based investment products)<sup>1102 1103</sup>

1. IVASS shall inform EIOPA of the sanctions imposed for breaches of the provisions relating to the design and distribution of insurance products, including insurance-based investment products, including the sanctions published on an anonymous basis or the publication of which has been deferred or excluded, and shall provide information on appeals and on the outcome of such appeals.<sup>1104</sup>

2. IVASS shall provide EIOPA annually with aggregated information regarding all administrative sanctions and other measures imposed in accordance with Chapter VI of this Title.<sup>1105</sup>

Art. 326  
(repealed)<sup>1106</sup>

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<sup>1101</sup> . Paragraph amended by article 1 (30) of legislative decree n. 187 of 30 December 2020.

<sup>1102</sup> Article inserted by article 1 (58) of legislative decree n. 68 of 21 May 2018.

<sup>1103</sup> Heading replaced by article 1 (31, a) of legislative decree n. 187 of 30 December 2020.

<sup>1104</sup> Paragraph replaced by article 1 (31, b) of legislative decree n. 187 of 30 December 2020. The previous version laid down: “1. IVASS shall inform EIOPA of all sanctions imposed for breaches relating to insurance distribution, including those published on an anonymous basis and information on appeals and on the outcome of such appeals.”.

<sup>1105</sup> Paragraph amended by article 1 (31, c) of legislative decree n. 187 of 30 December 2020.

<sup>1106</sup> Article repealed by article 1 (59) of legislative decree n. 68 of 21 May 2018. The previous version laid down:

“Art. 326

(Procedure for the application of pecuniary administrative sanctions)

1. IVASS shall notify the charges against the persons allegedly liable for the infringement within one hundred twenty days of establishing the infringement, or within one hundred eighty days for residents abroad, except in cases where the timely exercise of the supervisory functions or the interests of policyholders and of those entitled to insurance benefits are in no way adversely affected. Limited to the infringements referred to in articles 148 and 149 and without prejudice to the provisions of paragraphs 2 and 3, the procedure may be suspended by IVASS for a period up to ninety days in case the undertaking shows that checks are being carried out based on the reasonable ground that a fraud has taken place. If the suspension period has elapsed and the undertaking has not submitted any complaint the period referred to in paragraphs 2 and 3 shall begin again. The filing of a complaint shall suspend the procedure. The judgement or any other adjudication of the court in criminal proceedings shall extinguish the infringement.

[2. Except for the cases referred to in article 328 (1) the parties in the procedure may pay the most favourable amount between one third of the maximum and the double of the minimum sanction available in law. The payment shall extinguish the infringement.

3. If parties do not pay the reduced amount or in those cases where such option is not envisaged they may, within the deadline referred to in paragraph 2, file an appeal against the charges notified and ask for a hearing before the Advisory commission on sanctioning procedures.

4. The Advisory commission, appointed by the Minister of Production Activities, is made up of one judge, even if retired, acting at least in a capacity as Counsellor to the Court of Cassation or in a similar capacity or of a tenured teacher, even if retired, who holds the chair, as well as of one manager of the Ministry of Production Activities and one manager of ISVAP. The term of office shall last for a period of four years and may be renewed only once. The rules on the procedure before the Advisory commission and the situations of incompatibility of its members shall be established with regulation of the Minister of Production Activities in compliance with the principles of fair proceedings. The Advisory commission shall perform its activity at ISVAP, and the latter shall bear its operational costs and pay the consideration for its members.

5. If an appeal has been filed in accordance with paragraph 3 the Advisory commission shall acquire the results of the investigations, examine the defences and arrange for the hearing, where the parties may be assisted by independent lawyers and experts. If, in its opinion, no breach can be proven, the Advisory commission may decide to terminate the procedure or ask that the results of the investigations be supplemented. On the contrary, if in its opinion the breach is

Art. 327  
(repealed)<sup>1107</sup>

Art. 328  
(Rules on the payment of pecuniary administrative sanctions)

1. (repealed)<sup>1108</sup>

2. (repealed)<sup>1109</sup>.

3. IVASS shall, by its own regulation<sup>1110</sup>, establish the procedures and time limits for payment of the pecuniary administrative sanctions. The enforced recovery of the pecuniary administrative

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*proven, it shall submit to the Minister of Production Activities a reasoned proposal for establishing the pecuniary disciplinary sanction, also with regard to any mitigation or elimination of the harmful effects and to the adoption of appropriate measures to prevent that the infringement be repeated.] Furthermore, articles 8, 8-bis and 11 of law n. 689 of 24 November 1981 shall apply.*

*[6. Based on the outcome of the proposal by the Advisory commission, or at the request of ISVAP if no complaint is filed, the Ministry of Production Activities shall decide the sanction with a ministerial directive, which shall be then communicated by ISVAP to the parties in the procedure.]*

*7. The judicial protection before the administrative judge is governed by the code of the administrative procedure. Appeals shall be notified also to IVASS, which shall provide defence in court with their lawyers.*

*8. The IVASS measures imposing the pecuniary sanctions and the judgements on appeals issued by the administrative courts shall be published in IVASS' Bulletin. At the request of IVASS and on account of the infringement as well as of the interests involved, the Ministry of Economic Development may establish further forms of publicity of the measure, and order the infringer to bear the relevant costs".*

<sup>1107</sup> Article repealed by article 1 (59) of legislative decree n. 68 of 21 May 2018. The previous version laid down:

"Art. 327

(Cases where there is more than one breach and corrective measures)

*1. In the case of a repeated breach of the same provision of this code, or of its implementing provisions, which is punished with pecuniary administrative sanctions and which has been committed by means of a number of actions or omissions resulting from the same malfunction within the undertaking's or the intermediary's organisation, IVASS shall notify the charges in accordance with article 326 (1, first sentence) and, in the same measure, shall establish a mandatory time limit of not more than one hundred eighty days within which the party concerned must take the necessary steps to remove the malfunction found, if it intends to make use of this option.*

*2. If the party intends to take the steps indicated in paragraph 1 it shall inform IVASS accordingly, within sixty days of the issue of the measure notifying the charges, by specifying the terms, characteristics and expected effects. [This notification shall preclude the exercise of the option to pay the reduced amount as per article 326 (2), where this is allowed under article 328.]*

*3. If the party communicates that it does not intend to take the required steps, or if it makes no comment within sixty days of the issue of the measure notifying the charges, [the time for paying the reduced amount as per article 326 (2), where this is allowed, or to file a complaint as per article 326 (3), shall start running], it being understood that the application of the alternative sanction to the violations ascertained [shall] remain precluded. The procedure shall continue according to the provisions of article 326 [ 5 and 6.]*

*4. In the event that the party has made use of the option envisaged under paragraph 2, within thirty days from the expiry of the period assigned to remove the malfunction found, IVASS shall verify that the corrective measures have been adopted and shall inform the party in the procedure of the relevant outcome. If the corrective measures are adopted according to the terms and characteristics indicated in the notification to IVASS one single pecuniary administrative sanction shall be applicable, alternative to those applicable in case of breach of the same provision, which shall be not lower than fifty thousand euros and not higher than five hundred thousand euros. Any remarks raised by IVASS shall not preclude the application of the alternative sanction, but shall be taken into account when determining such sanction.*

*5. Within sixty days of notification of the outcome of IVASS's verifications the party may submit its comments on the remarks made by IVASS, if any, on the corrective measures adopted. [In all cases ISVAP shall send the Advisory commission on sanctioning procedures a report on the implementation of the measures taken for the purposes of establishing the alternative sanction.]"*

<sup>1108</sup> Paragraph repealed by article 1 (60, a) of legislative decree n. 68 of 21 May 2018. The previous version laid down:

*"[1. The option to pay the reduced amount shall not apply to the pecuniary sanctions envisaged by articles 305 (4), 308 (4), 309, 310, 311, 312 and 319]".*

<sup>1109</sup> Paragraph repealed by article 1 (60, b) of legislative decree n. 68 of 21 May 2018. The previous version laid down:

*"[2. In those cases where the infringement can be extinguished through the payment of the reduced amount and the party expressly waives all claims before the relevant meeting of the Advisory commission is fixed the procedure shall be extinguished by the payment of a sanction equal to the amount of the fine increased by ten per cent.]*

<sup>1110</sup> IVASS Regulation n. 39 of 02 August 2018. The provisions laid down in IVASS regulations n. 1 and n. 2 of 8 October 2013 shall apply to sanctioning proceedings for breaches committed before 1 October 2018.

sanctions is effected by entering it in the register in accordance with the terms and procedures laid down in presidential decree n. 602 of 29 September 1973<sup>1111</sup>.

4. Income from pecuniary administrative sanctions imposed in accordance with the articles listed below shall be paid to CONSAP Spa – autonomous management of the Fondo di garanzia per le vittime della strada<sup>1112</sup>:

- a) 310 (1) b), except for the income resulting from sanctions imposed for breaches of articles 10-quater<sup>1113</sup>;
- b) 310 (1) c), except for the income resulting from sanctions imposed for breach of article 183;
- c) 310-bis;
- d) 310-ter;
- e) 310-quater.

4-bis. The pecuniary administrative sanctions envisaged in this Title shall not be subject to the provisions contained in articles 6, 10, 11, 14 (1, 2 and 5) for the part relating to the payment of the reduced amount of the sanction, 16 and 22 of law n. 689 of 24 November 1981. For the notification of the administrative sanctions imposed by IVASS, including those of a non-pecuniary nature, article 14 (4) of Law no. 689 of 24 November 1981 shall apply.<sup>1114</sup>.

## **Chapter VIII**

### **DISCIPLINARY PROVISIONS APPLICABLE TO LOSS ADJUSTERS<sup>1115</sup>**

#### Art. 329 (Disciplinary sanctions applicable to loss adjusters)<sup>1116</sup>

1. Loss adjusters who, when performing their activity, breach the rules of this code or the relevant implementing provisions, shall be punished with one of the following sanctions, depending on the seriousness of the breach and on any previous convictions<sup>1117</sup>:

- a) reproach;
- b) censure;
- c) striking off.

2. The reproach, consisting in a reasoned written reprimand, shall be adopted for instances of minor failures. Censure shall be adopted in serious cases. The striking off shall be adopted in

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<sup>1111</sup> Paragraph replaced by article 1 (60, c) of legislative decree n. 68 of 21 May 2018. The previous version laid down: “3. By its own regulation the Minister of Economic Development, in agreement with the Minister of Economy and Finance, shall prescribe the time limits for payment and the procedures for the enforced recovery of the pecuniary sanctions envisaged by this code”.

<sup>1112</sup> Paragraph replaced by article 1 (60, d) of legislative decree n. 68 of 21 May 2018. The previous version laid down: “4. Income from sanctions imposed in accordance with article 145-bis and with chapter III of this title shall be paid to CONSAP Spa – autonomous management of the Fondo di garanzia per le vittime della strada”.

<sup>1113</sup> Letter replaced by article 1 (32, a) of legislative decree n. 187 of 30 December 2020. The previous version laid down: “a) 310 (1) b), except for the income resulting from sanctions imposed for breaches of articles 10-quater and 182,”

<sup>1114</sup> Paragraph inserted by article 1 (60), legislative decree n. 68 of 21 May 2018, and amended by article 1 (32, b) of legislative decree n. 187 of 30 December 2020.

<sup>1115</sup> Heading replaced by article 1 (61) of legislative decree n. 68 of 21 May 2018. The previous version laid down: “Persons subject to disciplinary sanctions and procedure”.

<sup>1116</sup> Heading replaced by article 1 (62, a) of legislative Decree n. 68 of 21 May 2018. The previous version laid down: “Insurance intermediaries and loss adjusters”.

<sup>1117</sup> Paragraph replaced by article 1 (62, b) of legislative decree n. 68 of 21 May 2018. The previous version laid down: “1. Insurance or reinsurance intermediaries, including direct canvassers, collaborators and other auxiliary staff of the insurance or reinsurance intermediary, and loss adjusters who, when performing their activity, including the cases punished under article 324, breach the rules of this code or the relevant implementing provisions, shall be punished with one of the following sanctions, depending on the seriousness of the breach and on any previous convictions: a) reproach; b) censure; c) striking off.”

extremely serious cases and shall imply the immediate termination of the mediation relationship; in case of pursuit of business as legal entity, it shall also imply the removal of the company in extremely serious cases or in the event of systematic repetition of the infringement<sup>1118</sup>.

3. The disciplinary measures shall be notified to the party concerned by means of a registered letter and the undertakings with which such party has current assignments shall be informed accordingly.

#### Art. 330

(Power to adopt disciplinary measures against loss adjusters)<sup>1119</sup>

1. The disciplinary sanctions referred to under article 329 shall be applied by CONSAP in accordance with article 331 against the natural persons liable for the infringement who are registered in the list of loss adjusters.

#### Art. 331

(Procedure for the application of disciplinary sanctions against loss adjusters)<sup>1120</sup>

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<sup>1118</sup> Paragraph replaced by article 1 (62, c) of legislative decree n. 68 of 21 May 2018. The previous version laid down: *“2. The reproach, consisting in a reasoned written reprimand, shall be adopted for instances of minor failures. Censure shall be adopted in serious cases. The striking off shall be adopted in extremely serious cases and shall imply the immediate termination of the mediation relationship.”.*

<sup>1119</sup> Article replaced by article 1 (63) of legislative decree no. 68 of 21 May 2018. The previous version laid down: *“Art. 330  
(Persons subject to disciplinary sanctions)*

*1. The disciplinary sanctions shall be applied against the natural persons liable for the infringement who are registered in the register of intermediaries, including collaborators and other auxiliary staff of the insurance or reinsurance intermediary, or in the list of loss adjusters.*

*2. In case of pursuit of business as legal entity the striking off shall also imply the removal of the company in extremely serious cases or in the event of systematic repetition of the disciplinary infringement.”.*

<sup>1120</sup> Article replaced by article 1 (64) of legislative decree no. 68 of 21 May 2018. The previous version laid down: *“Art. 331  
(Procedure for the application of disciplinary sanctions)*

*1. For the purposes of imposing the disciplinary sanctions referred to under article 330 IVASS, within one hundred twenty days of establishing the infringement, or within one hundred eighty days for residents abroad, shall notify the charges against the persons who are registered in the register of intermediaries, including collaborators and other auxiliary staff of the insurance or reinsurance intermediary allegedly liable for the infringement and shall submit the relevant documents to the Disciplinary Guarantee Committee.*

*1-bis. For the purposes of imposing disciplinary sanctions referred to under article 330CONSAP, within one hundred twenty days of establishing the infringement, or within one hundred eighty days for residents abroad, shall notify the charges against the loss adjusters allegedly liable for the infringement.*

*2. The persons subject to disciplinary sanctions referred to under paragraphs 1 and 1-bis may, within sixty days, file an appeal against the charges notified and ask for a hearing before the Disciplinary Guarantee Committee.*

*3. The Guarantee Committee is set up within IVASS and is made up of one judge acting at least in a capacity as Counsellor to the Court of Cassation or in a similar capacity, even if retired, who holds the chair or of a tenured teacher, and of two experts in insurance matters, which are appointed after hearing the most representative associations. The term of office shall last for a period of four years and may be renewed only once. The Guarantee Committee may be made up of more than one section, with a consequent increase in the number of its members, whenever IVASS deems it necessary to guarantee efficiency and timeliness in the determination of disciplinary proceedings. IVASS shall appoint the Guarantee Committee, lay down rules on the proceedings before the Committee in compliance with the principles of fair proceedings and establish the situations of incompatibility and the consideration for the members, which shall be borne by ISVAP.*

*4. If an appeal has been filed in accordance with paragraph 2 or the relevant deadline has expired without any appeal being filed, the Guarantee Committee shall acquire the results of the investigations, examine the defences and arrange for the hearing, where the parties may be assisted by independent lawyers and experts. If, in its opinion, no breach can be proven, the Guarantee Committee may decide to terminate proceedings or ask that the results of the investigations be supplemented. On the contrary, if in its opinion the breach is proven, it shall submit to IVASS or to CONSAP for the part falling under their competence a reasoned proposal for establishing the disciplinary sanction.*

*5. Once they have received the proposal made by the Guarantee Committee, IVASS or CONSAP shall, by decree, decide the disciplinary sanction, which is then notified to the parties in the proceeding.*

1. For the purposes of imposing disciplinary sanctions referred to under article 329 CONSAP, within one hundred twenty days of establishing the infringement, or within one hundred eighty days for residents abroad, shall notify the charges against the loss adjusters allegedly liable for the infringement.

2. The persons subject to disciplinary sanctions referred to under paragraph 1 may, within sixty days, submitted defences against the charges notified and ask for a hearing before the Guarantee Committee envisaged in article 324-octies, where they may be assisted by a lawyer.

3. If defences have been filed in accordance with paragraph 2 or the relevant deadline has expired without any defences being filed, the Guarantee Committee shall acquire the results of the investigations, examine the defences and arrange for the hearing, where the parties may be assisted by independent lawyers and experts. If, in its opinion, no breach can be proven, the Guarantee Committee may propose to terminate proceedings or ask CONSAP that the results of the investigations be supplemented. On the contrary, if in its opinion the breach is proven, it shall submit to CONSAP for the part falling under their competence a reasoned proposal for imposing the sanction.

4. Once it has received the proposal made by the Guarantee Committee, CONSAP shall, by order specifying the reasons for doing so, decide the disciplinary sanction, which is then notified to the parties in the proceedings.

5. Disputes concerning appeals against the measures applying the sanction shall be referred to the exclusive jurisdiction of the administrative courts. CONSAP shall be represented by its own lawyers in legal proceedings. Opposition does not suspend the execution of the ruling.

6. The measures imposing the striking off, the judgements on appeals issued by the administrative courts and the decrees relating to extraordinary petitions to the President of the Italian Republic shall be published by CONSAP in its internet site.

Art. 331-bis  
(Implementing provisions)<sup>1121</sup>

1. IVASS shall issue provisions implementing<sup>1122</sup> this Title.

**TITLE XIX**  
**PROVISIONS ON TAXES, TRANSITIONAL AND FINAL PROVISIONS**

**Chapter I**  
**TAX PROVISIONS**

Art. 332  
(Supplementary fund covering the solvency margin of insurance undertakings)

1. The supplementary fund, set up before 1 January 2004 in compliance with article 27 (4, 5 and 6) of legislative decree n. 174 of 17 March 1995 and article 28 of legislative decree n. 175 of 17 March 1995, shall be taken into account for the purposes of calculating the company's taxable

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*6. Disputes concerning appeals against the measures applying the disciplinary sanction shall be referred to the exclusive jurisdiction of the administrative courts. IVASS or CONSAP shall be represented by their own lawyers in legal proceedings.*  
*7. The measures imposing the striking off, the judgements on appeals issued by the administrative courts and the decrees relating to extraordinary petitions to the President of the Italian Republic shall be published in IVASS' Bulletin or by CONSAP in its internet site".*

<sup>1121</sup> Article inserted by article 1 (65) of legislative decree n. 68 of 21 May 2018.

<sup>1122</sup> IVASS Regulation n. 39 of 02 August 2018. The provisions laid down in IVASS regulations n. 1 and n. 2 of 8 October 2013 shall apply to sanctioning proceedings for breaches committed before 1 October 2018.

income in the financial year and in so far as it is attributed to members/shareholders also by capital reduction.

2. The revaluation reserve, envisaged in the balance sheet of insurance undertakings' financial statements shall also include the supplementary fund referred to in paragraph 1 already written in the financial statement of the financial year ending 31 December 2003.

#### Art. 333

(Taxes and levies on entries and on the registration of the assets freeze)

1. The registration of mortgages and freeze of assets envisaged by article 224 (1), to be effected in relation to immovable property situated in the territory of the Italian Republic, shall be subject to flat-rate mortgage taxes.

2. The relevant costs shall be borne by the undertaking.

#### Art. 334

(Fee on premiums of motor vehicles and craft insurance)

1. A fee shall apply to motor liability insurance premiums, in substitution for the actions within the competence of the Regions and the other bodies which provide benefits provided by the National Health Service against the insurance undertaking, the person who caused the accident or the appointed undertaking, for the reimbursement of the benefits provided to the victims of accidents caused by motor vehicles and craft.

2. A fee<sup>1123</sup> of 10.5% shall apply to premiums earned, and shall be shown separately in the policy and in the receipts. The insurance undertaking shall have a right of recourse against the policyholder for the amount of the fee.

3. Law n. 1216 of 29 October 1961 and subsequent modifications shall apply to the identification and notification of the premiums subject to the fee as well as to its collection and the relevant sanctions.

### Chapter II

#### SUPERVISORY AND MANAGEMENT FEES<sup>1124</sup>

#### Art. 335

(Insurance and reinsurance undertakings)

1. The following subjects shall be required to pay IVASS an annual contribution, called supervisory fee on insurance and reinsurance business, for an amount equal to that referred to in paragraph 2:

- a) insurance undertakings with head office in the territory of the Italian Republic and registered under section I of the register referred to in article 14 (4);
- b) branches of non-EU insurance undertakings established in the territory of the Italian Republic and registered under section II of the register referred to in articles 14 (4) and 28 (5, last sentence);
- c) the local undertakings referred to under article 51-bis (1, a) entered in the section of the register of insurance undertakings headed "Local undertakings referred to in Title IV, Chapter II, of the Code of Private Insurance" and the particular mutual insurance undertakings referred to in article

<sup>1123</sup> For the assignment of the fee see art. 2 para. 110 of law n. 191 of 23 December 2009 and art. 4 para. 76 of law n. 92 of 28 June 2012.

<sup>1124</sup> Heading amended by article 1 (217) of legislative decree n. 74 of 12 May 2015.

51-bis (1, b) and entered in the section of the register of insurance undertakings headed "Particular mutual insurance undertakings referred to in Title IV, Chapter III, of the Code of Private Insurance"<sup>1125</sup>;

d) reinsurance undertakings with head office in the territory of the Italian Republic and registered under section IV of the register referred to in article 59 (4);

e) branches of non-EU reinsurance undertakings established in the territory of the Italian Republic and registered under section V of the register referred to in article 60 (3);

e-bis) undertakings with head office in another member State referred to in Title II, Chapter III, registered in the lists in the appendix to the register under article 26.<sup>1126</sup>

2. The supervisory fee shall not exceed two per thousand of the premiums earned for each financial year, excluding taxes and levies and net of a percentage for operating expenses specifically calculated by IVASS on the basis of the data shown in the financial statements of the previous financial year<sup>1127</sup>. For the undertakings referred to in paragraph 1, e-bis), this fee is equivalent to an amount not exceeding half of that in the previous sentence and is calculated on the premiums earned in Italy.<sup>1128</sup>

3. The supervisory fee due from the other mutual undertakings shall be one per thousand of the premiums earned for each financial year, excluding levies and taxes.

4. The supervisory fee shall be established by 30 May by decree<sup>1129</sup> of the Minister of Economy and Finance, after hearing IVASS, so as to ensure the financial cover of the costs for supervising over undertakings as well as the operating expenses for the systems referred to in article 187.1 (1). The decree shall be published in the Official Journal and in IVASS' Bulletin by 30 June.<sup>1130</sup>

5. The fee, calculated net of a percentage for operating expenses, shall be paid directly to IVASS in two instalments by 31 January and 31 July of each year respectively, and shall be entered in the budget as a specific heading. Any surplus shall be included among the operating surplus and shall be taken into account to calculate the contribution for the following financial year<sup>1131</sup>.

6. The enforced recovery shall be effected on a tax-roll basis and in accordance with the arrangements in article 67 (2) of presidential decree n. 43 of 28 January 1988.

#### Art. 336

##### (Insurance and reinsurance intermediaries)

1. Each subject included in the register referred to in article 109 and in the list enclosed to the register referred to in articles 116-quater and 116-quinquies shall be required to pay IVASS an annual contribution, called supervisory fee on insurance and reinsurance intermediaries, for the maximum amount of: 100 euros for the natural persons registered in the register referred to in article 109 (2), a); 500 euros for the legal persons registered in the register referred to in article 109 (2), a); 100 euros for the natural persons registered in the register referred to in article 109 (2), b); 500 euros for the legal persons registered in the register referred to in article 109 (2), b), 50 euros for the natural persons registered in the register referred to in article 109 (2), c), 10,000.00 euros for the legal persons registered in the register referred to in article 109 (2), d), 100 euros for the natural persons registered in the register referred to in article 109 (2), f); 500 euros for the legal persons registered in the register referred to in article 109 (2), f); 5,000.00 euros for credit institutions and investment firms referred to in article 4, paragraph 1, points 1) and 2), of (EU)

<sup>1125</sup> Letter replaced by article 1 (191, a) of legislative decree n. 74 of 12 May 2015.

<sup>1126</sup> Letter inserted by article 1 (33, a) of legislative decree n. 187 of 30 December 2020.

<sup>1127</sup> IVASS Order of 29 November 2018 (for the premiums of 2019).

<sup>1128</sup> Paragraph amended by article 1 (33, b) of legislative decree n. 187 of 30 December 2020.

<sup>1129</sup> Decree of the Minister of Economy and Finance of 28 July 2023.

<sup>1130</sup> Paragraph amended by article 1 (33, c) of legislative decree n. 187 of 30 December 2020.

<sup>1131</sup> Paragraph replaced by article 1 (191, b) of legislative decree n. 74 of 12 May 2015.

Regulation n. 575 of 26 June 2013 included in the list enclosed to the register referred to in articles 116-quater and 116-quinquies, and 250 and 50 euros, respectively, for the other legal and natural persons registered in the same list. The fee may not be deducted from the income of the intermediary included in the register referred to in article 109.<sup>1132</sup>

2. The supervisory fee shall be established by 30 May of each year by decree of the Minister of Economy and Finance<sup>1133</sup>, after hearing IVASS, so as to ensure the financial cover of the costs for supervising over intermediaries recorded in the register and in the enclosed list, as well as of the operating expenses for the systems referred to in article 187.1 (1). The decree shall be published in the Official Journal and in IVASS' Bulletin by 30 June of each year.<sup>1134</sup>

3. Article 335 (5 and 6) shall apply. The proof of payment shall be communicated to IVASS in the proper form and within the time limit prescribed by the decree referred to in paragraph 2.

3-bis. The decree of the Minister of Economy and Finance, referred to in paragraph 2, shall also establish the fee to be paid by those intending to take the qualifying examination referred to in article 110 (2), to the extent necessary to ensure the holding of the examination<sup>1135</sup>.

#### Art. 337

##### (Loss adjusters)<sup>1136</sup>

1. The subjects registered in the list of loss adjusters<sup>1137</sup> shall be required to pay CONSAP an annual fee, called management fee on loss adjusters, for a maximum amount of one hundred euros.

2. The management fee shall be established by 30 May by decree of the Minister of Economy and Finance<sup>1138</sup>, after hearing CONSAP, so as to ensure the financial cover of the costs for managing the list of loss adjusters. The decree shall be published in the Official Journal and in CONSAP's website by 30 June.

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<sup>1132</sup> Paragraph replaced by article 1 (34) of legislative decree n. 187 of 30 December 2020. The previous version laid down: "1. Each subject included in the register referred to in article 109 shall be required to pay IVASS an annual contribution, called supervisory fee on insurance and reinsurance intermediaries, for the maximum amount of: one hundred euros for the natural persons registered in the register referred to in article 109 (2), a); five hundred euros for the legal persons registered in the register referred to in article 109 (2, a); one hundred euros for the natural persons registered in the register referred to in article 109 (2, b); five hundred euros for the legal persons registered in the register referred to in article 109 (2, b); fifty euros for the natural persons registered in the register referred to in article 109 (2, c), and ten thousand euros for the legal persons registered in the register referred to in article 109 (2, d), and one hundred euros for the natural persons registered in the register referred to in article 109 (2, f); five hundred euros for the legal persons registered in the register referred to in article 109 (2, f). The fee may not be deducted from the intermediary's income."

<sup>1133</sup> Decree of the Minister of Economy and Finance of 28 July 2023.

<sup>1134</sup> Paragraph replaced by article 1 (34) of legislative decree n. 187 of 30 December 2020. The previous version laid down: "2. The contribution for supervision shall be established by 30 May by decree of the Minister of Economy and Finance, after hearing IVASS, so as to ensure the financial cover of the costs for supervising over intermediaries recorded in the register. The decree shall be published in the Official Journal and in IVASS' Bulletin by 30 June."

<sup>1135</sup> Paragraph inserted by article 1 (67) of legislative decree n. 68 of 21 May 2018.

<sup>1136</sup> Article replaced by article 1 (192) of legislative decree n. 74 of 12 May 2015. Article 337 laid down:

"Art. 337

(Loss adjusters)

1. The subjects registered in the list of loss adjusters shall be required to pay ISVAP an annual fee, called supervisory fee on loss adjusters, for a maximum amount of one hundred euros.

2. The contribution for supervision shall be established by 30 May by decree of the Minister of Economy and Finance, after hearing ISVAP, so as to ensure the financial cover of the costs for supervising over the loss adjusters recorded in the list. The decree shall be published in the Official Journal and in ISVAP' Bulletin by 30 June.

3. The fees referred to in this article shall be paid to a specific unit in the Italian State budget revenue, and then re-allocated, by decree of the Minister of Economy and Finance, to the budget of the Ministry of Economic Development, which shall subsequently allocate them to ISVAP.

4. The proof of payment shall be communicated to IVASS in the proper form and within the time limit prescribed by the decree referred to in paragraph 2. In the event of non-payment the provision of article 335 (6) shall apply".

See art. 13, para. 35 of Decree-Law n. 95 of 6 July 2012 converted after amendments by Law n. 135 of 7 August 2012 for transfer of the list of loss adjusters to CONSAP.

<sup>1138</sup> Decree of the Minister of Economy and Finance of 07 December 2023.



3. The contribution referred to under this article shall be paid directly to CONSAP by 31 July of each year and shall be included as a specific item in CONSAP's budget. Any surplus shall be included among the operating surplus and shall be taken into account to calculate the contribution for the following financial year.

4. The proof of payment shall be communicated to CONSAP in the proper form and within the time limit prescribed by the decree referred to in paragraph 2. In the event of non-payment the provision of article 335 (6) shall apply.

### **Chapter III** **TRANSITIONAL PROVISIONS**

#### Art. 338

(Authorised insurance and reinsurance undertakings)

1. The insurance undertakings which, at the date of entry into force of this code, will be authorised pursuant to article 7 of legislative decree n. 174 of 17 March 1995, or to article 9 of legislative decree n. 175 of 17 March 1995, or which at the date of entry into force of said decrees will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered under section I of the register referred to in article 14 (4).

2. The branches of non-EU insurance undertakings which, at the date of entry into force of this code, will be authorised pursuant to article 81 of legislative decree n. 174 of 17 March 1995, or to article 93 of legislative decree n. 175 of 17 March 1995, or which at the date of entry into force of said decrees will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered under section II of the register referred to in articles 14 (4) and 28 (5, last sentence).

3. The mutual insurance undertakings not subject to the legislative decrees n. 174 of 17 March 1995 and n. 175 of 17 March 1995 which, at the date of entry into force of this code, will be authorised pursuant to presidential decree n. 449 of 13 February 1959, shall automatically be registered under section III of the register referred to in articles 14 (4) and 55 (2).

4. The reinsurance undertakings which, at the date of entry into force of this code, will be authorised pursuant to presidential decree n. 449 of 13 February 1959, or which at the date of entry into force of said decree will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered under section IV of the register referred to in articles 14 (4) and 59 (5).

5. The branches of reinsurance undertakings from third countries which, at the date of entry into force of this code, will be authorised pursuant to presidential decree n. 449 of 13 February 1959, or which at the date of entry into force of said decree will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered under section IV of the register referred to in articles 14 (4) and 60 (3).

6. The undertakings with head office in other member States which, at the date of entry into force of this code, will carry on business in the territory of the Italian Republic pursuant to article 69 of legislative decree n. 174 of 17 March 1995, or to article 80 of legislative decree n. 175 of 17 March 1995, or which at date of the entry into force of said decrees will have maintained the authorisation issued on the basis of previous regulations, shall automatically be registered in the list of undertakings carrying on business by way of establishment referred to in article 26.

7. The undertakings with head office in other member States which, at the date of entry into force of this code, will carry on business in the territory of the Italian Republic pursuant to article 70 of legislative decree n. 174 of 17 March 1995, or to article 81 of legislative decree n. 175 of 17 March

1995, or which at the date of entry into force of said decrees will have maintained the authorisation issued on the basis of previous regulations, and the branches of Italian undertakings established in other member States which, at the date of entry into force of this code, will carry on business in the territory of the Italian Republic pursuant to article 49 of legislative decree n. 174 of 17 March 1995, or to article 60 of legislative decree n. 175 of 17 March 1995, shall automatically be registered in the list of undertakings carrying on business by way of provision of services referred to in article 26.

Art. 339  
(repealed)<sup>1139</sup>

Art. 340  
(Available solvency margin for life business)

1. Until 31 December 2009, at the reasoned request of the undertaking pursuing life business, IVASS may allow that the available solvency margin may also consist of, for periods not exceeding twelve months each, a percentage of the undertaking's future profits, within the limits and subject to the conditions laid down in the regulation referred to in article 44 (4)<sup>1140</sup>.

2. For the purposes of the request referred to in paragraph 1 the undertaking shall submit a report, drawn up and underwritten by the appointed actuary, confirming the plausibility that such profits be obtained in the future, and a plan illustrating how the limits can be respected further on, also on account of the fact that it will no longer be possible to use future profits after the transitional period has elapsed.

Art. 341  
(Undertakings in compulsory winding up)

1. The provisions under article 252 shall apply to undertakings placed under compulsory winding up after the entry into force of legislative decree n. 174 of 17 March 1995 and legislative decree n. 175 of 17 March 1995. Compulsory winding ups commenced before the entry into force of said decrees shall continue to be governed by the law that was applicable to them at the time of publishing of the relevant measure in the Official Journal. Articles 246 (1, 2 and 3), 250, 252 (2), 261, 262 and 263 shall apply to all proceedings underway as of the date of entry into force of this code.

2. The decree by the Minister of Labour and Social Policy, issued in agreement with the Minister of Economic Development, laying down rules to facilitate, without costs to be borne by the State budget, migration of workers from insurance undertakings pursuing compulsory motor liability insurance that are placed under administrative compulsory winding up, who have been re-employed by the liquidator in the context of the measures for the pursuit of active policies for income and employment support referred to in article 2 (28) of law n. 662 of 23 December 1996, shall remain into force.

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<sup>1139</sup> Article repealed by article 1 (193) of legislative decree n. 74 of 12 May 2015. Article 339 laid down:

“Art. 339  
(Calculation and coverage of technical provisions for life business)

1. As regards the contracts concluded before 19 May 1995, insurance undertakings having their head office in the territory of the Italian Republic and branches of non-EU insurance undertakings shall continue to use the calculation principles envisaged by the provisions in force on that date.

2. The undertakings referred to in paragraph 1, which were formerly required to transfer a percentage of the risks to Istituto nazionale delle assicurazioni, shall represent, also by way of derogation from current regulations, their technical provisions limited to the amount obtained by deducting from technical provisions calculated pursuant to paragraph 1 an amount equal to the legal transfers effected before said requirement ceased to have effect. The effects of the agreements concluded between said undertakings and CONSAP, regulating the relationships deriving from legal transfers, shall remain unchanged”.

<sup>1140</sup> ISVAP Regulation n. 19 of 14 March 2008.

Art. 342  
(Formerly authorised participations)

1. The qualifying holdings or controlling interests formerly authorised in application of article 10 of law n. 20 of 9 January 1991 shall remain authorised, except for any withdrawal.

Art. 343  
(Intermediaries who are already registered or pursuing business)

1. The subjects who, at the date of entry into force of this code, will be registered in the Register of insurance agents or in the National register of insurance and reinsurance brokers shall automatically be registered in the corresponding section of the register envisaged by article 109 (2) after showing evidence that they have complied with the obligation to take out the professional indemnity insurance referred to in articles 110 (3) and 112 (3), subject to the provisions of article 109 (3), within twelve months of the date of entry into force of this code.

2. The subjects who have been removed from the Register of insurance agents or the National register of insurance and reinsurance brokers can, within, respectively, five years or two years of the date of entry into force of this code, be registered again, provided that the application is submitted within twelve months of the entry into force of this code and the removal was not ordered on the basis of a definitive disciplinary measure. Subject to the provisions of article 109 (3), registration shall be subject to the fulfilment of the obligation to take out the professional indemnity insurance policy referred to in article 110 (3).

3. The natural persons who, if law n. 48 of 7 February 1979 and law n. 792 of 28 November 1984 had remained in force, would have reached the requirements for automatic registration in the register of insurance agents or in the register of insurance and reinsurance brokers respectively, shall be entitled to registration in the corresponding section of the register envisaged by article 109, provided that the period required is completed within twelve months of the date of entry into force of this code. During the period laid down for registration they may continue to carry on the activity previously pursued.

4. The subjects referred to in article 109 (2 c, d and e) who, at the date of entry into force of this code, carry on the activity of insurance or reinsurance broker may be registered, subject to the provisions of article 109 (4), in the corresponding section of the register within the subsequent twelve months. During the period laid down for registration they may continue to carry on the activity previously pursued.

5. The fund referred to in article 115 shall succeed to all the rights and obligations of the Guarantee fund for the activity of insurance and reinsurance brokers referred to in article 4 (1, f) of law n. 792 of 28 November 1984, and shall continue to intervene in the cases envisaged by the decree of the Minister of Industry, Commerce and Handicrafts of 30 April 1985, published in the Official Journal n. 110 of 11 May 1985.

6. The natural persons referred to in this article and those registered in the register of insurance and reinsurance intermediaries shall not be subject to the obligations envisaged for commercial agents as regards supplementary pensions.

Art. 344  
(Formerly registered loss adjusters)

1. Loss adjusters carrying on the activity of assessing and estimating material damage resulting from the use, theft and fire of motor vehicles and craft and who, at the date of entry into force of this code, will be registered in the list referred to in article 2 of law n. 166 of 17 February 1992, shall automatically be registered in the list envisaged by article 156.

**Chapter III-bis**  
**TRANSITIONAL PROVISIONS ON THE ENTRY INTO FORCE OF SOLVENCY II<sup>1141</sup>**

**Section I**  
**IMMEDIATELY APPLICABLE PROVISIONS<sup>1142</sup>**

Art. 344-bis  
(Immediately applicable provisions)<sup>1143</sup>

1. From 1 April 2015 IVASS shall decide on the approval of:
  - a) ancillary own funds in accordance with article 44-quinquies (5, 6, 7 and 8);
  - b) the classification of own funds items referred to in article 44-octies (1, 6 and 7);
  - c) undertaking specific parameters in accordance with article 45-sexies (7);
  - d) a full or partial internal model in accordance with articles 46-bis and 46-ter;
  - e) special purpose vehicles to be established in the Italian territory in accordance with article 57-bis;
  - f) ancillary own funds of an intermediate insurance holding company in accordance with article 216-sexies (1, e);
  - g) the use of a group internal model in accordance with articles 207-octies, 216-sexies (1, a and b);
  - h) the use of the duration based equity risk sub-module in accordance with article 45-novies;
  - i) the use of the matching adjustment to the relevant risk-free interest rate term structure in accordance with articles 36-quinquies and 36-sexies;
  - l) the use of the transitional measure on the risk-free interest rates in accordance with article 344-novies;
  - m) the use of the transitional measure on technical provisions in accordance with article 344-undecies.
  
2. With regard to group supervision, from 1 April 2015 IVASS may:
  - a) decide on the application of the provisions on group supervision set out in Chapters I, IV-bis and IV-ter of Title XV;
  - b) be qualified as group supervisor, in accordance with article 207-sexies;
  - c) establish a college of supervisors in accordance with article 206-bis.
  
3. With regard to group supervision, from 1 July 2015 IVASS may:
  - a) deduct any participation in accordance with article 216-sexies (1);
  - b) determine the choice of method to calculate group solvency in accordance with article 216-sexies (1, a);
  - c) make the verification regarding the existence of equivalent group supervision, in accordance with articles 216-sexies (1, e) and 220-septies;
  - d) determine the application of the provisions on group supervision for groups with centralised risk management pursuant to article 217-quater and 217-quinquies, in accordance with article 217-bis;
  - e) make the determinations referred to in articles 220-octies and 220-sexies.
  
4. Starting from 1 July 2015, IVASS may determine the application of transitional measures in accordance with Section II of this Chapter.

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<sup>1141</sup> Chapter inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

<sup>1142</sup> Section inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

<sup>1143</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

5. The permissions and the decisions taken by IVASS in compliance with paragraph 1, and with paragraphs 2 and 3, shall become applicable from 1 January 2016.

## **Section II** **TRANSITIONAL MEASURES<sup>1144</sup>**

### Article 344-ter

(Transitional measures on particular types of insurance or reinsurance undertakings)<sup>1145</sup>

1. Until the dates set out in point a) and b) of paragraph 2, Titles I, II, III, IV, V, VI, VII, XIV, XV, XVI, XVIII of this Code shall not apply to insurance or reinsurance undertakings which, by 1 January 2016, cease to conduct new insurance or reinsurance contracts and exclusively administer their existing portfolio in order to terminate their activity where either:

- a) the undertaking has satisfied IVASS that it will terminate its activity before 1 January 2019; or
- b) the undertaking is subject to reorganisation measures set out in Title XVI, Chapter II and an administrator has been appointed.

2. Undertakings falling under:

a) paragraph 1(a) shall be subject to Titles I, II, III, IV, V, VI, VII, XIV, XV, XVI, XVIII from 1 January 2019 or from an earlier date where IVASS is not satisfied with the progress that has been made towards terminating the undertaking's activity;

b) paragraph 1(b) shall be subject to Titles I, II, III, IV, V, VI, VII, XIV, XV, XVI, XVIII from 1 January 2021 or from an earlier date where IVASS is not satisfied with the progress that has been made towards terminating the undertaking's activity.

3. The provisions under paragraphs 1 and 2 shall apply only if the undertaking referred to under paragraph 1 meets the following conditions:

a) the undertaking is not part of a group, or if it is, all undertakings that are part of the group cease to conduct new insurance or reinsurance contracts;

b) the undertaking shall provide IVASS with an annual report setting out what progress has been made in terminating its activity;

c) the undertaking has notified IVASS that it applies the transitional measures. Paragraphs 1 and 2 shall not prevent any undertaking from operating in accordance with Titles I, II, III, IV, V, VI, VII, XIV, XV, XVI, XVIII.

4. IVASS shall draw up a list of the insurance and reinsurance undertakings referred to under paragraph 1 and communicate that list to all the other Member States.

5. For the purposes of and within the scope of paragraph 1, the provisions set out in Titles I, II, III, IV, V, VI, VII, XIV, XV, XVI, XVIII shall continue to apply in the version in force before 1 January 2016.

### Article 344-quater

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<sup>1144</sup> Section inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

<sup>1145</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

(Transitional measures on information and supervisory review process)<sup>1146</sup>

1. Until 31 December 2019, the deadline for undertakings to submit the annual information to IVASS for the purpose of verifying the conditions for the pursuit of business referred to in article 47-quater, shall decrease by two weeks each financial year, starting from 20 weeks after the undertaking's financial year end in relation to its financial year ending on 31 December 2016, to no later than 14 weeks after the undertaking's financial year end in relation to its financial years ending on 31 December 2019.

2. Until 31 December 2019, the deadline for undertakings to submit the solvency and financial condition report referred to in article 47-septies shall decrease by two weeks each financial year, starting from no later than 20 weeks after the undertaking's financial year end in relation to its financial year ending on 31 December 2016, to no later than 14 weeks after the undertaking's financial year ending on 31 December 2019.

3. Until 31 December 2019, the deadline for undertakings to submit the quarterly information to IVASS for the purpose of verifying the conditions for the pursuit of business referred to in article 47-quater, shall decrease by one week each financial year, starting from no later than eight weeks related to any quarter starting from the end of the first quarter 2016 to no later than five weeks after the end of the first quarter 2019.

4. The deadlines envisaged in paragraphs 1 and 3, extended by further six weeks, shall apply to the ultimate Italian parent undertaking referred to under article 210 (2) as regards the reporting to IVASS for the purposes of verifying compliance with the requirements on group supervision as set out in article 216-octies.

5. The deadlines envisaged in paragraph 2, extended by further six weeks, shall apply to the ultimate Italian parent undertaking referred to under article 210 (2) as regards the group solvency and financial condition report as set out in article 216-novies.

#### Article 344-quinquies

(Transitional measures on own funds and investments)<sup>1147</sup>

1. Notwithstanding article 44-octies (2, 3, 4 and 5), on the classification in tiers, basic own-fund items shall be included in Tier 1 basic own funds for up to 10 years after 1 January 2016, provided that those items:

a) they were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in article 97 of Directive 2009/138/EC, whichever is the earlier;

b) on 31 December 2015 could be used to meet the available solvency margin up to 50 per cent of the solvency margin according to the laws, and regulations on the solvency margin, applicable at such date;

c) would not otherwise be classified in Tier 1 or Tier 2 in accordance with article 44-octies (2, 3, 4 and 5).

2. Notwithstanding article 44-octies (2, 3, 4 and 5) on the classification in tiers, basic own-fund items shall be included in Tier 2 basic own funds for up to 10 years after 1 January 2016, provided that those items satisfy all of the following conditions:

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<sup>1146</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

<sup>1147</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

a) they were issued before 1 January 2016 or prior to the date of entry into force of the delegated act referred to in article 97 of Directive 2009/138/EC, whichever is the earlier;

b) on 31 December 2015 they could be used to meet the available solvency margin up to 25 per cent of the solvency margin according to the laws and regulations on the solvency margin, applicable at such date.

3. With respect to undertakings investing in tradable securities or other financial instruments based on repackaged loans that were issued before 1 January 2011, the requirements to be complied with by undertakings “repackaging” loans in tradable securities or other financial instruments shall apply only in circumstances where new underlying exposures were added or substituted after 31 December 2014.

Article 344-sexies  
(Transitional measures on Solvency Capital Requirement)<sup>1148</sup>

1. Notwithstanding articles 45-bis, 45-ter (3) and 45-sexies, the Solvency Capital Requirement shall be calculated in accordance with the following provisions:

a) until 31 December 2017 the standard parameters to be used when calculating the market risk concentration sub-module and the spread risk sub-module in accordance with the standard formula shall be the same in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any Member State as the ones that would be applied to such exposures denominated and funded in their domestic currency;

b) in 2018 the standard parameters to be used when calculating the market risk concentration sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 80 per cent in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;

c) in 2019 the standard parameters to be used when calculating the market risk concentration sub-module and the spread risk sub-module in accordance with the standard formula shall be reduced by 50 per cent in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State;

d) from 1 January 2020 the standard parameters to be used when calculating the market risk concentration sub-module and the spread risk sub-module in accordance with the standard formula shall not be reduced in relation to exposures to Member States' central governments or central banks denominated and funded in the domestic currency of any other Member State.

2. Notwithstanding articles 45-bis, 45-ter (3) and 45-sexies, on the calculation of the Solvency Capital Requirement, the standard parameters to be used for equities that the undertaking purchased before 1 January 2016, when calculating the equity risk sub-module in accordance with the standard formula without the option set out in article 45-novies shall be calculated as the weighted averages of:

a) the standard parameter to be used when calculating the equity risk sub-module in accordance with article 45-novies; and

b) the standard parameter to be used when calculating the equity risk sub-module in accordance with the standard formula without the option set out in article 45-novies.

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<sup>1148</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

3. The weight for the parameter expressed in point (b) of paragraph 2 shall increase at least linearly at the end of each year from 0 per cent during the year starting on 1 January 2016 to 100 per cent on 1 January 2023.

Article 344-septies  
(Transitional measures on safeguards)<sup>1149</sup>

1. Notwithstanding article 222 (2-bis and 2-ter), on the breach of the Solvency Capital Requirement and without prejudice to paragraph 2-quater of the same provision where the undertaking complies with the solvency margin required by the laws and regulations on the solvency margin, applicable on 31 December 2015, but, during 2016, it does not comply with the Solvency Capital Requirement referred to in Title III, Chapter IV bis, IVASS shall require the undertaking to take the necessary measures to achieve the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement by 31 December 2017.

2. In the cases set out in paragraph 1 the undertaking shall, every three months, submit a progress report to IVASS setting out the measures taken and the progress made to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile to ensure compliance with the Solvency Capital Requirement.

3. The extension referred to in paragraph 1 shall be withdrawn by IVASS where the progress report referred to in paragraph 2 shows that there was no significant progress in achieving the re-establishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of the risk profile to ensure compliance with the Solvency Capital Requirement between the date of the observation of non-compliance of the Solvency Capital Requirement and the date of the submission of the progress report.

Art. 344-octies  
(Transitional provisions on group supervision)<sup>1150</sup>

1. The ultimate Italian parent undertaking referred to under article 210 (2) may, during a period until 31 March 2022, apply to IVASS for the approval of an internal group model applicable to a part of a group where the undertaking, to which the group internal model applies, is located in the territory of the Italian Republic and has a significantly different risk profile from the rest of the group.

2. IVASS regulation<sup>1151</sup> referred to in article 216-ter (1) shall lay down the transitional provisions, applicable at the level of the group notwithstanding Title XV, Chapter III, in accordance with the transitional provisions referred to in articles 344-quinquies on own funds, 344-sexies on Solvency Capital Requirement, 344-novies on risk-free interest rates, 344-decies on technical provisions.

3. Notwithstanding article 227 on the verification of group solvency, where the ultimate Italian parent undertaking referred to under article 210 (2) complies with the adjusted solvency calculated in accordance with the laws and regulations applicable on 31 December 2015 but does not comply with the group Solvency Capital Requirement referred to in articles 216-sexies and 216-septies (group Solvency Capital Requirement), IVASS shall require the parent undertaking to take the necessary measures to achieve the re-establishment of the level of eligible own funds covering the group Solvency Capital Requirement or the reduction of the group risk profile to ensure

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<sup>1149</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

<sup>1150</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

<sup>1151</sup> IVASS Regulation n. 17 of 19 January 2016.



compliance with the group Solvency Capital Requirement by 31 December 2017. Article 344-septies (2 and 3) shall apply.

4. In the cases referred to in paragraph 3, IVASS, in its capacity as group supervisor, shall adopt the measures set out in article 344-septies (1), in relation to the Italian undertaking at the head of the group which is not the ultimate Italian parent undertaking referred to under article 210 (2). Paragraphs 2 and 3 of article 344-septies shall apply.

Article 344-novies  
(Transitional measure on the risk-free interest rates)<sup>1152</sup>

1. Insurance or reinsurance undertakings may, apply a transitional adjustment to the relevant risk-free interest rate term structure with respect to admissible insurance and reinsurance obligations.

2. The application of the transitional adjustment referred to in paragraph 1 shall be subject to prior approval by IVASS.

3. For each currency the adjustment shall be calculated as a portion of the difference between:

a) the interest rate as determined by the undertaking in accordance with the laws and regulations on technical provisions applicable on 31 December 2015;

2) the annual effective rate, calculated as the single discount rate that, where applied to the cash flows of the portfolio of eligible insurance or reinsurance obligations, results in a value that is equal to the value of the best estimate of the portfolio of eligible insurance or reinsurance obligations where the time value of money is taken into account using the relevant risk-free interest rate term structure referred to under article 36-quater.

4. The portion referred to in point a) of the difference under paragraph 3 shall decrease linearly at the end of each year from 100 per cent starting from 1 January 2016 to 0 per cent on 1 January 2032.

5. Where undertakings apply the volatility adjustment referred to in article 36-septies, the relevant risk-free interest rate term structure referred to in point (b) of paragraph 3 shall be the adjusted relevant risk-free interest rate term structure set out in article 36-septies.

6. The admissible insurance and reinsurance obligations shall comprise only insurance or reinsurance obligations that meet the following requirements:

a) they originate from contracts concluded before 31 December 2015, excluding contract renewals on or after that date;

b) the relevant technical provisions were determined in accordance with the laws and regulations on technical provisions applicable on 31 December 2015;

c) the matching adjustment referred to in article 36-quinquies shall not be applied with respect to these obligations.

7. Insurance and reinsurance undertakings applying paragraph 1 shall:

a) not include the admissible insurance and reinsurance obligations in the calculation of the volatility adjustment set out in article 36-septies;

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<sup>1152</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

b) not apply article 344-decies;

c) as part of their report on their solvency and financial condition referred to in article 47-septies, publicly disclose that they apply the transitional risk-free interest rate term structure, and the quantification of the impact of not applying this transitional measure on their financial position.

Article 344-decies  
(Transitional measure on technical provisions)<sup>1153</sup>

1. Insurance and reinsurance undertakings may apply a transitional deduction to technical provisions. That deduction may be applied at the level of homogeneous risk groups referred to in article 36-novies (1).

2. The application of the transitional deduction referred to in paragraph 1 shall be subject to approval by IVASS.

3. The transitional deduction shall correspond to a portion of the difference between the following two amounts:

a) the technical provisions after deduction of the amounts recoverable from reinsurance contracts and special purpose vehicles, calculated in accordance with article 36-bis as of 1 January 2016;

b) the technical provisions after deduction of the amounts recoverable from reinsurance contracts calculated in accordance with the laws and regulations on technical provisions in force as at 31 December 2015.

4. The maximum transitional deduction shall decrease linearly at the end of each year from 100 per cent starting from 1 January 2016 to 0 per cent on 1 January 2032.

5. Where undertakings, as at 1 January 2016, apply the volatility adjustment referred to in article 37-septies, the amount referred to point a) of paragraph 3 shall be calculated with the volatility adjustment as at 1 January 2016.

6. The amounts of technical provisions, including where applicable the amount of the volatility adjustment, used to calculate the transitional deduction referred to in paragraph 3 may be recalculated every 24 months, or more frequently where the risk profile of the undertaking has materially changed. The recalculation shall be made subject to approval by or upon request of IVASS.

7. The deduction referred to in paragraph 3 may be limited by IVASS if its application could result in a reduction of the financial resources requirements that apply to the undertaking when compared with those calculated in accordance with the laws and regulations on technical provisions applicable on 31 December 2015.

8. Undertakings applying paragraph 1 shall:

a) not apply article 344-novies<sup>1154</sup>;

b) when they would not comply with the Solvency Capital Requirement without application of the transitional deduction, submit annually a report to IVASS setting out measures taken and the progress made to re-establish at the end of the transitional period set out in paragraph 4 a level

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<sup>1153</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

<sup>1154</sup> Letter replaced by article 1 (35) of legislative decree n. 187 of 30 December 2020.

of eligible own funds covering the Solvency Capital Requirement or to reduce their risk profile to restore compliance with the Solvency Capital Requirement;

c) as part of their report on their solvency and financial condition referred to in article 47-septies, publicly disclose that they apply the transitional deduction to the technical provisions, and the quantification of the impact of not applying that transitional deduction on their financial position.

#### Article 344-undecies

(Phasing-in plan on the transitional measures on risk-free interest rates and on technical provisions)<sup>1155</sup>

1. Undertakings that apply the transitional measures set out in articles 344-novies and 344-decies shall inform IVASS as soon as they observe that they would not comply with the Solvency Capital Requirement without application of these transitional measures.

2. In the cases set out in paragraph 1, IVASS shall require the undertaking to take the necessary measures to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

3. Within two months from observation of non-compliance with the Solvency Capital Requirement without application of these transitional measures, the undertaking shall submit to IVASS a phasing-in plan setting out the planned measures to establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce its risk profile to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

4. The undertaking concerned may update the phasing-in plan during the transitional period.

5. The undertaking concerned shall submit annually a report to IVASS setting out the measures taken and the progress made to ensure compliance with the Solvency Capital Requirement at the end of the transitional period.

6. IVASS shall revoke the approval for the application of the transitional measures set out in articles 344-novies and 344-decies where the report setting out the measures taken and the progress made referred to in paragraph 5 shows that compliance with the Solvency Capital Requirement at the end of the transitional period is unrealistic.

#### Article 344-duodecies

(Disclosure of information to EIOPA)<sup>1156</sup>

1. Until 1 January 2021 IVASS shall provide EIOPA with the following information, in accordance with the provisions of the European Union:

a) the availability of long-term guarantees in insurance products in the Italian market and the behaviour of insurance and reinsurance undertakings as long-term investors;

b) the number of insurance and reinsurance undertakings applying the matching adjustment, the volatility adjustment, the extension of the recovery period in accordance with article 222 (2-ter), the duration-based equity risk sub-module and the transitional measures set out in articles 344-novies and 344-decies;

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<sup>1155</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

<sup>1156</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

c) the impact on the insurance and reinsurance undertakings' financial position of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the standard equity risk charge, the duration-based equity risk sub-module and the transitional measures set out in articles 344-novies and 344-decies, at national level and in anonymised way for each undertaking;

d) the effect on the investment behaviour of insurance and reinsurance undertakings of the matching adjustment, the volatility adjustment, the symmetric adjustment mechanism to the standard equity risk charge and the duration-based equity risk sub-module, and whether they provide undue capital relief;

e) the effect of any extension of the recovery period in accordance with article 222 (2-ter), on the efforts of insurance and reinsurance undertakings to re-establish the level of eligible own funds covering the Solvency Capital Requirement or to reduce the risk profile in order to ensure compliance with the Solvency Capital Requirement;

f) where insurance and reinsurance undertakings apply the transitional measures set out in articles 344-novies and 344-decies, whether they comply with the phasing-in plans referred to in article 344-undecies and the prospects for a reduced dependency on these transitional measures, including measures that have been taken or are expected to be taken by the undertakings and IVASS, taking into account the regulatory environment of the Italian State.

#### Article 344-terdecies

(Transitional provisions on compliance with the Minimum Capital Requirement)<sup>1157</sup>

1. Notwithstanding article 222-bis, insurance and reinsurance undertakings which, as at 31 December 2015, comply with the solvency margin required by the laws and regulations in force on that date but do not hold sufficient eligible own funds covering the Minimum Capital Requirement, shall comply with the provisions on the Minimum Capital Requirement referred to in Section IV, Chapter IV-bis, Title III, by 31 December 2016.

2. The authorisation to the pursuit of insurance and reinsurance business shall be withdrawn, pursuant to article 242, to the undertaking referred to in paragraph 1 which has failed to comply with the provisions on the Minimum Capital Requirement referred to in Section IV, Chapter IV-bis, Title III, by 31 December 2016.

#### Article 344-quaterdecies

(Information requirements on capital add-on)<sup>1158</sup>

1. Without prejudice to the information requirements envisaged by other laws or regulations, and although the Solvency Capital Requirements have been reported pursuant to article 47-septies (2, e, point 2) until 31 December 2020, the undertaking shall disclose - without separate evidence - the capital add-on or the impact of the specific parameters the undertaking has been required to use in accordance with article 45-terdecies.

### Chapter IV

#### FINAL PROVISIONS

#### Art. 345

(Institutions and bodies excluded)

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<sup>1157</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

<sup>1158</sup> Article inserted by article 1 (194) of legislative decree n. 74 of 12 May 2015.

1. The following institutions and bodies shall be excluded from the scope of this code:

a) public administrations, social security institutions administered by law by the Ministry of Economy and Finance, institutions, bodies and funds – however named - which manage provident and mutual-benefit schemes included in a statutory social security system for the benefit of workers or of specific professional categories;

b) *(repealed)*<sup>1159</sup>;

c) SACE Servizi assicurativi per il commercio estero S.p.a., envisaged by law n. 227 of 24 May 1977, and subsequent modifications, limited to those activities benefiting from the support of the State and without prejudice to paragraph 2;

d) the Fondo di solidarietà nazionale per la riassicurazione dei rischi agricoli set up within ISMEA under article 127 of law n. 388 of 23 December 2000, and governed by articles 2 and 4 of decree-law n. 200 of 13 September 2002, converted, after amendment, by law n. 256 of 13 November 2002;

e) organisations which undertake to provide benefits solely in the event of death, where the benefits are provided in kind or where the amount of such benefits does not exceed the average funeral costs established in article 15 (1) d) of the consolidated law on income tax, envisaged by presidential decree n. 917 of 22 December 1986, and subsequent modifications;

f) società di mutuo soccorso set up under law n. 3818 of 15 April 1886 which directly pay capitals or annuities of any amount to their members, without prejudice to paragraph 3;

g) farmers' mutual associations, set up under law n. 526 of 7 July 1907, and royal decree-law n. 1759 of 2 September 1919, as amended by royal decree-law n. 2479 of 21 October 1923, both converted into law n. 473 of 17 April 1925, as amended by article 9 of royal decree-law n. 1290 of 12 July 1934, converted into law n. 303 of 12 February 1935.

2. By way of derogation from paragraph 1, SACE S.p.a. shall be subject to the provisions of chapters I, II and III of title VIII of this code as concerns the activities benefiting from the support of the State. The activities of SACE S.p.a. not benefiting from the support from the State shall remain fully subject to the provisions of this code.

3. Mutual societies referred to in paragraph 1 f), which undertake to pay to their members capitals or annuities of an overall amount higher than one hundred thousand euros for each financial year, shall be subject to the provisions of title IV, *mutatis mutandis*. When these societies conclude insurance contracts on behalf of their members, the latter shall be provided with the information referred to in titles IX, chapter III, and XII, *mutatis mutandis*.

4. Self-managed healthcare funds shall be subject to the provisions of title IV, *mutatis mutandis*.

#### Art. 346

(Assistance provided by non insurance institutions and undertakings)

1. The following activities shall not constitute exercise of assistance insurance:

a) servicing, maintenance, after-sales service and the mere indication or provision of aid as an intermediary;

b) assistance operations carried out by a person resident or having its head office in the territory of the Italian Republic on the occasion of an accident or breakdown involving a vehicle which

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<sup>1159</sup> Letter deleted by article 1 (195) of legislative decree n. 74 of 12 May 2015. Letter b) laid down: "*b) the Cassa di previdenza per l'assicurazione degli sportivi, recognised by royal decree n. 2047 of 16 October 1934, and subsequent modifications*".

occurs in the same territory, on condition that such activity be limited to the following assistance operations:

- 1) an on-the-spot breakdown service, provided by using mainly own staff and equipment;
- 2) the conveyance of the vehicle to the nearest or the most appropriate location at which repairs may be carried out and the possible accompaniment, normally by the same means of assistance, of the driver and passengers to the nearest location from where they may continue their journey by other means.

2. The provision under paragraph 1 b) shall also apply when the accident or breakdown have happened abroad and the breakdown service or conveyance of the vehicle is provided by a body, similar to another body in Italy, of which the beneficiary of the assistance is a member, which provides the assistance on the basis of a reciprocal agreement with the Italian body, simply on presentation of a membership card, without any additional premium being paid.

3. When the assistance described in paragraph 1 b) is provided by an insurance undertaking, it shall constitute exercise of insurance business in the assistance class and, without prejudice to the provisions of article 2 (5), it may only be provided by undertakings authorized for class 18.

4. IVASS shall, by its own regulation, lay down the conditions governing the taking up and pursuit of business, also by way of exemptions from the provisions of titles II, III and VIII, relating to insurance undertakings pursuing only assistance activity, when this activity consists only of benefits in kind, is carried out exclusively on a local basis and the total annual income collected does not exceed two hundred thousand euros.

#### Art. 347

(Regions with legislative power)

1. The State shall exercise its legislative powers on insurance matters in compliance with article 117 (2) e) and l) of the Constitution.

2. Special statute regions which, in accordance with the provisions implementing their statutes, are vested with powers on matters regulated by this code, shall issue implementing rules in compliance with the mandatory general provisions contained in this code.

3. In accordance with the provisions set forth in this code the Minister of Economic Development and IVASS shall have exclusive competence to adopt the measures concerning insurance and reinsurance undertakings admitted to mutual recognition, EU undertakings pursuing business in the territory of the Italian Republic under the right of establishment or the freedom to provide services, branches of third-country insurance and reinsurance undertakings, and insurance and reinsurance intermediaries<sup>1160</sup>.

4. Whenever regional rules provide for the adoption of measures against mutual insurance undertakings referred to in title IV, in particular as regards the granting and withdrawal of the authorization to pursue business, the approval of the amendments to the articles of association and the approval of portfolio transfers, transformation and mergers or divisions, IVASS shall provide a binding opinion for supervisory purposes. Supervisory assessments shall be the sole responsibility of IVASS.

5. The provisions set forth in paragraphs 3 and 4 may not be derogated from and shall prevail over any contrary provisions already issued.

#### Art. 348

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<sup>1160</sup> Paragraph amended by article 1 (196) of legislative decree n. 74 of 12 May 2015.

(Simultaneous pursuit of life and non life insurance)<sup>1161</sup>

1. By way of derogation from the requirement to limit their objects to the pursuit of life or non life insurance, of reinsurance and related operations, as provided for in article 11 (2), the simultaneous pursuit of life and non life insurance shall be allowed to undertakings authorized to such business as at 15 March 1979.

2. An undertaking simultaneously pursuing life and non life insurance in accordance with paragraph 1 shall be required to maintain a separate management for each of the two activities. IVASS shall, by its own regulation<sup>1162</sup>, fix the criteria and methods for representing the separate management, by imposing the requirement:

a) to indicate in the memorandum and articles of association what part of the capital, or of the initial fund in case of mutual undertakings, and of capital provisions shall be allocated to each management;

b) to draw up the accounts in such a manner as to show the results for each of the activities; To that end all income, in particular premiums, payments by reinsurers and investment income, and expenditure, in particular insurance settlements, additions to technical provisions, reinsurance premiums and operating expenses in respect of insurance business, shall be broken down according to origin.

c) to enter in the accounts the items common to both activities in accordance with methods of apportionment to be accepted by IVASS.

2-bis. Without prejudice to the provisions on the capital requirements referred to under article 45-bis and 47-bis the undertaking simultaneously pursuing life and non-life insurance shall calculate:

a) a notional life Minimum Capital Requirement with respect to the life insurance or reinsurance activity, calculated as if the undertaking only pursued that activity, on the basis of the separate accounts referred to in paragraph 2 (b); and

b) a notional non-life Minimum Capital Requirement with respect to the non-life insurance or reinsurance activity, calculated as if the undertaking only pursued that activity, on the basis of the separate accounts referred to in paragraph 2 (b);

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<sup>1161</sup> Article replaced by article 1 (197) of legislative decree n. 74 of 12 May 2015. The previous version laid down:

“Art. 348

(Simultaneous pursuit of life and non life insurance)

1. By way of derogation from the requirement to limit their objects to the pursuit of life or non life insurance, of reinsurance and related operations, as provided for in article 11 (2), the simultaneous pursuit of life and non life insurance shall be allowed to undertakings authorized to such business as at 15 March 1979.

2. An undertaking simultaneously pursuing life and non life insurance in accordance with paragraph 1 shall be required to maintain a separate management for each of the two activities. ISVAP shall, by its own regulation, fix the criteria and methods for representing the separate management, by imposing the requirement:

a) to indicate in the memorandum and articles of association what part of the capital, or of the initial fund in case of mutual undertakings, and of capital provisions shall be allocated to each management;

b) to draw up the accounts in such a manner as to show the results and the availability of the solvency margin required for each of the two activities;

c) to apportion the items constituting the solvency margin, specific for each activity, to the solvency margin of the corresponding management.

3. Subject to ISVAP's authorisation, the undertaking which has fulfilled the obligations laid down in paragraph 2 may use items making up the net assets included in the available solvency margin for one or other activity.

4. Insurance undertakings with head office in other member States which, at the date of entry into force of this code, carry on business by way of establishment or by way of free provision of services and are authorized in their respective countries to the simultaneous pursuit of one or more life and non life classes, may continue to pursue such classes in the territory of the Italian Republic either by way of establishment or by way of free provision of services.

5. The provisions of this article shall also apply to undertakings which have been authorised to the simultaneous pursuit of life assurance and accident and sickness insurance after the date indicated in paragraph 1, without prejudice to the obligation to comply with the provisions of paragraph 2 b) starting from the accounts current at the date of issue of the authorization”.

<sup>1162</sup> ISVAP Regulation n. 17 of 11 March 2008.

2-ter. The undertaking simultaneously pursuing life and non-life insurance shall cover the following by an equivalent amount of eligible basic own-fund items:

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

2-quater. The minimum requirements referred to in paragraph 2-ter, in respect of the life insurance activity and the non-life insurance activity, shall not be borne by the other activity.

2-quinquies. An undertaking which fulfils the minimum requirements referred to in paragraph 2-ter and 2-quater may - provided that an appropriate notification has been sent to IVASS - use to cover the Solvency Capital Requirement referred to in article 45-bis, the explicit eligible own-fund items which are still available for one or the other activity.

2-sexies. Through the analysis of the results of life and non-life insurance business IVASS shall verify that the requirements referred to under paragraphs 2, 2-bis, 2-ter, 2-quater and 2-quinquies are complied with.

2-septies. The undertaking simultaneously pursuing life and non-life insurance shall, on the basis of the accounts, prepare a statement in which the eligible basic own-fund items covering each notional Minimum Capital Requirement as referred to in paragraph 2-bis are clearly identified, in accordance with article 44-decies (4).

2-octies. If the amount of eligible basic own-fund items with respect to one of the activities is insufficient to cover the minimum requirements referred to in paragraph 2-ter, IVASS shall apply to the deficient activity the measures provided for in this code, whatever the results in the other activity.

2-novies. In such cases, by way of derogation from paragraph 2-quater, IVASS may authorise the transfer of explicit eligible basic own-fund items from one activity to the other.

3. Insurance undertakings with head office in other member States which, at the date of entry into force of this code, carry on business by way of establishment or by way of free provision of services and are authorized in their respective countries to the simultaneous pursuit of one or more life and non life classes, may continue to pursue such classes in the territory of the Italian Republic either by way of establishment or by way of free provision of services.

4. The provisions of this article shall also apply to undertakings which have been authorised to the simultaneous pursuit of life assurance and accident and sickness insurance after the date indicated in paragraph 1, without prejudice to the obligation to comply with the provisions of paragraph 2 b), 2-bis, 2-ter, 2-quater, 2-quinquies, 2-sexies, 2-septies 2-octies and 2-novies starting from the accounts current at the date of issue of the authorisation.

#### Art. 349

(Insurance undertakings with head office in the Swiss Confederation)

1. Insurance undertakings having their head office in the Swiss Confederation and proposing to pursue non life business in the territory of the Italian Republic shall not be subject to the provisions under chapter IV of title II and to those under chapter V of title III which shall be indicated by IVASS' regulation<sup>1163</sup>.

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<sup>1163</sup> ISVAP Regulations n. 10 of 2 January 2008, in particular Title II, Chapter II -; n. 16 of 4 March 2008 and n. 19 of 14 March 2008 and n.22 of 22 April 2008.



2. The undertakings under paragraph 1 must enclose with their application for authorisation a certificate issued by the competent authority attesting that they possess the Solvency Capital Requirement calculated in accordance with the provisions of chapter IV of title III<sup>1164</sup>.

3. For the purposes of Title XV, the undertakings under paragraph 1 may delegate to the branch established in the territory of the Italian Republic the functions of managing and coordinating the group companies with head office in Italy. In that case the branch shall be considered as the ultimate Italian parent undertaking as per article 210 (2) and shall be registered in the register as ultimate parent company as per article 210-ter (1)<sup>1165</sup>.

#### Art. 350

(Right to apply to the courts in cases concerning the register of intermediaries and the list of loss adjusters)

1. The measures adopted by IVASS in accordance with chapter II of title IX concerning the refusal of registration and the removal from the register of insurance and reinsurance intermediaries shall be subject to the right to apply to the administrative court, within sixty days of the relevant notification.

2. The measures adopted by CONSAP in accordance with chapter VI of title X concerning the refusal of registration and the removal from the list of loss adjusters shall be subject to the right to apply to the administrative court, within sixty days of the relevant notification<sup>1166</sup>.

#### Art. 351

(Amendments to other insurance regulations)

1. Article 4 of law n. 576 of 12 August 1982 shall be replaced by:

«Article 4 (Functions of IVASS). - 1. IVASS, in keeping with European Union regulations on insurance and within the sphere of insurance policy lines set by the Government, shall carry out functions of supervision as set forth in the code of private insurance. 2. IVASS shall provide consultation and send comments to Parliament and the Government for matters within its competence for the regulation and supervision of the insurance sector. 3. By 31 May of each year IVASS presents a report on its activity to the President of the Council of Ministers for transmission to Parliament. 4. IVASS's budget and financial statements shall be subject to the control of the Court of Auditors.».

2. In article 14 (1, d) of law n. 576 of 12 August 1982 the sentence: «of the fee established in accordance with article 25» shall be replaced by: «of the total revenues from supervisory fees».

3. In article 23 (1, first sentence) of law n. 576 of 12 August 1982 the sentence: «in article 67 (1) of the consolidation act on the exercise of private insurance, approved by presidential decree n. 449 of 13 February 1959, and subsequent modifications» shall be replaced by: «in articles 335, 336 and 337 of the code of private insurance».

4. In article 29 (1) of law n. 576 of 12 August 1982 the sentence: «of the supervisory fee paid yearly by the entities and undertakings described in article 4 (1) of this law, in accordance with article 67 (1) of the consolidation act on the exercise of private insurance, approved by presidential decree n. 449 of 13 February 1959, and subsequent modifications» shall be replaced by: «resulting on the whole from the supervisory fees envisaged in articles 335, 336 and 337 of the code of private insurance». In the second paragraph the words: «of the Treasury» shall be replaced by: «of Economy and Finance».

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<sup>1164</sup> Paragraph amended by article 1 (198, a) of legislative decree n. 74 of 12 May 2015.

<sup>1165</sup> Paragraph amended by article 1 (198, b) of legislative decree n. 74 of 12 May 2015.

<sup>1166</sup> Paragraph amended by article 1 (199) of legislative decree n. 74 of 12 May 2015.

5. The following article shall be placed after article 1 of legislative decree n. 173 of 26 May 1997: «Art. 1-bis (Link with the code of private insurance). - 1. The formal references to items, letters, Arabic and Roman numerals contained in the provisions of articles 15, 16, 17, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 38, 41, 55 and 56 shall be deemed to refer to the corresponding classifications used in the layout of accounts adopted with the regulation envisaged in article 90 (1) of the code of private insurance.».

6. In legislative decree n. 173 of 26 May 1997 the words: «securities quoted on a stock exchange» shall be replaced by: «securities dealt in on regulated markets» wherever used.

7. In article 16 (5) of legislative decree n. 173 of 26 May 1997 the sentence: «in articles 7 and 8 of this decree» shall be replaced by: «in article 89 (1) of the code of private insurance».

8. In article 24 (1) of legislative decree n. 173 of 26 May 1997 the sentence: «in article 30 (1 and 2) of legislative decree n. 174 of 17 March 1995» shall be replaced by: «in article 41 (1 and 2) of the code of private insurance».

9. Article 20 (5) of legislative decree n. 173 of 26 May 1997 shall be replaced by: «5. In exceptional cases the transfer of investments from item D to item C of assets may be allowed, according to their current value at the time of the transfer, when the value of the assets is higher than the corresponding technical provisions, as a result of the removal of the restriction on the use of some assets exclusively for the representation of technical provisions, in those cases indicated by IVASS' regulation<sup>1167</sup>. The notes on the accounts must indicate the reasons for the transfer and specify the amount and the type of the investment.».

10. In article 31 (2) of legislative decree n. 173 of 26 May 1997 the sentence: «in articles 32, 33, 35, 36 and 37 (1 and 2) of this decree, as well as those referred to in articles 23 (2), 24, 25, 26 of legislative decree n. 175 of 17 March 1995, as amended by article 80 of this decree» shall be replaced by: «in article 36 of the code of private insurance».

11. In article 31 (3) of legislative decree n. 173 of 26 May 1997 the sentence: «in articles 24 and 25 of legislative decree n. 174 of 17 March 1995, as amended by article 79 of this decree, as well as that referred to in articles 34 of this decree» shall be replaced by: «in article 37 of the code of private insurance».

12. In article 44 (1) of legislative decree n. 173 of 26 May 1997 the sentence: «falling within the scope of legislative decree n. 175 of 17 March 1995» shall be replaced by: «referred to in article 2 (3) of the code of private insurance» and the sentence: «falling within the scope of legislative decree n. 174 of 17 March 1995» shall be replaced by: «in article 2 (1) of the code of private insurance».

13. In article 45 (4) of legislative decree n. 173 of 26 May 1997 the sentence: «in article 6 (1) c) of this decree» shall be replaced by: «in article 90 (1) of the code of private insurance».

14. In article 46 (2) of legislative decree n. 173 of 26 May 1997 the sentence: «in article 6 (1) c) of this decree» shall be replaced by: «in article 90 (1) of the code of private insurance».

#### Art. 352

(Formal coordination with other legal provisions)

1. In paragraph 3 of article 120 of the personal data protection code the sentence: «of article 2 (5-quater) of decree-law n. 70 of 28 March 2000, converted, after amendment, by law n. 137 of 26 May 2000 and subsequent modifications» shall be replaced by: «by article 135 of the code of private insurance».

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<sup>1167</sup> ISVAP Regulation n. 20 of 04 April 2008, in particular Title III.

2. In article 2 (1, d) of legislative decree n. 38 of 28 February 2005 the sentence: «of legislative decree n. 173 of 26 May 1997» shall be replaced by: «of article 88 (1 and 2) and those referred to in article 95 (2) of the code of private insurance». In article 1 (1, e) of legislative decree n. 142 of 30 May 2005 the sentence: «of legislative decrees n. 174 and 175 of 17 March 1995» shall be replaced by: «by article 1 (1, t) of the code of private insurance».

3. In article 1 (1, i) of legislative decree n. 142 of 30 May 2005 the sentence: «e) of legislative decree n. 239 of 17 April 2001» shall be replaced by: «of article 1 (1, cc) of the code of private insurance».

4. In article 1 (1, l) of legislative decree n. 142 of 30 May 2005 the sentence: «insurance regulations and the relevant implementing provisions» shall be replaced by: «the code of private insurance».

5. In article 1 (1, q) of legislative decree n. 142 of 30 May 2005 the sentence: «and of article 10 (2) of law n. 20 of 9 January 1991» shall be replaced by: «and of article 72 (2) of the code of private insurance».

6. In article 1 (1, r) of legislative decree n. 142 of 30 May 2005 the sentence: «and of article 10 (2) of law n. 20 of 9 January 1991» shall be replaced by: «and of article 72 (2) of the code of private insurance».

7. In article 13 (1, c) of legislative decree n. 142 of 30 May 2005 the sentence: «by the laws and regulations on private insurance, including the provisions under law n. 576 of 12 August 1982» shall be replaced by: «by title VII, chapter III, and by title XVI, chapters I, II, III and IV of the code of private insurance».

8. The above shall in no way compromise the powers reserved to the Supervisory Commission for Pension Funds (COVIP) by law n. 243 of 23 August 2004.

8-bis. In article 13 (1, a) of legislative decree n. 142 of 30 May 2005 after the wording "article 188" the words "paragraph 1" shall be deleted<sup>1168</sup>.

8-ter. In article 13 (1) of legislative decree n. 142 of 30 May 2005 the following shall be added: "d) the provisions referred to in article 220-novies of the Insurance Code."<sup>1169</sup>.

8-quater. In article 13 (2) of legislative decree n. 142 of 30 May 2005 the words "letters from a-bis to c" shall be replaced by "letters from a-bis to d"<sup>1170</sup>.

8-quinquies. In article 31 (2) of legislative decree n. 173 of 26 May 1997 the sentence: "referred to in article 36" shall be replaced by "in the regulation referred to in article 90 (1)"<sup>1171</sup>.

8-sexies. In article 31 (3) of legislative decree n. 173 of 26 May 1997 the sentence: "in article 37" shall be replaced by "in the regulation referred to in article 90 (1)".<sup>1172</sup>

#### Art. 353

(Supplements to the provisions about the tax on private insurance premiums)

1. The following article shall be placed after article 1 of law n. 1216 of 29 October 1961: «Article 1-bis (Premium tax on compulsory motor liability insurance).–

<sup>1168</sup> Paragraph inserted by article 1 (200) of legislative decree n. 74 of 12 May 2015.

<sup>1169</sup> Paragraph inserted by article 1 (200) of legislative decree n. 74 of 12 May 2015.

<sup>1170</sup> Paragraph inserted by article 1 (200) of legislative decree n. 74 of 12 May 2015.

<sup>1171</sup> Paragraph inserted by article 1 (200) of legislative decree n. 74 of 12 May 2015.

<sup>1172</sup> Paragraph inserted by article 1 (200) of legislative decree n. 74 of 12 May 2015.

1. Compulsory insurance against civil liability in respect of the use of motor vehicles and craft shall be subject to the tax on premiums at a rate of 12.5%. Such percentage shall remain unchanged also in case other risks pertaining to the vehicle or craft, or to the damage caused by the use of motor vehicles and craft, are insured under the same contract along with the risk of civil liability.

2. The provisions of article 16 shall apply to the receipts regarding the payment of amounts connected to the insurance contracts referred to in the previous paragraph, issued to the insurance undertaking by policyholders or by injured parties or by those claiming under them, even if they result from a formal act or have out-of-court effects, and even if they include not only compensation, but also expenses and legal fees and other ancillary rights envisaged by the insurance policy.

3. All the operations and acts required for the compensation paid by the Guarantee Fund for Victims of Road Accidents, and those regarding the relations between CONSAP – Concessionaire for Public Insurance Services, autonomous management of the Guarantee fund, and insurance undertakings, shall be exempted from any indirect levy and tax on business as well as from the formalities of registration.».

2. The following item shall be placed under the tariff in annex A to law n. 1216 of 29 October 1961: «assistance insurance», and a 10% rate shall be envisaged.

3. The following article shall be placed after article 2 of law n. 1216 of 29 October 1961: «Article 2-bis (Replacement of the undertaking in co-insurance). - 1. In case an insurer replaces another one in a co-insurance relationship the tax relating to the premium ceded to the subsequent insurer shall not be due again.».

4. The following article shall be placed after article 4 of law n. 1216 of 29 October 1961: «Article 4-bis (Premium tax due on contracts concluded by undertakings carrying on business by way of free provision of services). - 1. The undertakings proposing to carry on business under the freedom to provide services in the territory of the Italian Republic shall appoint a fiscal representative for the payment of the tax envisaged by law n. 1216 of 29 October 1961, and subsequent modifications, due on the premiums relating to the contracts concluded.

2. The representative shall be resident in the territory of the State and its appointment shall be notified to the competent office of Agenzia delle Entrate of Rome and to IVASS.

3. If the undertakings referred to in paragraph 1 have an establishment in the territory of the Italian Republic the role of fiscal representative may be played by that establishment.

4. The fiscal representative shall keep a register, in which the contracts concluded by the undertaking under the right of establishment and the freedom to provide services are listed separately, with the indication, for each of them, of the policyholder's particulars, the contract number, the commencement and expiry date, the nature of the risk insured, the amount of the premium or of the collected premium instalments, the rate of tax and its amount. The register shall be kept in chronological order with regard to the date on which the premium, or the premium instalment, is collected, and the contracts shall be included in the register within one month of said date. The representative shall also keep a copy of each contract.

5. By 31 of May of each year the fiscal representative must submit - on the basis of the procedures set by an order of the Director of Agenzia delle Entrate - the notification of the premiums and policy charges collected in the previous calendar year, distinguishing premiums according to category and the applicable rate of tax. The provisions of article 9 shall apply to the fiscal representative<sup>1173</sup>.

6. The provisions of articles 12, 24 and 28 shall apply to the fiscal representative».

6-bis. The provisions of this article shall not apply to insurance undertakings with head office in the States of the European Union or in the States of the European Economic Area ensuring an

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<sup>1173</sup> Paragraph replaced by article 24 of legislative decree n. 175 of 21 November 2014 published in the Official Journal n. 277 of 28 November 2014. The previous version laid down:

*5. Each month the representative shall submit to the competent office of Agenzia delle Entrate of Rome the notification of the premiums collected in the previous month, distinguishing premiums according to the applicable rate of tax. The representative shall at the same time submit the notification and pay the tax due."*

appropriate exchange of information. The insurance undertakings pursuing business under the freedom to provide services in the Italian territory which do not make use of the fiscal representative shall submit by 31 of May of each year - on the basis of the procedures set by an order of the Director of Agenzia delle Entrate - the notification of the premiums and policy charges collected in the previous calendar year, distinguishing premiums according to category and the applicable rate of tax. The provisions of article 9 shall apply to the fiscal representative appointed, if any»<sup>1174</sup>.

5. The following article shall be placed after article 6 of law n. 1216 of 29 October 1961:

«Article 6-bis (Premium tax due on contracts concluded by way of Community co-insurance). - 1. If the undertaking acting as leading insurer is established in the territory of the Italian Republic it shall be required to pay the tax referred to in this law in relation to the whole amount of the premium and of the policy charges applied to the contract concluded in the form and under the conditions established for Community co-insurance, without prejudice to the right to recover its share from the other co-insurers.

2. If the undertaking acting as leading insurer is not established in the territory of the Italian Republic it shall be required to appoint a fiscal representative for the payment of the tax referred to in paragraph 1.».

## Chapter V

### REPEALS

#### Art. 354

(Explicitly repealed regulations)

1. Without prejudice to the provisions of article 20 (3, b) of law n. 59 of 15 March 1997, in the text replaced by article 1 of law n. 229 of law 29 July 2003 the following regulations are or remain repealed:

royal decree n. 387 of 23 March 1922;

royal decree n. 63 of 04 January 1925;

presidential decree n. 449 of 13 February 1959;

law n. 990 of 24 December 1969;

decree-law n. 857 of 23 December 1976 converted, after amendment, by law n. 39 of 26 February 1977;

decree-law n. 576 of 26 September 1978 converted, after amendment, by law n. 738 of 24 November 1978;

law n. 48 of 07 February 1979;

articles 5 (1, 2 and 3), 5-bis, 6, 6-bis, 7, 7-bis, 10 (5 and 6) and 25 of law n. 576 of 12 August 1982;

law n. 792 of 28 November 1984;

law n. 742 of 22 October 1986;

law n. 772 of 11 November 1986;

law n. 242 of 07 August 1990;

law n. 20 of 09 January 1991;

legislative decree n. 393 of 26 November 1991;

article 25 of law n. 157 of 11 February 1992;

law n. 166 of 17 February 1992;

articles 26, 30 and 33 of law n. 142 of 19 February 1992;

presidential decree of 19 April 1993, published in the Official Journal n. 153 of 2 July 1993;

presidential decree n. 385 of 18 April 1994;

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<sup>1174</sup> Paragraph inserted by decree-law n. 135 of 25 September 2009, converted into law n. 166 of 20 November 2009, on: "*Urgent measures for the implementation of Community obligations and the enforcement of judgements by the Court of Justice of the European Communities*", published in the Official Journal n. 274 of 24 November 2009 - Supplemento Ordinario n. 215 and subsequently amended by article 24 of legislative decree n. 175 of 21 November 2014 published in the Official Journal n. 277 of 28 November 2014.

article 12 of decree-law n. 691 of 19 December 1994 converted, after amendment, by law n. 35 of 16 February 1995;  
legislative decree n. 174 of 17 March 1995;  
legislative decree n. 175 of 17 March 1995;  
legislative decree n. 173 of 26 May 1997, except for articles 2, 4, 5, 14, 15, 16 (1-16), 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 29, 30, 31 (2, 3 and 4), 38, 40, 41, 42, 44, 45, 46, 47, 48,49, 50, 51, 52, 53, 54, 55 and 56;  
article 38 of law n. 449 of 27 December 1997;  
legislative decree n. 373 of 13 October 1998;  
article 45 (11) of law n. 448 of 23 December 1998;  
legislative decree n. 343 of 04 August 1999;  
article 27 (13) of law n. 488 of 23 December 1999;  
decree-law n. 70 of 28 March 2000 converted, after amendment, by law n. 137 of 26 May 2000;  
article 89 of law n. 388 of 23 December 2000;  
articles 1, 2, 3, 4, 5 and 6 of law n. 57 of 5 March 2001;  
legislative decree n. 239 of 17 April 2001;  
articles 19, 20, 21, 22, 23, 25 and 26 of law n. 273 of 12 December 2002;  
article 81 (1) of law n. 289 of 27 December 2002;  
legislative decree n. 93 of 09 April 2003;  
legislative decree n. 190 of 30 June 2003;  
legislative decree n. 307 of 03 November 2003;  
article 9 (2) of legislative decree n. 38 of 28 February 2005.

2. The regulations issued by IVASS pursuant to this code shall also comply with the principles and options introduced by the previous provisions implementing Community regulations.

3. Any other provision incompatible with this code shall hereby be repealed. Any reference to the repealed provisions made by laws, regulations or other rules shall be deemed to refer to the corresponding provisions of this code and of the orders therein envisaged.

4. The provisions referred to in paragraph 1 and those issued in application of the repealed or replaced regulations shall continue to apply, *mutatis mutandis*, until the date of entry into force of the orders issued in pursuance of this code in the corresponding matters, and anyhow not later than thirty months after the time limit envisaged under article 355 (2). The articles under chapters II, III, IV and V of title XVIII shall apply, in relation to the matters respectively regulated, in case of infringement and based on the sanctioning procedure laid down by article 326<sup>1175</sup>.

5. By way of derogation from paragraph 4 the following decrees shall remain in force and replace the corresponding orders envisaged by this code:

a) the decrees of the Minister of Industry, Commerce and Handicrafts of 26 May 1971, published in the Official Journal n. 141 of 4 June 1971, and of 12 October 1972, published in the Official Journal n. 280 of 26 October 1972, adopted under article 6 of law n. 990 of 24 December 1969;

b) the ministerial decree of 3 July 2003 of the Minister of Health, in agreement with the Minister for Labour and Social Policy and the Minister of Economic Development, published in the Official Journal n. 211 of 11 September 2003, adopted in compliance with article 5 of law n. 57 of 5 March 2001, as amended by article 23 (3) of law n. 273 of 12 December 2002.

5-bis. When the regulation envisaged by article 76 (1) comes into effect the following decrees are or remain repealed:

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<sup>1175</sup> Paragraph amended by article 9 (3) of decree-law n. 194 of 30 December 2009, converted into law n. 25 of 26 February 2010. The paragraph had been previously amended by article 4 (8) of decree-law n. 97 of 3 June 2008, converted into law n. 129 of 2 August 2008, by article 16 (1) of decree-law n. 207 of 30 December 2008, converted into law n. 14 of 27 February 2009 and by article 23 (12) of decree-law n. 78 of 1 July 2009, converted into law n. 102 of 3 August 2009.

a) decree of the Minister of Economic Development n. 220 of 11 November 2011, published in the Italian Official Journal n. 6 of 9 January 2012.

b) decree of the Minister of Economic Development n. 99 of 28 April 2008, published in the Italian Official Journal n. 130 of 5 June 2008<sup>1176</sup>.

6. For the purposes of achieving the objective of simplification referred to in law n. 229 of 23 July 2003 IVASS shall adopt, in line with its competences, the provisions envisaged by this code by way of one single regulation for each title, and fully repeal its own previous general order.

7. The contracts already concluded at the date of entry into force of this code shall continue to be governed by the previous regulations.

Art. 355  
(Entry into force)

1. This code shall entry into force on 1 January 2006.

2. During its initial application the implementing provisions shall be issued within twentyfour months of the date referred to in paragraph 1.

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<sup>1176</sup> Paragraph inserted by article 1 (219) of legislative decree n. 74 of 12 May 2015.