The Standard Formula: A Guide to Solvency II

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Chapter 13
Supervision

Introduction

This chapter explores the supervision framework. Specifically, it explores:

- The supervision regime.
- The reporting framework.
- Quantitative reporting.
- Capital add-ons.
- Supervisory convergence and information sharing.
- Obligations under Solvency II.
- Acquisitions involving qualifying holdings.

1. The Supervision Regime

Proportionality

The supervision regime is built on the principle of "proportionality," in an effort to ensure that supervision remains effective and meets its underlying purposes without being overly burdensome. The key obligation with respect to proportionality requires that the provisions of the Solvency II Directive are applied in a manner that is proportionate to the nature, scale and complexity of the risks inherent in the business of a (re)insurance undertaking.[413]

Notwithstanding the proportionality provisions in place, feedback from firms suggests that the implementation of the proportionality principle has been relatively unsuccessful in reducing the regulatory burden: A consultation by the European Insurance and Occupational Pensions Authority (EIOPA) on supervisory reporting in June 2019 revealed how the Solvency II regime was criticised for its extensive reporting requirements, unsatisfactory solutions to exempt firms from their quarterly reporting obligations, duplicative reporting requirements and strict reporting timelines.[414]

Legislative efforts to update the principle of proportionality date back to the European Commission's 2021 Legislative Proposals.[415] The proposals aimed to simplify the supervision framework by proposing a regime that would: (i) exclude more small firms from the scope of Solvency II; (ii) ensure that reporting requirements would not go beyond what was necessary; and (iii) enhance proportionality by creating a new category of low-risk profile firms.[416] Under the proposals, this new category of low-risk profile

413 Article 29 of the Solvency II Directive, "The Prudential Regulation Authority's Approach to Insurance Supervision," July 2023.

414 Paragraph 33, "Consultation Paper on Proposals for Solvency II 2020 Review," EIOPA-BoS-19-304 25 June 25 2019.

415 COM(2021) 581 final, "Proposal for a Directive of the European Parliament and of the Council," 22 September 2021.

416 Ibid., paragraphs 2, 13.

firms would automatically qualify for certain measures, such as less onerous reporting requirements, which contrasts with other firms that are required to obtain prior approval from the supervisory authorities to avail themselves of these proportionality measures.[417]

Certain provisions of the Solvency II Directive were approved on 23 April 2024 (the amendments) resulting from over five years of consultations, reviews and feedback from industry participants.[418] The aim of the amendments is to further enhance the proportionality principle and simply the supervision regime. In respect of supervision and reporting requirements, the amendments bring about two key changes. First, the size threshold for firms excluded from the Solvency II regulatory scope is increasing, resulting in a greater number of firms being excluded from reporting and other regulatory requirements.[419] Second, the amendments will also introduce a new classification of "small and non-complex undertakings" together with a new set of criteria and processes for identifying them.[420] Such firms automatically qualify for "proportionality" measures, such as less frequent reporting requirements. In contrast, firms that are not classified as "small and non-complex" will not be prohibited but will be subject to prior approval from the supervisory authority in order to avail themselves of these proportionality measures.[421]

The UK has similarly followed suit by updating the proportionality of its regime. Recent reforms by the PRA increase the size thresholds above which a firm enters the UK Solvency II regime and simplify the overall reporting framework.[422] Firms will only be exempt from the UK Solvency II framework if they have not exceeded the UK Solvency II thresholds for three consecutive years and do not expect to do so in the following five years.[423] Small firms, which are not regulated by the UK Solvency II framework, are instead subject to a simpler UK regime, referred to as the non-directive firm sector rules, which are outside the scope of this chapter. Firms that do not exceed the new increased thresholds will continue to be able to operate within the Solvency II regime should they wish to, by applying for a voluntary requirement.[424] The UK reforms will take effect from 31 December 2024.[425]

417 Ibid., paragraph 63.

418 European Parliament Briefing, "Proposal Amending the Solvency II Directive," 4 October 2024.

419 Article 1(2), COM(2021)0582, "Proposal for a Directive of the European Parliament and of the Council," 19 January 2024.

420 Article 1(13), COM(2021)0582, "Proposal for a Directive of the European Parliament and of the Council," 19 January 2024.

421 Article 1(13), COM(2021)0582, "Proposal for a Directive of the European Parliament and of the Council," 19 January 2024.

422 PS2/24, "Review of Solvency II: Adapting to the UK Insurance Market," 28 February 2024.

423 Ibid., paragraph 8.10.

424 Ibid., paragraph 8.11.

425 Ibid., paragraph 10.18.

Supervisory Authorities

At its core, prudential supervision covers two distinct concepts. First, the supervision process entails initial "verification" whereby supervisory authorities must satisfy themselves as to a firm's state of solvency, establishment of technical provisions, its assets and eligible own funds. Second, once a firm has been authorised, supervision responsibility extends to monitoring a firm's compliance with the supervisory regime and the technical resources it has at its disposal for the purpose of carrying out its obligations.[426]

The default position is that the financial supervision of (re)insurance undertakings is the sole responsibility of that firm's home jurisdiction.[427] Where the supervisory authority of another Solvency II state in which a risk is situated has reason to consider that the activities of the firm might affect its financial soundness, it must inform the undertaking's home supervisory authority. The undertaking's home supervisory authority has sole responsibility to determine whether the undertaking is complying with the relevant prudential principles.[428]

Supervisory authorities must conduct themselves in a transparent and accountable manner, giving due regard to the protection of confidential information. Likewise, supervisory authorities must have transparent procedures for the appointment and dismissal of the members of their governing and managing bodies.[429] They are mandated to publicly disclose, in a way that allows for the comparison of approaches adopted by authorities of different member states, the following information:

- The texts of laws, regulations, administrative rules and general guidance in the field of insurance regulation.
- The general criteria and methods used in the supervisory review process as set out in Article 36 of the Solvency II Directive.
- Aggregate statistical data on key aspects of the application of the prudential framework.
- The manner of exercise of the options provided for in the Solvency II Directive.
- The objectives of the supervision and its main functions and activities.[430]

Supervisory Powers

Supervisory authorities should have the power to take preventive and corrective measures to ensure that firms comply with applicable laws, regulations and administrative provisions.[431] In this regard, supervisors have the ability to: (i) take "any

426 Article 30(2) of the Solvency II Directive.

427 Article 30(1) of the Solvency II Directive.

428 Article 30(3) of the Solvency II Directive.

429 Article 31(3) of the Solvency II Directive.

430 Article 31(2) of the Solvency II Directive; Part 1A and 9A of the FSMA for the PRA's obligation to publish certain documents and guidance.

431 Article 34(1) of the Solvency II Directive.

necessary measures," including administrative and financial measures; (ii) develop necessary quantitative tools under the supervisory process, in addition to the calculation of the solvency capital requirement (SCR), to assess the ability of the firms to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing; and (iii) carry out on-site investigations at a firm's premises.[432] These powers also apply in respect of activities that have been outsourced by firms.[433] The only caveat to these broad powers is that they must be exercised in a timely and proportionate manner.[434]

The UK authorities similarly have general supervisory powers, which are similar in nature to those outlined above.[435]

The Supervisory Review Process

The supervision process entails an initial authorisation as well as reviews of a firm's continued operations and regulatory compliance. Supervisory authorities are required to review and evaluate the strategies, processes and reporting procedures of each firm to comply with the laws, regulations and administrative provisions adopted pursuant to the Solvency II Directive.[436] This review should include an assessment of the qualitative requirements relating to the system of governance, the risks the firm faces or may face and the ability of the firm to assess those risks given the environment in which it operates.[437]

Additionally, supervisory authorities must assess the adequacy of methods and practices that a firm has in place to identify possible events or future changes in economic conditions that could have adverse effects on the overall financial standing of that undertaking.[438] They are required to adopt appropriate monitoring tools to enable them to identify deteriorating financial conditions in firms and to monitor how that deterioration is remedied.[439]

The Solvency II Directive highlights certain elements that should remain the focus of the supervisory authorities' review. These are as follows:

- The system of governance, including the own risk and solvency assessment.
- The technical provisions.
- The capital requirements.
- The investment rules.
- The quality and quantity of own funds.
- Where the (re)insurance undertaking uses a full or partial internal model, ongoing compliance with the requirements for full and partial internal models.[440]

The Solvency II Directive leaves it to supervisory authorities of the respective member states to decide the minimum frequency and scope of these reviews, with due regard to nature, scale and complexity of the activities of the firm concerned.[441] The Directive does, however, stipulate that these reviews must be conducted "regularly."[442] EIOPA has published guidelines to promote consistency in processes and practices within the supervisory review process, while allowing national supervisory authorities sufficient flexibility to adapt their actions to take into account the specificities of the firms involved, their own markets and other supervisory priorities.[443] For the review process to be effective and remedial, supervisory authorities have been given "necessary" powers to require the remediation of any weaknesses or deficiencies identified in the review.[444]

Supervision of Outsourced Activities

While firms are able to outsource activities and functions, they must take necessary steps to ensure that the following conditions are satisfied where they do so:

- The service provider must cooperate with supervisory authorities of the (re)insurance undertaking in connection with the outsourced function or activity.
- The (re)insurance undertaking, their auditors and the supervisory authorities must have effective access to data relating to the outsourced functions or activities.
- Supervisory authorities must have effective access to the business premises of the service provider and must be able to exercise those rights of access.[445]

The state where the service provider is located must permit the firm's "home" supervisory authority to carry out on-site inspections at the service provider's premises.[446] However, such inspections may be delegated to the supervisory authority where the service provider is located, subject to agreement as between the regulatory bodies.[447]

Where a supervisory authority is unable to exercise its right to carry out an on-site inspection, in accordance with Article 38 of the Solvency II Directive, the supervisory authority may refer the matter to EIOPA and seek its assistance in resolving

432 Article 34 of the Solvency II Directive.
433 Article 34(7) of the Solvency II Directive.
434 Article 34(6) of the Solvency II Directive.
435 Parts 2, 3, 4A, 5, 9A and 14 of FSMA.
436 Article 36(1) of the Solvency II Directive.
437 Ibid.
438 Article 36(4) of the Solvency II Directive.
439 Article 36(3) of the Solvency II Directive.
440 Article 36(2) of the Solvency II Directive.
441 Article 36(6) of the Solvency II Directive.
442 Ibid.
443 EIOPA-BoS-14/179 EN, "Guidelines on Supervisory Review Process."
444 Article 36(5) of the Solvency II Directive.
445 Article 38(1) of the Solvency II Directive; transposed in Part 7.4 PRA Conditions Governing Business.
446 Article 38(2) of the Solvency II Directive.
447 Ibid.

the disagreement with the cross-border supervisory authority.[448] EIOPA is also able to participate in on-site inspections at the premises of service providers where they are carried out jointly by two or more supervisory authorities.[449]

2. The Reporting Framework

The Solvency II Directive allows supervisory authorities to determine the nature, scope and format of the information sought from undertakings, which they may require firms to submit:

- At predefined periods.
- Upon occurrence of predefined events.
- During enquiries regarding the situation of an insurance or reinsurance undertaking.[450]

The Level 2 Delegated Regulation (which is directly applicable in the UK as retained EU law) provides more detail on the reporting obligations of Solvency II firms.[451] The suite of information that firms are required to submit to supervisory authorities can be segregated into four key components. These are as follows:

- •The Solvency and Financial Condition Report (SFCR).
- The Regular Supervisory Report (RSR).
- The Own Risk and Solvency Assessment (ORSA).
- Annual and quarterly quantitative templates (QRT) specifying in greater detail and supplementing the information presented in the SFCR and RSR.[452]

The RSR and the additional quantitative reporting requirements will be the focus of this chapter. For more information on the ORSA, please see chapter 10 on Governance Requirements.

General Reporting Obligations of (Re)insurance Undertakings

There is a general obligation to provide supervisory authorities with all information that is necessary for the purposes of supervision.[453] Relatedly, supervisory authorities have the power to require all information necessary to conduct supervision. It should be noted that supervisory authorities are empowered to determine the nature, scope and format of the information that they require (re)insurance undertakings to provide.[454] At a minimum, the information supplied must enable supervisory authorities to (i) assess the system of governance applied by the firms, 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; and (ii) make any appropriate decisions resulting from the exercise of their supervisory rights and duties.[455]

The information supplied by firms must be reflective of the nature, scale, complexity of the business and risks inherent to the firm. Such information must also be accessible, complete, consistent, relevant and reliable. Further, firms must have a written policy supported by appropriate systems and structures to allow them to fulfil their reporting requirements. The information supplied by firms must comprise the following:

- Qualitative or quantitative elements, or any appropriate combination thereof.
- Historic, current or prospective elements, or any appropriate combination thereof.
- Data from internal or external sources, or any appropriate combination thereof.[456]

The Regular Supervisory Report

The RSR must be submitted in electronic form at least every three years, notwithstanding the fact that supervisory authorities may require a firm to submit its RSR at the end of any financial year.[457] Notably, even when there is no requirement to submit an RSR in relation to a given financial year, firms must still submit a report setting out any material changes that have occurred in the firm's business and performance, system of governance, risk profile, valuation for solvency purposes and capital management over the given financial year, and provide a concise explanation about the causes and effects of such changes.[458] The deadline to submit the RSR is currently set at no later than 14 weeks after the firm's financial year end.[459]

Supervisory authorities are able to limit regular supervisory reporting, or exempt firms from reporting on an item-by-item basis, where:

- 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 firm.
- The submission of that information is not necessary for the effective supervision of the firm.
- The exemption does not undermine the stability of the financial systems concerned.
- The firm is able to provide the information on an *ad hoc* basis.[460]

448 Article 38(2) of the Solvency II Directive; Article 19 of Regulation (EU) No 1094/2010 (as amended by Regulation (EU) 2019/2175).

449 Article 38(2) of the Solvency II Directive.

450 Article 35(2)(a) of the Solvency II Directive.

451 Commission Delegated Regulation (EU) 2015/35 (Level 2 Delegated Regulation).

452 Article 304 of the Level 2 Delegated Regulation.

453 Article 35(1) of the Solvency II Directive (transposed in Paragraph 2.1 Reporting Part PRA Rulebook).

454 Article 35(2) of the Solvency II Directive.

455 Article 35(1) of the Solvency II Directive (transposed in Paragraph 2.2 Reporting Part PRA Rulebook).

456 Article 35(3)-(5) of the Solvency II Directive (transposed in Paragraphs 2.3-2.5 Reporting Part PRA Rulebook).

457 Article 312 of the Level 2 Delegated Regulation.

458 Ibid.

459 Ibid.

460 Article 35(7) of the Solvency II Directive.

In determining eligibility for available exemptions, supervisory authorities have been instructed to give priority to the smallest of firms.[461]

However, the potential exemption referred to above can only be granted to (re)insurers that do not represent more than 20% of a jurisdiction's life and non-life insurance or reinsurance market respectively, where the non-life market share is based on gross written premiums and the life market share is based on gross technical provisions.[462] Further, supervisory authorities must not exempt any (re)insurer from reporting on an item-by-item basis that is a part of a "group" for the purposes of the Solvency II Directive, unless the firm can demonstrate 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.[463]

As part of efforts to make the supervision regime more proportional, the amendments referred to in The Supervision Regime above will adapt the reporting requirements to be better suited to the size, nature and complexity of each firm. New, simplified reporting requirements for "small and non-complex undertakings" are introduced, facilitating their access to exemptions and limitations for regular supervisory reporting; there is the possibility such undertakings be given permission to submit their RSR every five years, instead of every three years.[464] The amendments also extend the submission deadline for all undertakings for the RSR from 14 weeks to no later than 18 weeks after the undertaking's financial year ends.[465]

The UK has already implemented some simplifications to reduce reporting burdens under its Solvency II regime, with some additional reforms taking effect on 31 December 2024.[466] The UK reforms focus on reducing the volume of information that Solvency II firms are required to report, making it less burdensome for firms while ensuring that the PRA still receives the necessary information to conduct effective supervision. In December 2023, the PRA removed the requirement to submit the RSR for all Solvency II firms, including UK branches of international insurers.[467] The PRA recognised that the report was burdensome to prepare and that the triennial reporting frequency of the RSR would not provide timely information.[468] The PRA views that the remainder of the framework allows for collection of information that is important for supervision.[469]

Content Requirements of the Regular Supervisory Report

The Level 2 Delegated Regulation fleshes out in great level of specificity the content requirements of the RSR, set out in Articles 307 to 311 of the Level 2 Delegated Regulation and are summarised below.

Content Requirements

Business and Performance (Article 307)

In relation to the business of the undertaking:

- The main trends and factors that contribute to the development, performance and position of the undertaking over its business planning time period including the undertaking's competitive position and any significant legal or regulatory issues.
- A description of the business objectives of the undertaking, including the relevant strategies and time frames.

On the underwriting performance of the undertaking:

- Information on the undertaking's underwriting income and expenses by material line of business and material geographical areas where it writes business during the reporting period, a comparison of the information with that reported on the previous reporting period and the reasons for any material changes.
- An analysis of the undertaking's overall underwriting performance during the reporting period.
- Information on the undertaking's underwriting performance by line of business during the reporting period against projections, and significant factors affecting deviations from these projections.
- Projections of the undertaking's underwriting performance, with information on significant factors that might affect such underwriting performance over its business planning time period.
- Information on any material risk mitigation techniques purchased or entered into during the reporting period.

In relation to the performance of the undertaking's investments:

- Information on income and expenses with respect to investment activities during the last reporting period, a comparison of the information reported in the previous period and reasons for any material changes.
- An analysis of the undertaking's overall investment performance during the reporting period and also by relevant asset class.

[461] Ibid.

[462] Ibid.

[463] Ibid.

[464] Article 1(16), COM(2021)0582, "Proposal for a Directive of the European Parliament and of the Council," 19 January 2024.

[465] Article 1(18), COM(2021)0582, "Proposal for a Directive of the European Parliament and of the Council," 19 January 2024.

[466] CP12/23 – "Review of Solvency II: Adapting to the UK Insurance Market," December 2023, and PS3/24 – "Review of Solvency II: Reporting and Disclosure Phase 2 Near-Final," March 2024.

[467] PS3/24 – "Review of Solvency II: Reporting and Disclosure Phase 2 Near-Final," March 2024.

[468] Para 3.29, PS3/24 – "Review of Solvency II: Reporting and Disclosure Phase 2 Near-Final," March 2024.

[469] Ibid.

- Projections of the undertaking's expected investment performance, with information on significant factors that might affect such investment performance, over its business planning time period.
- The key assumptions that the undertaking makes in its investment decisions with respect to the movement of interest rates, exchange rates and other relevant market parameters, over its business planning time period.
- Information about any investments in securitisation, and the undertaking's risk management procedures in respect of such securities or instruments.

In addition, information of any material income and expenses, other than underwriting or investment income and expenses, over the undertaking's business planning time period should be provided together with any other material information regarding the undertaking's business and performance.

System of Governance (Article 308)

In relation to the governance systems:

- Information allowing the supervisory authorities to gain a good understanding of the system of governance within the undertaking, and to assess its appropriateness to the undertaking's business strategy and operations.
- Information relating to the undertaking's delegation of responsibilities, reporting lines and allocation of functions.
- The remuneration entitlements of the members of the administrative, management or supervisory body, over the reporting period and a comparison of the information with that reported on the previous reporting period and the reasons for any material changes.

In relation to fit and proper requirements:

- A list of the persons in the undertaking that are responsible for key functions.
- Information on the policies and processes established by the undertaking to ensure that those persons are fit and proper.

In relation to risk management system:

- Information on the undertaking's risk management strategies, objectives, processes and reporting procedures for each category of risk.
- Information on significant risks that the undertaking is exposed to over the lifetime of its (re)insurance obligations and how these have been captured in its overall solvency needs.
- Information on any material risks that the undertaking has identified and that are not fully included in the calculation of the SCR.
- Information on how the undertaking fulfils its obligation to invest all its assets in accordance with the prudent person principle.
- Information on how the undertaking verifies the appropriateness of credit assessments from external credit assessments institutions including how and the extent to which credit assessments from external credit assessments institutions are used.
- Results of the assessments regarding the extrapolation of the risk-free rate, the matching adjustment and the volatility adjustment.

In relation to the own risk and solvency assessment:

- A description of how the own risk and solvency assessment is performed, internally documented and reviewed.
- A description of how the own risk and solvency assessment is integrated into the management process and into the decision-making process of the undertaking.

In relation to the internal control system of the undertaking:

- Information on the key procedures that the internal control system includes.
- Information on the activities performed during the reporting period.
- Information on the undertaking's compliance policy, the process for reviewing that policy, the frequency of review and any significant changes to that policy during the reporting period.

In relation to the internal audit function of the undertaking:

- A description of internal audits performed during the reporting period, with a summary of the material findings and recommendations reported to the undertaking's administrative, management or supervisory body, and any action taken with respect to these findings and recommendations.
- A description of the undertaking's internal audit policy, the process for reviewing that policy, the frequency of review and any significant changes to that policy during the reporting period.
- A description of the undertaking's audit plan, including future internal audits and the rationale for these future audits.
- Where the persons carrying out the internal audit function assume other key functions in accordance with Article 271(2), a qualitative and quantitative assessment of the criteria set out in points (a) and (b) of Article 271(2) of the Level 2 Delegated Regulation.

In relation to outsourcing:

- Where the undertaking outsources any critical or important operational functions or activities, the rationale for the outsourcing and evidence that appropriate oversight and safeguards are in place.
- Information on the service providers to whom any critical or important operational functions or activities have been outsourced and how the undertaking ensures that the service providers comply with provisions of the Level 2 Delegated Regulation.

- A list of the persons responsible for the outsourced key functions in the service provider.

In relation to the actuarial functions, an overview of the activities undertaken by the actuarial function in each of its areas of responsibility during the reporting period, describing how the actuarial function contributes to the effective implementation of the undertaking's risk management system together with any other material information regarding the undertaking's system of governance.

Risk Profile (Article 309)

Qualitative and quantitative information regarding the risk profile of the (re)insurance undertaking, for all of the following categories of risk:

- Underwriting risk.
- Market risk.
- Credit risk.
- Liquidity risk.
- Operational risk.
- Other material risks.

In relation to each of the risks outlined above, the RSR must include the following:

- On risk exposure of the insurance or reinsurance undertaking, including the exposure arising from off-balance sheet positions and the transfer of risk to special purpose vehicles:
  - an overview of any material risk exposures anticipated over the business planning time period given the undertaking's business strategy, and how these risk exposures will be managed;
  - where the undertaking sells or repledges collateral, the amount of that collateral;
  - where the undertaking has provided collateral, the nature of the collateral, the nature and value of assets provided as collateral and the corresponding actual and contingent liabilities created by that collateral arrangement;
  - information on the material terms and conditions associated with the collateral arrangement;
  - a complete list of assets and how those assets have been invested in accordance with the prudent person principle;
  - where the undertaking has entered into securities lending or borrowing transactions, repurchase or reverse repurchase agreements including liquidity swaps, information on their characteristics and volume; and
  - where the undertaking sells variable annuities, information on guarantee riders and hedging of the guarantees.
- Information regarding the volume and nature of the loan portfolio of the undertaking.
- Information on the material risk concentrations to which the undertaking is exposed to and an overview of any future risk concentrations anticipated over the business planning time period given that undertaking's business strategy, and how these risk concentrations will be managed.
- On risk mitigation techniques of the undertaking:
  - information on the techniques currently used to mitigate risks, and a description of any material risk-mitigation techniques that the undertaking is considering purchasing or entering into over the business planning time period given the undertaking's business strategy, and the rationale for and effect of such risk mitigation techniques; and
  - where the (re)insurance undertaking holds collateral, the value of the collateral, and information on the material terms and conditions associated with the collateral arrangement.
- With respect to liquidity risk, information regarding the expected profit included in future premiums for each line of business, the result of the qualitative assessment and a description of methods and main assumptions used to calculate the expected profit included in future premiums.
- On risk sensitivity of the undertaking:
  - a description of the relevant stress tests and scenario analysis carried out by the undertaking, including their outcome; and
  - a description of the methods used and the main assumptions underlying those stress tests and scenario analysis.
- Information regarding quantitative data that is necessary for determining dependencies between the risks covered by the risk modules or sub-modules and of the Basic SCR.
- Any other material information regarding the risk profile of the undertaking.

Valuation for Solvency Purposes (Article 310)

- Any important information, other than that already disclosed in the SFCR of the (re)insurance undertaking regarding the valuation of its assets, technical provisions and other liabilities for solvency purposes.
- A description of the relevant assumptions about future management actions and policyholder behaviour.
- Information to comply with the reporting requirements of the undertaking in relation to valuation for solvency purposes.[470]

Capital Management (Article 311)

In relation to the own funds of the undertaking:

- Information on the material terms and conditions of the main items of own funds held by the undertaking.
- The expected developments of the undertaking's own funds over its business planning time period given the undertaking's

[470] As set out in Article 263 Level 2 Delegated Regulation.

business strategy, and appropriately stressed capital plans and whether there is any intention to repay or redeem any own-fund item or plans to raise additional own funds.

- The undertaking's plans on how to replace basic own-fund items that are subject to the transitional arrangements.

In relation to deferred taxes:

- A description of the calculated amount of deferred tax assets without assessing their probable utilisation, and the extent to which those deferred tax assets have been recognised.
- For the deferred tax assets that have been recognised, a description of the amounts being recognised as likely to be utilised by reference to probable future taxable profit and by reference to the reversion of deferred tax liabilities relating to income taxes levied by the same taxation authority.
- A detailed description of the underlying assumptions used for the projection of probable future taxable profit.
- An analysis of the sensitivity of the net deferred tax assets to changes in the underlying assumptions referenced in the prior bullet.

In relation to the SCR and minimum capital requirement (MCR) (together, the capital requirements):

- Quantitative information on the undertaking's SCR split by risk modules where the undertaking applies the standard formula, and by risk categories where the undertaking applies an internal model.
- The expected developments of the undertaking's anticipated capital requirements over its business planning time period given the undertaking's business strategy.
- An estimate of the undertaking's SCR determined in accordance with the standard formula, where the supervisory authority requires the undertaking to provide that estimate pursuant to Article 112(7) of the Solvency II Directive.
- For the future profit projected for the purpose of the loss-absorbing capacity of deferred taxes:
  - a description, and the relevant amount of each of the components used to demonstrate a positive value of the increase in deferred tax assets;
  - a detailed description of the underlying assumptions used for the projection of probable future taxable profit; and
  - an analysis of the sensitivity of the value of the adjustment to changes in the underlying assumptions referred to above.
- Where an internal model is used to calculate the SCR:
  - the results of the review of the causes and sources of profits and losses, for each major business unit and how the categorisation of risk chosen in the internal model explains those causes and sources of profits and losses;
  - information on whether, and if so to what extent, the risk profile of the undertaking deviates from the assumptions underlying the undertaking's internal model; and
  - information about future management actions used in the calculation of the SCR.
- Information on any reasonably foreseeable risk of noncompliance with the undertaking's capital requirements, and the undertaking's plans for ensuring that compliance with each is maintained.

Any other material information regarding the capital management of the (re)insurance undertaking.

Reporting Market Risk Sensitivities

While there is no equivalent requirement under the Solvency II Directive, the PRA requires additional reporting on data collection of market risk sensitivities for firms with material exposure to market risk, specifically with respect to the sensitivities of solvency position to various changes in market conditions.[471] The requirement is addressed to firms holding or intending to hold material quantities of assets exposed to market risk.[472]

The PRA has stated that it will inform firms individually, through their usual supervisory contacts, if they fall within scope.[473] Firms within the scope of the reporting requirement are those most exposed to market risks, *i.e.*, primarily Category 1 and 2 firms in the life sector, and any other category life firm or general insurance firm, or composite insurance firm that demonstrates material market risk exposures.[474]

The PRA requires such in-scope firms to report sensitivities to various changes in market risks twice a year.[475] Market risk covers a range of exposures including equity prices, property prices, swap rates, sovereign rates, spreads on corporate bonds over swap rates, downgrades on credit-risk affected assets, inflation and exchange rates, and may include new risks that develop over time.[476] The report must show the impact of market risks on assets, technical provisions, own funds, the SCR and other liabilities.[477]

A new version of SS7/17 was published on 29 February 2024, which is due to take effect from 31 December 2024.[478] This has been updated to reflect the revised calculation requirements on

471 SS7/17, "Solvency II: Data Collection of Market Risk Sensitivities," was first published in October 2017. The current version in force was published in September 2020.

472 Ibid., 1.2.

473 Ibid., 2.1.

474 Ibid.

475 Ibid., 3.1.

476 Ibid., 3.2.

477 Ibid., 3.3.

478 SS/17 "Solvency II: Data Collection of Market Risk Sensitivities," February 2024.

the Transitional Measure of Technical Provisions following the PRA's new policy statement: PS2/24 Review of Solvency II: Adapting to the UK Insurance Market.[479]

3. Quantitative Reporting

Independent of the RSR, though thematically closely aligned, firms are required to submit to their supervisor information necessary to adequately supervise the firm by way of annual and quarterly quantitative templates, containing specific, detailed information.[480]

Standardised Template Reporting

The PRA requires that quantitative information be submitted in the relevant format as provided in the Solvency II Regulations or in the form of any national specific templates. The form and technical content requirements of the quantitative templates were initially set out in the Commission Implementing Regulation (EU) 2015/2450, subsequently repealed and replaced on 31 December 2023.[481] The driving principle was to address the variability in reporting and regulatory supervision within the European Union. In standardising the reporting template, (re)insurance undertakings should have been able to provide consistent and comparable date to supervisory authorities.

There is an extensive set of annexes containing the various reporting templates that cover various aspects of a firm's financial and solvency position. The templates are designed to capture both basic information[482] but also detailed information on assets and liabilities,[483] own funds,[484] technical provisions and other relevant metrics such as the capital requirements.[485] In order to reinforce the standardisation principle, the templates are highly structured, with specific fields and formats that must be adhered to, ensuring uniformity in the data presented to regulators.

In respect of any given firm, the templates are intended to provide an easy, accessible and accurate overview of:

- Its system of governance.
- The business it pursues.
- The valuation principles applied by the firm for solvency purposes.
- The risks faced by the firm.
- Its risk management systems.
- Its capital structure, capital needs and capital management.

[479] PS/24 "Review of Solvency II: Adapting to the UK Insurance Market," February 2024.

[480] Article 35(5) Solvency II (transposed in Paragraph 2.5 Reporting Part PRA Rulebook).

[481] Commission Implementing Regulation (EU) 2023/894.

[482] Template S.01.01.

[483] Template S.02.01.

[484] Template S.23.01.

[485] Template S.28.01.

In order to effectively achieve the original objective of the quantitative reporting system, the introduction of updated regulation refines the original reporting requirements addressing the evolving needs of the market and also the wider business landscape. The changes revise and expand upon the original set of templates used for reporting; notable changes include the introduction of templates for emerging risks[486] and sustainability-related disclosures[487] and revised templates to align with new market practices. The introduction of sustainability-related reporting reflects the growing cognisance of these areas in the regulatory landscape. The templates themselves are designed to align with international standards and framework, such as the Task Force on Climate-Related Financial Disclosures' recommendations, to ensure consistency and comparability of the reported information.

Subject to certain exemptions outlined below, the general requirement is for the quantitative reporting information to be submitted on both an annual and quarterly basis.[488] Deadlines for submission in the UK of the quantitative reporting analysis are:

- No later than 14 weeks for the UK (or 16 weeks in the case of the EU[489]) after the end of a firm's financial year end in respect of annual reporting.[490]
- No later than five weeks after the end of any quarter.[491]

In any event where such date is not a business day, the reporting must be submitted no later than the business day immediately following such prescribed deadline.

UK-Specific Templates

The PRA maintains a separate suite of national specific templates (NSTs), which can be found on the PRA website,[492] to supplement and address areas that stem from specific national requirements or the intricacies of local markets which were not catered for in the original Solvency II harmonised templates. Subject to particular exceptions,[493] there are specific types of firms that are required to submit specific NSTs, including assessable mutuals, firms writing suretyship business and long term-insurers.[494]

Notwithstanding the departure of the UK from the EU, the form of reporting is consistent: XBRL (eXtensible Business Reporting Language) must be used for submission, ensuring data consistency and facilitating automated processing.[495]

[486] Template S.30.01.

[487] Templates S.40.01/S.41.01.

[488] Paragraph 2.8 Reporting Part PRA Rulebook.

[489] Article 1(18), COM(2021)0582, Council of the European Union, 19 January 2024.

[490] Article 312 Level 2 Delegated Regulation; Paragraph 2.10 Reporting Part PRA Rulebook.

[491] Article 312 Level 2 Delegated Regulation; Paragraph 2.11 Reporting Part PRA Rulebook.

[492] Section 1(f): National Specific Templates, "Regulatory Reporting - Insurance Sector."

[493] Paragraph 2.7 Reporting Part PRA Rulebook.

[494] Paragraph 2.6 Reporting Part PRA Rulebook.

[495] Article 3, Commission Implementing Regulation (EU) 2023/894.

The PRA Approach — Simplification and Exemption

The PRA has two main goals: a general goal to enhance the safety and stability of the firms it oversees, and a specific goal for (re)insurance firms, which is to help ensure an adequate level of protection for policyholders. In addition to the mechanical issues with the standardised reporting, feedback from firms suggested that there had been unintended consequences, specifically being required to adhere to a level of detail and quantity of reporting inappropriate to specific kinds of firms.

Beginning in 2021, the PRA consulted on simplifications to the quantitative reporting regime focusing on reducing the volume of financial information firms are required to give to the PRA with a view to implementation with a low administrative burden, removing the requirement to report several Solvency II quantitative reporting templates for all firms and reducing the reporting frequency of the MCR templates from quarterly to a semi-annual basis.[496]

To further aid a streamlined approach, the PRA categorised firms according to their potential to adversely affect the stability of the UK financial system by failing, coming under operational or financial stress, or because of the inherent way in which the firm conducts its business.[497] Additionally, the PRA also looks at whether the services provided by a firm can be substituted for another, and to what extent such actions could mitigate the impact of any potential collapse, including in stressed circumstances. The different categories are outlined below.

- **Category 1:** The most significant insurers whose size, interconnectedness, complexity and business type give them the capacity to cause very significant disruption to the UK financial system (and to economic activity more widely) by failing or by carrying on their business in an unsafe manner.
- **Category 2:** Insurers whose size, interconnectedness, complexity and business type give them the capacity to cause some disruption to the UK financial system (and to economic activity more widely) by failing or by carrying on their business in an unsafe manner.
- **Category 3:** Insurers whose size, interconnectedness, complexity and business type give them the capacity to cause minor disruption to the UK financial system by failing or by carrying on their business in an unsafe manner, but where difficulties across a whole sector or subsector have the potential to generate disruption.
- **Category 4:** Insurers firms whose size, interconnectedness, complexity and business type give them almost no capacity individually to cause disruption to the UK financial system by failing or by carrying on their business in an unsafe manner, but where difficulties across a whole sector or subsector have the potential to generate disruption.

Following on from the categorisation of firms and responding to feedback received, the PRA published a supervisory statement confirming the changes to the scope of quantitative reporting requirements in February 2023. In the statement, the PRA considered that some firms would be eligible to apply for a "modification by consent," whereby a firm may limit its regular supervisory reporting where the predefined submission period is less than one year.[498] Generally, firms designated as category three or four by the PRA (whether as an individual entity or part of a group) will be eligible to apply for the quarterly reporting exemption.

While the term "exemption" is used both in this chapter and by the PRA, it should not be considered a complete exemption. At the individual firm level, the exemption from quarterly reporting does not apply to (i) reporting of own funds and balance sheet templates in the second quarter; and (ii) the basic information and content of submission templates. Group level undertakings that meet the relevant criteria in Article 254 Solvency II Directive may not be required to submit any group level quarterly reporting templates.[499]

Irrespective of any exemption granted to any category of firm, the PRA may nonetheless still require a firm to provide the information ordinarily required under the quarterly reporting regime, notwithstanding the exemption held. As a matter of good practice, firms should be capable of readily responding to any such requests.

Exemptions may be considered for category one and two firms on an individual basis. Groups should not submit a formal application for the exemption in the first instance but should discuss the merits of their proposal with the relevant supervisor.

Firms are expected to notify their supervisor as soon as they believe there are any reasons that could impact its undertaking suitability for holding the reporting exemption. To the extent the PRA revokes any consent, it is expected that the relevant firm will resume reporting within six months from the date of notification of the waiver. It is clear from the guidance that firms should pro-actively manage their reporting, whether or not they are obliged to share the information with the PRA, as best practice.

4. Capital Add-Ons

In exceptional circumstances, supervisory authorities may require a capital add-on for a (re)insurance undertaking, meaning that such undertaking shall be required to maintain more capital than would otherwise be required pursuant to the SCR. As an overarching principle within the Solvency II Directive, the imposition of a capital add-on is "exceptional" and "should only be used as a measure of last resort, when

[496] CP11/21, PRA.

[497] 19, Bank of England PRA, "The Prudential Regulation Authority's Approach to Insurance Supervision," July 2023.

[498] 1, SS11/15.

[499] S165 FSMA, Regulation 31 of the Solvency II Regulations, Paragraph 17.3 Group Supervision Part PRA Rulebook.

other supervisory measures are ineffective or inappropriate." "Exceptional" should also be viewed through the lens of the specific firm in question rather than in relation to the total number of capital add-ons in a specific market.[500]

Given the extraordinary nature for the imposition of a capital add-on, there are very limited circumstances in which it will be imposed, being in a situation, as judged by the supervisory body, where:[501]

- The risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the SCR calculated using the standard formula and either:
  - the requirement to use the internal model is inappropriate or ineffective; or
  - a full or partial internal model is being developed.
- The risk profile of the undertaking deviates significantly from the assumptions underlying the SCR as calculated using an internal or partial model because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate time frame.
- The system of governance of the undertaking deviates significantly from the standards dictated by the Solvency II Directive 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 that the application of other measures is, in itself, unlikely to improve the deficiencies sufficiently within an appropriate timeframe.
- The undertaking applies the matching adjustment, the volatility adjustment or the transitional measures, and the supervisory authority concludes that its risk profile deviates significantly from the assumptions underlying those adjustments and transitional measures.

SCR: Deviation and Calculation of Capital Add-Ons

The PRA will calculate the capital add-on as the difference between:[502]

- The SCR of the undertaking, excluding any previous capital add-ons, if the standard formula or the internal model (as appropriate) were to be amended to reflect that undertaking's actual risk profile.
- The SCR of the undertaking, excluding any previous capital add-ons.

The requirement to use an internal model is inappropriate where the estimated financial resources necessary to produce the internal model are themselves disproportionate to the size of deviation in the firm's risk profile from the assumptions underpinning the SCR.[503] Similarly, circumstances where the requirement to use an internal model is ineffective include where no internal model has been developed or where the developed internal model fails to meet the approval conditions.[504]

Additionally, in determining the extent deviations from the SCR (described above), the supervisory body will consider a variety of factors, including:[505]

- The nature, type and size of any deviation.
- The likelihood and severity of any adverse impact on policyholders.
- The level of sensitivity of the assumptions to which the deviation relates.
- The anticipated duration and volatility of the deviation over the duration of the deviation.

In order to provide firms with more comfort, the PRA provides numerical information in addition to situational guidance in its response, which is outlined below.[506] However, this guidance is contained within the Level 2 Delegated Regulation and is applicable to all relevant jurisdictions.[507]

Profile Deviation	PRA Determination
<10%	There is a possibility that the firm's risk profile may deviate significantly when compared to the original SCR assessment.
10% ≤ 15%	There is a rebuttable presumption that the conclusion will be the firm's risk profile deviates significantly when compared to the original SCR assessment, unless there is evidence to the contrary using the risk factors outlined.
≥15%	There is an expectation that the conclusion will be the firm's risk profile deviates significantly when compared to the original SCR assessment.

500 Recital 27 of the Solvency II Directive.

501 Article 37(1) of the Solvency II Directive.

502 Article 282 of the Level 2 Delegated Regulation.

503 Article 280 of the Level 2 Delegated Regulation.

504 Title I, Chapter VI, Section 4, Subsections 1 and 3 of Directive 2009/138/EC.

505 Article 280 of the Level 2 Delegated Regulation, "Statement of Policy – Solvency II: Capital Add-Ons," February 2024.

506 "Statement of Policy – Solvency II: Capital Add-Ons," February 2024.

507 Article 280 of the Level 2 Delegated Regulation.

Governance: Deviation and Calculation of Capital Add-On

When assessing a significant deviation with respect to governance (noted above), the supervisory body will consider a variety of factors, including:[508]

- The effect of the deviation on the sound and prudent management of the business and whether such deviation arises from an inadequate implementation of a requirement relating to the system of governance or a failure to implement such a requirement.
- The likelihood and severity of any adverse impact on policyholders and beneficiaries.
- The different ways of organising an effective system of governance that is proportionate to the nature, scale and complexity of the risks inherent in the business of the firm.
- The probable financial loss the firm could incur as a consequence of the deviation.
- The anticipated duration of the deviation.

In calculating the add-on for a deviation from governance standards, the supervisory authority should take into account the relevant factors outlined in Article 277, summarised above, and also any capital add-ons set in respect of previous deviations of other (re)insurance undertakings with similar risk profiles provided that, in the case of the UK, the PRA is able to state the reasons for their decision and the statement itself is compliant with the provisions of the professional secrecy requirements as set out in Section 348 of the Financial Services and Markets Act 2000.[509]

Matching Adjustment: Deviation and Calculation of Capital Add-Ons

In determining whether a firm's risk profile deviates significantly from the assumptions underlying the matching adjustment, volatility adjustment and transitional measures, the factors to be considered by the supervisory body are identical to those concerning the SCR deviation set out in SCR: Deviation and Calculation of Capital Add-Ons. In addition, where the deviation relates to the matching adjustment, volatility adjustment or transitional measures, the PRA may only impose a capital add-on where the deviation underlying those assumptions and transitional measures is temporary and does not justify revoking the supervisory approval for the use of the adjustment or the transitional measure (as appropriate).[510]

[508] Article 277 of the Level 2 Delegated Regulation, "Statement of Policy – Solvency II: Capital Add-Ons," February 2024.

[509] Article 286 of the Level 2 Delegated Regulation, "Statement of Policy – Solvency II: Capital Add-Ons," February 2024.

[510] Article 278 of the Level 2 Delegated Regulation, "Statement of Policy – Solvency II: Capital Add-Ons," February 2024.

The capital add-on calculation in respect of firms applying the matching adjustment, volatility adjustment and transitional measures will be calculated based on the total of:

- The negative of the amount of eligible own funds that would be calculated if the adjustment or transitional measure was modified in such a way that the assumptions underlying the adjustment or transitional measure would fit the actual assets, liabilities and risk profile of the firm.
- The amount of the SCR, excluding any previous or simultaneous capital add-on, that would be calculated if the adjustment or transitional measure was modified in such a way that the assumptions underlying the adjustment or transitional measure would fit the actual assets, liabilities and risk profile of the undertaking.
- The amount of eligible own funds.
- The negative of the amount of the SCR of the firm, excluding any previous or simultaneous capital add-on.[511]

In calculating the amounts referenced in Capital Add-Ons above, the relevant considerations are the features of a particular undertaking's assets, liability or risk profile that gave risk to the deviations from the assumptions underlying the adjustment or transitional measure in the first instance.[512]

The PRA: Setting and Removing a Capital Add-On

The PRA should initially notify the relevant firm of its intention to apply a capital add-on, which should include a deadline by which the relevant firm should respond.

The PRA may request the firm to perform a calculation of a capital add-on according to one of the methods set out in this section.

If the PRA receives information it deems to be insufficient, it may request the entity to provide further information necessary for making a decision on setting a capital add-on at a later date to be set by the PRA. If the firm anticipates its inability to meet the deadline, it should notify the PRA immediately.

After having received all pertinent information, the PRA will notify the relevant firm in writing of its decision to set a capital add-on. The decision of the PRA must be sufficiently detailed to enable the firm to understand the steps needed to be taken and remedies implemented in order that the capital add-on be removed. The PRA should supply to the firm:

- The reasons and rationale for setting the capital add-on.
- The methodology for calculating the capital add-on and the amount thereof.

[511] Article 286 of the Level 2 Delegated Regulation, "Statement of Policy – Solvency II: Capital Add-Ons," February 2024.

[512] Article 285 of the Level 2 Delegated Regulation, "Statement of Policy – Solvency II: Capital Add-Ons," February 2024.

- The date from which the capital add-on is applicable.
- The deadline by which the undertaking is expected to have remedied the deficiency that led to the capital add-on (where appropriate).
- The content and frequency of any progress reports to be provided (where appropriate).

The PRA will continue to review the capital add-on on a regular basis, the frequency of which is to be reviewed on a case-by-case basis. The PRA also expects that the firm make every effort to remedy the deficiencies that led to the imposition of a capital add-on and that the firm inform it in the event that there is a material change to the circumstances that led to the situation causing the capital add-on.[513] The driving goal of all parties will be to have the capital add-on in place for as short a timeframe as possible.

5. Supervisory Convergence and Information Sharing

Supervisory Convergence

In exercising the various supervisory tools and practices under the laws, regulations and administrative requirements adopted pursuant to the Solvency II Directive, supervisory authorities must give due regard to "convergence."[514] For that purpose, it must be ensured that:

- Supervisory authorities participate in EIOPA's activities.
- Supervisory authorities make every effort to comply with the guidelines and recommendations issued by EIOPA in accordance with Article 16 of Regulation (EU) No 1094/2010 and state reasons if they do not do so.
- National mandates conferred on the supervisory authorities do not inhibit the performance of their duties as members of EIOPA or under the Solvency II Directive.[515]

Confidentiality of Information

An obligation of professional secrecy binds all persons who are working or have worked for the supervisory authorities (including auditors and experts acting on behalf of supervisory authorities).[516] Similar restrictions exist on the ability of the PRA and FCA to disclose confidential information.[517]

Persons bound by professional secrecy must not disclose any confidential information received in the course of performing their duties to any person or authority, save for cases covered by criminal law.[518] There is an exception allowing such persons to share a summary or aggregate form of confidential information, such that the individual firm cannot be identified.[519] However, where a firm is placed into insolvency procedures, it is possible to divulge confidential information that does not concern third parties involved in attempts to rescue that firm in civil or criminal proceedings.[520]

Additionally, where supervisory authorities receive confidential information, they may only use it in the course of their duties and for the following purposes:

- To check that the conditions governing the taking-up of the business of (re)insurance are met and to facilitate the monitoring of the conduct of such business, especially with regard to the monitoring of the technical provisions, the SCR, the MCR and the system of governance.
- To impose sanctions.
- In administrative appeals against decisions of the supervisory authorities.
- In court proceedings under the Solvency II Directive.[521]

Permitted Exchange of Information

The obligation of professional secrecy does not preclude the exchange of information between supervisory authorities of different member states. Information exchanged in this manner should, however, be subject to the obligation of professional secrecy.[522] EIOPA may be provided with all information necessary to enable it to carry out its duties.[523]

Information may also be disclosed to supervisory authorities of third countries but only if the information to be disclosed is subject to guarantees of professional secrecy at least equivalent to those under the Solvency II Directive.[524] Further, this exchange is only permitted where the disclosed information is intended to be used for the performance of supervisory functions of those third-country authorities or bodies.[525] Where, however, the information to be disclosed to a third country originates in another member state, it cannot be disclosed without the express agreement of the supervisory authority of that member state.[526]

The PRA has obligations to cooperate with other bodies that have functions similar to the PRA, whether or not situated in the United Kingdom (but noting that the FCA is specifically excluded).[527] Cooperation may include sharing information that the PRA is not prevented from disclosing.[528]

[513] Article 37(3) of the Solvency II Directive.
[514] Article 71(2) of the Solvency II Directive.
[515] Ibid.
[516] Article 64 of the Solvency II Directive.
[517] Section 348 of the FSMA.
[518] Article 64 of the Solvency II Directive.
[519] Ibid.
[520] Ibid.
[521] Article 67 of the Solvency II Directive.
[522] Article 65 of the Solvency II Directive.
[523] Article 65a of the Solvency II Directive.
[524] Article 66 of the Solvency II Directive.
[525] Ibid.
[526] Ibid.
[527] Article 354B of the FSMA.
[528] Ibid.

There are additional circumstances where the exchange of information is permitted as follows:[529]

- Exchange of information between several supervisory authorities in the same member state in the discharge of their supervisory functions.
- Exchange of information, in the discharge of their supervisory functions, between supervisory authorities and any of the following that are situated in the same member state:
  - authorities responsible for the supervision of credit institutions and other financial organisations and the authorities responsible for the supervision of financial markets;
  - bodies involved in the liquidation and bankruptcy of insurance undertakings or reinsurance undertakings and in other similar procedures;
  - persons responsible for carrying out statutory audits of the accounts of (re)insurance undertakings and other financial institutions; and
  - authorities responsible for supervising credit and financial institutions.[530]
- The disclosure, to bodies that administer compulsory winding-up proceedings or guarantee funds, information necessary for the performance of their duties.

The exchange of information between supervisory authorities noted above can also take place between different member states.[531] Further information may be permitted to be exchanged between supervisory authorities and any of the following:[532]

- The authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of (re)insurance undertakings and other similar procedures.
- The authorities responsible for overseeing the persons charged with carrying out statutory audits of the accounts of (re)insurance undertakings, credit institutions, investment firms and other financial institutions.
- Independent actuaries of (re)insurance undertakings carrying out legal supervision of those undertakings and the bodies responsible for overseeing such actuaries.

However, in order to exchange information under the circumstances noted in the paragraph above, member states must ensure that the following conditions are met: (i) the information must be for the purpose of carrying out the overseeing or legal supervision; (ii) the information received must be subject to the obligation of professional secrecy; and (iii) where the information originates in another state, it must not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.[533]

The exchange of information between supervisory authorities and any authorities or bodies responsible may also be authorised for the detection and investigation of breaches of company law. The aim behind allowing such exchanges is to strengthen the stability and integrity of the financial system.[534] To permit this exchange, however, member states must ensure that the following conditions are met: (i) the information must be intended for the purpose of detection and investigation of breaches of company law; (ii) the information received must be subject to the obligation of professional secrecy; and (iii) where the information originates in another member state, it shall not be disclosed without the express agreement of the supervisory authority from which it originates and, where appropriate, solely for the purposes for which that authority gave its agreement.[535]

The Solvency II Directive provides for two additional circumstances where the disclosure of information by supervisory authorities is permitted:

- To other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment services and (re)insurance undertakings and to inspectors acting on behalf of those departments. Such disclosure is only permitted, however, where necessary for reasons of prudential control.[536]
- To central banks, monetary authorities, payment systems overseers and the European Systemic Risk Board.[537]

6. Obligations of Auditors Under Solvency II

Persons carrying out statutory audits for Solvency II firms are obligated to promptly report, to the relevant supervisory authority, any fact or decision concerning that firm of which they have become aware while carrying out the audit and which is liable to bring about any of the following:

- A material breach of the laws, regulations or administrative provisions that lay down the conditions governing authorisation or which specifically govern pursuit of the activities of the firm.
- The impairment of the continuous functioning of the firm.
- A refusal to certify the accounts or to the expression of reservations.
- Noncompliance with the capital requirements.[538]

529 Article 68(1) of the Solvency II Directive.

530 Obliged entities are listed in points (1) and (2) of Article 2(1) of Directive (EU) 2015/849 of the European Parliament and of the Council for Compliance with that directive.

531 Article 68(1) of the Solvency II Directive.

532 Article 68(2) of the Solvency II Directive.

533 Article 68(2) of the Solvency II Directive.

534 Article 68(3) of the Solvency II Directive.

535 Article 68(3) of the Solvency II Directive.

536 Article 69 of the Solvency II Directive.

537 Article 70 of the Solvency II Directive.

538 Article 72(1) of the Solvency II Directive.

Auditors performing statutory audits for firms must also report any facts or decisions of which they become aware in relation to an undertaking, which has close links with the firm for which the audit is being performed, resulting from a control relationship.[539] The Solvency II Directive clarifies that a good faith disclosure by an auditor pursuant to the provisions laid out in this section will not constitute a breach of any confidentiality obligation imposed by contract, or by any legislative, regulatory or administrative provision.[540]

Auditors performing statutory audits for firms in the UK are also under reporting obligations. The circumstances mandating disclosure by auditors in the UK are largely similar to those outlined above.[541]

7. Acquisitions Involving Qualifying Holdings

Notification Requirements

The Solvency II Directive requires the "proposed acquirer" of a "qualifying holding" in a (re)insurance undertaking to notify supervisory authorities in writing when it decides to acquire the firm but before it is actually acquired.[542] This notification must include the size of the relevant holding as well as any other relevant information that is needed to carry out the prudential assessment under Article 58.[543] The information submitted should, however, be proportional to the nature of the proposed acquirer and the proposed acquisition, and the proposed acquirer should not be made to submit information that is not relevant for the prudential assessment.[544]

Under this regime, a proposed acquirer includes any natural or legal person or such persons acting in concert, and a qualifying holding means a direct or indirect holding in an undertaking that represents 10% or more of the capital or voting rights or which makes it possible to exercise a significant influence over the management of that undertaking. A proposed acquisition includes: (i) a direct or indirect acquisition of a qualifying holding in a (re) insurance undertaking, or (ii) an acquisition involving a further direct or indirect increase in qualifying holding in a (re)insurance undertaking, as a result of which the proportion of voting rights or capital held by the proposed acquirer would reach or exceed 20%, 30 % or 50% or where the target (re)insurance undertaking would become a subsidiary of the proposed acquirer.[545]

[539] Ibid.

[540] Article 72(2) of the Solvency of the II Directive.

[541] SI 2001/2587; Regulation 2(2) of the FSMA 2000 (Communications by Auditors) Regulations 2001 and Section 342(3) of the FSMA.

[542] Article 57 of the Solvency II Directive.

[543] Ibid.

[544] Article 59(4) of the Solvency II Directive.

[545] Article 57 of the Solvency II Directive.

The notification requirement also applies where a person (natural or legal) decides to reduce their qualifying holding so that the proportion of the voting rights or capital held would fall below 20%, 30% or 50% or where the target (re)insurance undertaking would cease to be a subsidiary of that person.[546]

If a (re)insurance undertaking becomes aware of any acquisitions or disposals of holdings in its capital that cause those holdings to exceed or fall below any of the 20%, 30% or 50% thresholds that trigger the notification requirement outlined above, it must notify the supervisory authority at the point at which it becomes aware of such fact.[547] It must also, at least annually, inform supervisory authorities of the names of shareholders and members possessing qualifying holdings and the size of these holdings.[548]

Assessment Period

Having received the notification required, the supervisory authority must acknowledge receipt promptly in writing to the proposed acquirer within two working days.[549] The following timelines subsequently apply:

- Supervisory authorities have a maximum period of 60 working days from the date of the written acknowledgement of receipt of the notification, to carry out the assessment (assessment period). Supervisory authorities must mention this deadline in the acknowledgement of receipt.[550]
- Supervisory authorities may request additional information that is necessary to complete the assessment up until the 50th working day of the assessment period with any such requests for information in writing.[551]
- Any responses by the proposed acquirer to the requests for further information must be given within 20 working days. Supervisory authorities may, however, extend this period by up to 30 working days where the proposed acquirer is: (i) situated or regulated outside the European Union, or (ii) not subject to supervision under the Solvency II Directive.[552]
- If the supervisory authority decides to oppose the proposed acquisition on conclusion of the assessment, it must inform the proposed acquirer in writing with the reasons for the decision, within two working days of making the decision.[553]
- If the supervisory authority does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.[554]

[546] Article 57 of the Solvency II Directive.

[547] Article 61 of the Solvency II Directive.

[548] Article 61 of the Solvency II Directive.

[549] Article 58(1) of the Solvency II Directive.

[550] Article 58(1) of the Solvency II Directive.

[551] Article 58(2) of the Solvency II Directive.

[552] Articles 58(2)-(3) of the Solvency II Directive.

[553] Article 58(4) of the Solvency II Directive.

[554] Article 58(5) of the Solvency II Directive.

- Where the supervisory authority approves the proposed acquisition, it may stipulate a maximum period within which the acquisition must be concluded, and extend it where appropriate.[555]

Assessment Criteria

In assessing the proposed acquisition, supervisory authorities should ensure the sound and prudent management of the target firm.[556] In this regard, they must assess the suitability of the proposed acquirer and the financial soundness of the proposed acquisition in light of the following criteria:

- The reputation of the proposed acquirer.
- The reputation and experience of any person who will direct the business of the target firm as a result of the proposed acquisition.
- The financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged in the target firm.
- Whether the target firm will be able to comply and continue to comply with the prudential requirements under the Solvency II Directive and other applicable directives, in particular, whether the group of which it will become part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the supervisory authorities and determine the allocation of responsibilities among the supervisory authorities.
- Whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.[557]

Prior conditions may not be imposed with respect to either the level of holding that must be acquired or from examining the proposed acquisition in terms of the economic needs of the market.[558] Supervisory authorities can only oppose the proposed acquisition if there are reasonable grounds for doing so on the basis of the above criteria or if the information provided by the proposed acquirer is incomplete.

[555] Article 58(6) of the Solvency II Directive.

[556] Article 59(1) of the Solvency II Directive.

[557] Ibid.

[558] Article 59(3) of the Solvency II Directive.

Regulated Financial Undertakings

The relevant supervisory authorities are instructed to work in "full consultation" with each other when carrying out an assessment of an acquisition in which the proposed acquirer is any one of the following:

- A credit institution, (re)insurance undertaking, investment firm or management company[559] authorised in another member state or in a sector other than that in which the acquisition is proposed.
- The parent undertaking of any entity mentioned above.
- A natural or legal person controlling any entity mentioned above.[560]

Under any of the circumstances mentioned in paragraph above, supervisory authorities are required to cooperate with each other and provide each other with any information that is essential or relevant for the assessment, both on request and on their own initiative.[561]

Supervisory Powers Under the Acquisition Regime

Where the influence exercised by a proposed acquirer is likely to operate against the sound and prudent management of the target firm, the supervisory authority of the target firm must take appropriate measures to put an end to that situation. Such measures may consist, for example, of: (i) injunctions, (ii) penalties against directors and managers, or (iii) suspension of voting rights attached to shares held by the shareholders or members in question.[562] Supervisory authorities are instructed to take similar measures in a situation where a proposed acquirer fails to comply with the notification requirements.[563]

In a situation where a holding is acquired despite opposition from the supervisory, member states must ensure their laws provide for suspending the corresponding voting rights or annulling any votes cast.[564]

[559] Article 2(1)(b) of the UCITS Directive (2009/65/EC).

[560] Article 60(1) of the Solvency II Directive.

[561] Article 60(2) of the Solvency II Directive.

[562] Article 62 Solvency II Directive.

[563] Ibid.

[564] Ibid.