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**COMMISSION IMPLEMENTING REGULATION (EU) No .../.. of [date] laying down implementing technical standards with regard to the procedures to be followed for the supervisory approval of the application of a matching adjustment according to Article 77b(1) of Directive 2009/138/EC of the European Parliament and of the Council**

**of []**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union.

Having regard to Directive 2009/138/EC of 25 November 2009 of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)[[1]](#footnote-1) and in particular Article 86(3) thereof,

Whereas:

1. Article 77b of Directive 2009/138/EC allows insurance and reinsurance undertakings to apply a matching adjustment to the relevant risk-free interest rate term structure, subject to prior approval by the supervisory authorities where certain conditions are met.
2. The present Regulation establishes the procedures to be followed for the approval of the application of a matching adjustment.
3. In order for an application to be considered complete, it should include all relevant information necessary for the assessment and decision by the supervisory authorities. To provide a harmonised basis for the assessment and decision by supervisory authorities, an application should include evidence demonstrating that each of the conditions set out in Article 77b of Directive 2009/138/EC are met.
4. As well as Article 77b, Directive 2009/138/EC contains other requirements that apply to all firms using a matching adjustment. An application should therefore include evidence that all of these other requirements will be satisfied if approval is granted, as set out in Article 6 of this Regulation.
5. The procedures to be followed envisage ongoing communication between the supervisory authorities and insurance and reinsurance undertakings. This includes communication before a formal application is submitted to the supervisory authorities and, after an application has been approved, through the supervisory review process. Such ongoing communication is necessary to ensure that supervisory judgements are based on relevant and up-to-date information and evidence.
6. To ensure a smooth and efficient process, supervisory authorities should be able to request that insurance and reinsurance undertakings make modifications to an application in order to address areas where the submitted evidence is insufficient to demonstrate compliance with the relevant conditions set by Article 77b of Directive 2009/138/EC, before deciding whether to finally accept or reject the application.
7. In addition to considering the evidence included within an application, supervisory authorities should also consider other factors that are relevant when reaching a decision as to whether the requirements of Directive 2009/138/EC have been satisfied.
8. Since matching portfolios may be managed on a going concern basis, undertakings that have received approval to use a matching adjustment to value the corresponding liabilities should also be allowed to use that adjustment to value future insurance obligations, to the extent that those obligations and the assets matching them possess the same features as the obligations and assets included in the initial matching portfolio and, consequently, entail the same risks for the undertaking concerned.
9. This Regulation is based on the draft implementing technical standards submitted by the European Insurance and Occupational Pensions Authority to the European Commission.
10. The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010.

HAS ADOPTED THIS REGULATION:

*Article 1*

***Application to use a matching adjustment***

1. Insurance and reinsurance undertakings applying to use a matching adjustment shall submit a written application for prior approval by the supervisory authorities.
2. The application shall be submitted in one of the official languages of the Member State in which the insurance or reinsurance undertaking has its head office, or in a language previously agreed by the supervisory authority, and shall contain at least the information required by Articles 3 to 6 of this Regulation.
3. Insurance and reinsurance undertakings shall ensure that the application includes any other relevant information that they consider may be necessary for the assessment and decision by the supervisory authority.
4. Where an application is submitted in respect of more than one portfolio of insurance or reinsurance obligations, the application shall set out the evidence required by Articles 3 to 6 of this Regulation separately for each portfolio that is covered by the application.
5. The application shall be approved by the administrative, management or supervisory body of the insurance or reinsurance undertaking and documentary evidence of this approval shall be submitted with the application.

*Article 2*

***Content of the application relating to the assigned portfolio of assets***

1. In relation to the assigned portfolio of assets required by Article 77b(1)(a) of Directive 2009/138/EC, the application shall include at least the following:
2. evidence that the assigned portfolio of assets meets all of the relevant conditions specified in Article 77b(1) of Directive 2009/138/EC;
3. details of the assets within the assigned portfolio, which shall consist of line-by-line asset information together with the procedure used to group such assets by asset class, credit quality and duration for the purposes of determining the fundamental spread referred to in paragraph 1(b) of Article 77c of Directive 2009/138/EC;
4. a description of the process used to maintain the assigned portfolio of assets in accordance with Article 77b(1)(a) of Directive 2009/138/EC, including the process for maintaining the replication of expected cash-flows where these have materially changed.

*Article 3*

***Content of the application relating to the portfolio of insurance or reinsurance obligations***

1. In relation to the portfolio of insurance or reinsurance obligations to which the matching adjustment is intended to apply, the application shall contain at least the following:
2. evidence that the insurance or reinsurance obligations meet all of the criteria specified in Article 77b(1)(d), (e), (g) and (j) of Directive 2009/138/EC;
3. where mortality risk is present, quantitative evidence that the best estimate of the portfolio of insurance or reinsurance obligations does not increase by more than 5% under the mortality risk stress specified in Article 52 of the Implementing Measures.

*Article 4*

***Content of the written application relating to cash-flow matching and portfolio management***

1. In relation to the cash-flow matching and management of the eligible portfolio of obligations and the assigned portfolio of assets, the application shall contain at least the following:
2. quantitative evidence that the criteria of Article 77b(1)(c) of Directive 2009/138/EC are met, including a quantitative and qualitative assessment of whether any mismatch gives rise to risks which are material in relation to the risks inherent in the insurance business to which the matching adjustment is intended to be applied;
3. evidence that adequate processes will be in place to properly identify, organise and manage the portfolio of obligations and assigned portfolio of assets separately from other activities of the undertaking, and to ensure that the assigned assets will not be used to cover losses arising from other activities of the undertaking, in accordance with Article 77b(1)(b) of Directive 2009/138/EC;
4. evidence of how the own funds will be adjusted in accordance with Article 81 to reflect any reduced transferability;
5. evidence of how the Solvency Capital Requirement (SCR) will be adjusted to appropriately reflect any reduced scope for risk diversification. Where relevant this shall include evidence of compliance with Articles 216, 217 and 234 of the Implementing Measures. Where insurance and reinsurance undertakings intend to calculate the Solvency Capital Requirement using an internal model but have not been granted the necessary supervisory approval, the evidence required by this paragraph shall be submitted on the basis of the standard formula result as well as the unapproved internal model.

*Article 5*

***Additional content of the written application***

1. In addition to the information specified in Articles 3 to 5 of this Regulation, the application shall also include:
2. confirmation that the conditions of Article 77b(3) of Directive 2009/138/EC will be met if supervisory approval to apply a matching adjustment is granted;
3. the liquidity plan required under Article 44(2) of Directive 2009/138/EC;
4. the assessments required under Article 44(2)(a) and (b) of Directive 2009/138/EC;
5. the assessments required under Article 45(2)(a) of Directive 2009/138/EC;
6. a detailed explanation and demonstration of the calculation process used to determine the matching adjustment in accordance with the requirements of Article 77c of Directive 2009/138/EC;
7. a list of the other applications submitted by the insurance or reinsurance undertaking, or currently foreseen within the next six months, for approval of any of the items of the phasing-in listed in Article 308a(1) of Directive 2009/138/EC, together with the corresponding application dates.

*Article 6*

***Assessment of the application***

1. The supervisory authority shall confirm receipt of the application of the insurance or reinsurance undertaking. The supervisory authority shall not consider an application to be complete until the application contains all of the evidence required by Articles 2 to 6 of this Regulation.
2. Where the supervisory authority has considered an application to be complete, this shall not prevent the supervisory authority from requesting additional information necessary for its assessment. The request shall specify the additional information and the rationale for the request.
3. Within 30 days of the receipt of an application, the supervisory authority shall determine whether the application is complete and communicate this in writing to the undertaking. Where an application is determined to be incomplete, the supervisory authority shall specify the additional information and evidence required to complete the application.
4. The assessment of the application shall involve ongoing communication with the insurance or reinsurance undertaking and may include requests for adjustments from supervisory authorities to the way the undertaking proposes to apply a matching adjustment only in cases where the evidence submitted in the application is insufficient to demonstrate compliance with the relevant conditions of Directive 2009/138/EC. If the supervisory authority determines that it is possible to approve the application of a matching adjustment subject to adjustments to the application being submitted, it may notify this to the insurance and reinsurance undertaking.
5. The supervisory authority shall ensure that the time period to consider the application and communicate its decision does not exceed 6 months from the receipt of the complete application.
6. Notwithstanding paragraph 5, the days between the date the supervisory authority requests further evidence or adjustments in accordance with paragraph 2 or 4 of this Article and the date the supervisory authority receives such information shall not be included within the period of time stated in paragraph 5.
7. Insurance and reinsurance undertakings shall ensure that all the evidence required by the supervisory authority is made available to it throughout the assessment of the application including in electronic form.
8. If, following a request from the supervisory authority for providing further evidence or adjustments, an undertaking makes a change to its application, this shall not be considered as a new application.
9. Where an undertaking informs the supervisory authority of a change to its application other than in the situation described in paragraph 8 above, this shall be treated as a new application unless the supervisory authority considers that the change does not significantly affect the assessment and decision on the approval of the application within the time period set out in paragraph 4.
10. An undertaking may withdraw an application by notifying in writing at any stage prior to the decision of the supervisory authority. In the case that an application is withdrawn, any updated or resubmitted application shall be treated as a new application.

*Article 7*

***Decision on the application***

1. The supervisory authority shall only approve an application for the use of a matching adjustment if, on the basis of the written application, and any additional information received as described in this Regulation, the criteria set out in Article 77b and the calculation requirements set out in Article 77c of Directive 2009/138/EC are satisfied.
2. The supervisory authority may consider other factors relevant to the use of a matching adjustment by insurance and reinsurance undertakings when reaching a decision on the approval of the application.
3. The supervisory authority’s decision on the approval of the application shall be communicated in writing in the same language as the application.
4. Where a single application has been received in respect of more than one portfolio of insurance or reinsurance obligations, the supervisory authority may decide to approve the application in respect of some but not all of the portfolios included in the application. In this case, the written communication of the decision shall specify to which portfolios of insurance and reinsurance obligations a matching adjustment can be applied.
5. Where the supervisory authority decides to reject an application, for some or all of the portfolios included within an application, it shall state clearly the reasons for this decision.
6. Insurance and reinsurance undertakings shall not use a matching adjustment for a portfolio until its application in respect of that portfolio has been assessed and approved by the supervisory authority. Insurance and reinsurance undertakings shall not consider an application in respect of a portfolio to have been approved until written notification of the approval has been received from the supervisory authority.
7. Where insurance and reinsurance undertakings are granted approval to apply a matching adjustment to a portfolio of insurance and reinsurance obligations, the scope of that approval decision shall be considered to cover future insurance and reinsurance obligations and assets that are added to that matching portfolio, provided that undertakings can demonstrate that:
8. the future obligations and assets have the same features as the obligations and assets included in the matching portfolio for which the approval was granted;
9. the matching portfolio continues to meet the relevant conditions of Directive 2009/138/EC.

*Article 8*

***Revocation of approval by the supervisory authority***

1. Where the supervisory authority considers that an insurance or reinsurance undertaking which approval to use a matching adjustment has ceased to comply with the conditions set out in Articles 77b or 77c of Directive 2009/138/EC, it shall inform the insurance or reinsurance undertaking immediately and explain the nature of the non-compliance. In this case, the insurance or reinsurance undertaking shall:
2. restore compliance with these conditions within two months;
3. remedy any governance failure that led to the non-compliance with these conditions not being identified or reported to the supervisory authority in accordance with Article 77b(2) of Directive 2009/138/EC, and;
4. demonstrate to the satisfaction of the supervisory authority that it has done so.
5. Where an insurance or reinsurance undertaking is unable to restore compliance with the conditions specified in Article 77b and 77c of Directive 2009/138/EC within two months, it shall cease applying the matching adjustment to any of the insurance or reinsurance obligations within the portfolio(s) for which these conditions have been breached, according to Article 77b(2) of Directive 2009/138/EC. The insurance or reinsurance undertaking shall not apply the matching adjustment to the relevant portfolio(s) again for a period of a further 24 months and then only after prior approval by the supervisory authorities in accordance with the procedures set out in Articles 2 to 8 of this Regulation.

Article 9

**Entry into force**

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, [ ]

[For the Commission

The President]  
   
 [On behalf of the President]  
 [Position]

1. OJ L 335, 17.12.2009, p.1-155 [↑](#footnote-ref-1)