

Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council

## CHAPTER I

### OBJECTIVE AND DEFINITIONS

#### *Article 3*

#### **Thresholds for identifying a financial conglomerate**

[<sup>F1</sup> For the purposes of determining whether the activities of a group mainly occur in the financial sector, within the meaning of Article 2(14)(b)(i), the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole should exceed 40 %.

2 For the purposes of determining whether activities in different financial sectors are significant within the meaning of Article 2(14)(a)(iii) or (14)(b)(iii), for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group should exceed 10 %.

For the purposes of this Directive, the smallest financial sector in a financial conglomerate is the sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average. For the purposes of calculating the average and for the measurement of the smallest and the most important financial sectors, the banking sector and the investment services sector shall be considered together.

Asset management companies shall be added to the sector to which they belong within the group. If they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

Alternative investment fund managers shall be added to the sector to which they belong within the group. If they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

3 Cross-sectoral activities shall also be presumed to be significant within the meaning of Article 2(14)(a)(iii) or (14)(b)(iii) if the balance sheet total of the smallest financial sector in the group exceeds EUR 6 billion.

If the group does not reach the threshold referred to in paragraph 2 of this Article, the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate. They may also decide not to apply the provisions of Article 7, 8, or 9, if they are of the opinion that the inclusion of the group in the scope of this Directive or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

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Decisions taken in accordance with this paragraph shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.

3a If the group reaches the threshold referred to in paragraph 2 of this Article, but the smallest sector does not exceed EUR 6 billion, the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate. They may also decide not to apply the provisions of Article 7, 8, or 9, if they are of the opinion that the inclusion of the group in the scope of this Directive or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

Decisions taken in accordance with this paragraph shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.]

4 For the application of paragraphs 1, 2 and 3, the relevant competent authorities may by common agreement:

- [<sup>F1</sup>a exclude an entity when calculating the ratios, in the cases referred to in Article 6(5), unless the entity moved from a Member State to a third country and there is evidence that the entity changed its location in order to avoid regulation;]
- b take into account compliance with the thresholds envisaged in paragraphs 1 and 2 for three consecutive years so as to avoid sudden regime shifts, and disregard such compliance if there are significant changes in the group's structure[<sup>F1</sup>;]
- [<sup>F2</sup>c exclude one or more participations in the smaller sector if such participations are decisive for the identification of a financial conglomerate, and are collectively of negligible interest with respect to the objectives of supplementary supervision.]

Where a financial conglomerate has been identified according to paragraphs 1, 2 and 3, the decisions referred to in the first subparagraph of this paragraph shall be taken on the basis of a proposal made by the coordinator of that financial conglomerate.

[<sup>F15</sup> For the application of paragraphs 1 and 2, the relevant competent authorities may, in exceptional cases and by common agreement, replace the criterion based on balance sheet total with one or more of the following parameters or add one or more of these parameters, if they are of the opinion that those parameters are of particular relevance for the purpose of supplementary supervision under this Directive: income structure, off-balance sheet activities, total assets under management.]

6 For the application of paragraphs 1 and 2, if the ratios referred to in those paragraphs fall below 40 % and 10 % respectively for conglomerates already subject to supplementary supervision, a lower ratio of 35 % and 8 % respectively shall apply for the following three years to avoid sudden regime shifts.

Similarly, for the application of paragraph 3, if the balance sheet total of the smallest financial sector in the group falls below EUR 6 billion for conglomerates already subject to supplementary supervision, a lower figure of EUR 5 billion shall apply for the following three years to avoid sudden regime shifts.

During the period referred to in this paragraph, the coordinator may, with the agreement of the other relevant competent authorities, decide that the lower ratios or the lower amount referred to in this paragraph shall cease to apply.

7 The calculations referred to in this Article regarding the balance sheet shall be made on the basis of the aggregated balance sheet total of the entities of the group, according to their

annual accounts. For the purposes of this calculation, undertakings in which a participation is held shall be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the group. However, where consolidated accounts are available, they shall be used instead of aggregated accounts.

The solvency requirements referred to in paragraphs 2 and 3 shall be calculated in accordance with the provisions of the relevant sectoral rules.

[<sup>F28</sup> The European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(1)</sup> (EBA), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council<sup>(2)</sup> (EIOPA) and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council<sup>(3)</sup> (ESMA) (hereinafter collectively referred to as ‘the ESA’) shall, through the Joint Committee of the ESA (Joint Committee), issue common guidelines aimed at the convergence of supervisory practices with regard to the application of paragraphs 2, 3, 3a, 4 and 5 of this Article.

9 The competent authorities shall, on an annual basis, reassess waivers of the application of supplementary supervision and shall review the quantitative indicators set out in this Article and risk-based assessments applied to financial groups.]

#### **Textual Amendments**

- F1** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)
- F2** Inserted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

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- (1) [<sup>F2</sup>OJ L 331, 15.12.2010, p. 12.]
- (2) [<sup>F2</sup>OJ L 331, 15.12.2010, p. 48.]
- (3) [<sup>F2</sup>OJ L 331, 15.12.2010, p. 84.]

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#### **Textual Amendments**

- F2** Inserted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).