

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 II

SUPPLEMENTARY SUPERVISION

SECTION 2

FINANCIAL POSITION

Article 6

Capital adequacy

1 Without prejudice to the sectoral rules, supplementary supervision of the capital adequacy of the regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in Article 9(2) to (5), in Section 3 of this Chapter, and in Annex I.

2 The Member States shall require regulated entities in a financial conglomerate to ensure that own funds are available at the level of the financial conglomerate which are always at least equal to the capital adequacy requirements as calculated in accordance with Annex I.

The Member States shall also require regulated entities to have in place adequate capital adequacy policies at the level of the financial conglomerate.

The requirements referred to in the first and second subparagraphs shall be subject to supervisory overview by the coordinator in accordance with Section 3.

The coordinator shall ensure that the calculation referred to in the first subparagraph is carried out at least once a year, either by the regulated entities or by the mixed financial holding company.

The results of the calculation and the relevant data for the calculation shall be submitted to the coordinator by the regulated entity within the meaning of Article 1 which is at the head of the financial conglomerate, or, where the financial conglomerate is not headed by a regulated entity within the meaning of Article 1, by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.

^[F13] For the purposes of calculating the capital adequacy requirements referred to in the first subparagraph of paragraph 2, the following entities shall be included in the scope of supplementary supervision in accordance with Annex I:

- a a credit institution, a financial institution or an ancillary services undertaking;
- b an insurance undertaking, a reinsurance undertaking or an insurance holding company;
- c an investment firm;

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d a mixed financial holding company.

4 When calculating the supplementary capital adequacy requirements with regard to a financial conglomerate by applying method 1 (Accounting consolidation) referred to in Annex I to this Directive, the own funds and the solvency requirements of the entities in the group shall be calculated by applying the corresponding sectoral rules on the form and extent of consolidation as laid down in particular in Articles 133 and 134 of Directive 2006/48/EC and Article 221 of Directive 2009/138/EC.

When applying method 2 (Deduction and aggregation) referred to in Annex I, the calculation shall take account of the proportion of the subscribed capital which is directly or indirectly held by the parent undertaking or undertaking which holds a participation in another entity of the group.]

5 The coordinator may decide not to include a particular entity in the scope when calculating the supplementary capital adequacy requirements in the following cases:

- a if the entity is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the sectoral rules regarding the obligation of competent authorities to refuse authorisation where the effective exercise of their supervisory functions is prevented;
- b if the entity is of negligible interest with respect to the objectives of the supplementary supervision of regulated entities in a financial conglomerate;
- c if the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision.

However, if several entities are to be excluded pursuant to (b) of the first subparagraph, they must nevertheless be included when collectively they are of non-negligible interest.

In the case mentioned in (c) of the first subparagraph the coordinator shall, except in cases of urgency, consult the other relevant competent authorities before taking a decision.

When the coordinator does not include a regulated entity in the scope under one of the cases provided for in (b) and (c) of the first subparagraph, the competent authorities of the Member State in which that entity is situated may ask the entity which is at the head of the financial conglomerate for information which may facilitate their supervision of the regulated entity.

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 \(Text with EEA relevance\).](#)

Article 7

Risk concentration

1 Without prejudice to the sectoral rules, supplementary supervision of the risk concentration of regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in Article 9(2) to (4), in Section 3 of this Chapter and in Annex II.

2 The Member States shall require regulated entities or mixed financial holding companies to report on a regular basis and at least annually to the coordinator any significant risk concentration at the level of the financial conglomerate, in accordance with the rules laid down in this Article and in Annex II. The necessary information shall be submitted to the coordinator by the regulated entity within the meaning of Article 1 which is at the head of the financial conglomerate or, where the financial conglomerate is not headed by a regulated entity within the meaning of Article 1, by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.

These risk concentrations shall be subject to supervisory overview by the coordinator in accordance with Section 3.

[^{F13} Pending further coordination of Union legislation, Member States may set quantitative limits, allow their competent authorities to set quantitative limits, or adopt other supervisory measures which would achieve the objectives of supplementary supervision, with regard to any risk concentration at the level of a financial conglomerate.]

4 Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding risk concentration of the most important financial sector in the financial conglomerate, if any, shall apply to that sector as a whole, including the mixed financial holding company.

[^{F25} The ESA shall, through the Joint Committee, issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of risk concentration as provided for in paragraphs 1 to 4 of this Article. In order to avoid duplication, the guidelines shall ensure that the application of the supervisory tools as provided for in this Article is aligned to the application of Articles 106 to 118 of Directive 2006/48/EC and of Article 244 of Directive 2009/138/EC. They shall issue specific common guidelines on the application of paragraphs 1 to 4 of this Article to participations of the financial conglomerate in cases where national company law provisions obstruct the application of Article 14(2) of this Directive.]

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).

Article 8

Intra-group transactions

1 Without prejudice to the sectoral rules, supplementary supervision of intra-group transactions of regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in Article 9(2) to (4), in Section 3 of this Chapter, and in Annex II.

2 The Member States shall require regulated entities or mixed financial holding companies to report, on a regular basis and at least annually, to the coordinator all significant intra-group transactions of regulated entities within a financial conglomerate, in accordance

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with the rules laid down in this Article and in Annex II. Insofar as no definition of the thresholds referred to in the last sentence of the first paragraph of Annex II has been drawn up, an intra-group transaction shall be presumed to be significant if its amount exceeds at least 5 % of the total amount of capital adequacy requirements at the level of a financial conglomerate.

The necessary information shall be submitted to the coordinator by the regulated entity within the meaning of Article 1 which is at the head of the financial conglomerate or, where the financial conglomerate is not headed by a regulated entity within the meaning of Article 1, by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.

These intra-group transactions shall be subject to supervisory overview by the coordinator.

[^{F13} Pending further coordination of Union legislation, Member States may set quantitative limits and qualitative requirements, allow their competent authorities to set quantitative limits or qualitative requirements, or take other supervisory measures that would achieve the objectives of supplementary supervision, with regard to intra-group transactions of regulated entities within a financial conglomerate.]

4 Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding intra-group transactions of the most important financial sector in the financial conglomerate shall apply to that sector as a whole, including the mixed financial holding company.

[^{F25} The ESA shall, through the Joint Committee, issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of intra-group transactions as provided for in paragraphs 1 to 4 of this Article. In order to avoid duplication, the guidelines shall ensure that the application of the supervisory tools, as provided for in this Article, is aligned to the application of Article 245 of Directive 2009/138/EC. They shall issue specific common guidelines on the application of paragraphs 1 to 4 of this Article to participations of the financial conglomerate in cases where national company law provisions obstruct the application of Article 14(2) of this Directive.]

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 \(Text with EEA relevance\).](#)

Article 9

Internal control mechanisms and risk management processes

1 The Member States shall require regulated entities to have, in place at the level of the financial conglomerate, adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

2 The risk management processes shall include:

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- a sound governance and management with the approval and periodical review of the strategies and policies by the appropriate governing bodies at the level of the financial conglomerate with respect to all the risks they assume;
 - b adequate capital adequacy policies in order to anticipate the impact of their business strategy on risk profile and capital requirements as determined in accordance with Article 6 and Annex I;
 - c adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all measures are taken to ensure that the systems implemented in all the undertakings included in the scope of supplementary supervision are consistent so that the risks can be measured, monitored and controlled at the level of the financial conglomerate^[F3];
 - ^[F4]d arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans. Such arrangements shall be updated regularly.]
- 3 The internal control mechanisms shall include:
- a adequate mechanisms as regards capital adequacy to identify and measure all material risks incurred and to appropriately relate own funds to risks;
 - b sound reporting and accounting procedures to identify, measure, monitor and control the intra-group transactions and the risk concentration.

^[F14] The Member States shall ensure that, in all undertakings included in the scope of supplementary supervision pursuant to Article 5, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of the supplementary supervision.

The Member States shall require the regulated entities, at the level of the financial conglomerate, to regularly provide their competent authority with details on their legal structure and governance and organisational structure including all regulated entities, non-regulated subsidiaries and significant branches.

The Member States shall require the regulated entities to disclose publicly, at the level of the financial conglomerate, on an annual basis, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure.]

5 The processes and mechanisms referred to in paragraphs 1 to 4 shall be subject to supervisory overview by the coordinator.

^[F26] Competent authorities shall align the application of the supplementary supervision of internal control mechanisms and risk management processes as provided for in this Article with the supervisory review processes as provided for by Article 124 of Directive 2006/48/EC and Article 248 of Directive 2009/138/EC. To this end, the ESA shall, through the Joint Committee, issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of internal control mechanisms and risk management processes as provided for in this Article, as well as on the consistency with the supervisory review processes as provided for by Article 124 of Directive 2006/48/EC and Article 248 of Directive 2009/138/EC. They shall issue specific common guidelines for the application of this Article to participations of the financial conglomerate, in cases where national company law provisions obstruct the application of Article 14(2) of this Directive.]

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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).
- F3** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F4** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).