

Directive 2009/138/EC of the European Parliament and of the Council  
of 25 November 2009 on the taking-up and pursuit of the business of  
Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance)

TITLE III

**SUPERVISION OF INSURANCE AND  
REINSURANCE UNDERTAKINGS IN A GROUP**

CHAPTER I

**Group supervision: definitions, cases of application, scope and levels**

Section 1

**Definitions**

*Article 212*

**Definitions**

- 1 For the purposes of this Title, the following definitions shall apply:
  - a ‘participating undertaking’ means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;
  - b ‘related undertaking’ means either a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;
  - c ‘group’ means a group of undertakings that:
    - (i) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC; or
    - (ii) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:
      - one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and,
      - the establishment and dissolution of such relationships for the purposes of this Title are subject to prior approval by the group supervisor,

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where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

- d 'group supervisor' means the supervisory authority responsible for group supervision, determined in accordance with Article 247;
- [<sup>F1</sup>e 'college of supervisors' means a permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group;]
- [<sup>F2</sup>f 'insurance holding company' means a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking;
- g 'mixed-activity insurance holding company' means a parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;
- h 'mixed financial holding company' means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC.]

2 For the purposes of this Title, the supervisory authorities shall also consider as a parent undertaking any undertaking which, in the opinion of the supervisory authorities, effectively exercises a dominant influence over another undertaking.

They shall also consider as a subsidiary undertaking any undertaking over which, in the opinion of the supervisory authorities, a parent undertaking effectively exercises a dominant influence.

They shall also consider as participation the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the supervisory authorities, a significant influence is effectively exercised.

#### Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)
- F2** 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 \(Text with EEA relevance\).](#)

## Section 2

### Cases of application and scope

#### Article 213

#### Cases of application of group supervision

1 Member States shall provide for supervision, at the level of the group, of insurance and reinsurance undertakings which are part of a group, in accordance with this Title.

The provisions of this Directive which lay down the rules for the supervision of insurance and reinsurance undertakings taken individually shall continue to apply to such undertakings, except where otherwise provided under this Title.

[<sup>F2</sup>2 Member States shall ensure that supervision at the level of the group applies to the following:

- a insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 218 to 258;
- b insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the Union, in accordance with Articles 218 to 258;
- c insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking, in accordance with Articles 260 to 263;
- d insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 265.

3 In the cases referred to in points (a) and (b) of paragraph 2, where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in the Union is either a related undertaking of, or is itself a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244 of this Directive, the supervision of intra-group transactions referred to in Article 245 of this Directive, or both, at the level of that participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company.

4 Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the group supervisor may, after consulting the other supervisory authorities concerned, apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.

5 Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the group supervisor may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provisions of the Directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

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6 The group supervisor shall inform 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) and 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 (EIOPA)<sup>(2)</sup> of the decisions taken under paragraphs 4 and 5. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010<sup>(3)</sup> (ESMA) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of those guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.]

#### Textual Amendments

- F2** 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 214

#### Scope of group supervision

[<sup>F21</sup> The exercise of group supervision in accordance with Article 213 shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking, the insurance holding company, the mixed financial holding company or the mixed-activity insurance holding company taken individually, without prejudice to Article 257 as far as insurance holding companies or mixed financial holding companies are concerned.]

2 The group supervisor may decide on a case-by-case basis not to include an undertaking in the group supervision referred to in Article 213 where:

- a the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 229;
- b the undertaking which should be included is of negligible interest with respect to the objectives of group supervision; or
- c the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

However, where several undertakings of the same group, taken individually, may be excluded pursuant to point (b) of the first subparagraph, they must nevertheless be included where, collectively, they are of non-negligible interest.

Where the group supervisor is of the opinion that an insurance or reinsurance undertaking should not be included in the group supervision under points (b) or (c) of the first subparagraph, it shall consult the other supervisory authorities concerned before taking a decision.

Where the group supervisor does not include an insurance or reinsurance undertaking in the group supervision under point (b) or (c) of the first subparagraph, the supervisory

authorities of the Member State in which that undertaking is situated may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance or reinsurance undertaking concerned.

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**Textual Amendments**

- F2** 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 \(Text with EEA relevance\).](#)

**Section 3****Levels***Article 215***Ultimate parent undertaking at Community level**

[<sup>F2</sup>1 Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company referred to in Article 213(2)(a) and (b) is itself a subsidiary undertaking of another insurance or reinsurance undertaking or of another insurance holding company or of another mixed financial holding company which has its head office in the Union, Articles 218 to 258 shall apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union.

2 Where the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial holding company which has its head office in the Union, as referred to in paragraph 1, is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244, the supervision of intra-group transactions referred to in Article 245, or both, at the level of that ultimate parent undertaking or company.]

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**Textual Amendments**

- F2** 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 216***Ultimate parent undertaking at national level**

[<sup>F2</sup>1 Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company which has its head office in the Union, as referred to in Article 213(2)(a) and (b), does not have its head office in the same Member State as the ultimate parent undertaking at Union level referred to in Article 215, Member States

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may allow their supervisory authorities to decide, after consulting the group supervisor and that ultimate parent undertaking at Union level, to subject the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at national level to group supervision.

[<sup>F3</sup>In such a case, the supervisory authority shall explain its decision to both the group supervisor and the ultimate parent undertaking at Union level. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).

Articles 218 to 258 shall apply *mutatis mutandis*, subject to paragraphs 2 to 6 of this Article.]]

2 The supervisory authority may restrict group supervision of the ultimate parent undertaking at national level to one or several sections of Chapter II.

3 Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, the choice of method made in accordance with Article 220 by the group supervisor in respect of the ultimate parent undertaking at Community level referred to in Article 215 shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

4 Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, and where the ultimate parent undertaking at Community level referred to in Article 215 has obtained, in accordance with Article 231 or Article 233(5), permission to calculate the group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, that decision shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

In such a situation, where the supervisory authority considers that the risk profile of the ultimate parent undertaking at national level deviates significantly from the internal model approved at Community level, and as long as that undertaking does not properly address the concerns of the supervisory authority, that supervisory authority may decide to impose a capital add-on to the group Solvency Capital Requirement of that undertaking resulting from the application of such model or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its group Solvency Capital Requirement on the basis of the standard formula.

[<sup>F1</sup>The supervisory authority shall explain such decisions to both the undertaking and the group supervisor. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).]

5 Where the supervisory authority decides to apply Chapter II, Section 1 to the ultimate parent undertaking at national level, that undertaking shall not be permitted to introduce, in accordance with Articles 236 or 243, an application for permission to subject any of its subsidiaries to Articles 238 and 239.

6 Where Member States allow their supervisory authorities to make the decision referred to in paragraph 1, they shall provide that no such decisions can be made or maintained where the ultimate parent undertaking at national level is a subsidiary of the ultimate parent undertaking at Community level referred to in Article 215 and the latter has obtained in accordance with Articles 237 or 243 permission for that subsidiary to be subject to Articles 238 and 239.

[<sup>F17</sup> The Commission may adopt delegated acts in accordance with Article 301a specifying the circumstances under which the decision referred to in paragraph 1 of this Article can be made.]

#### Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).
- F2** 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).
- F3** Inserted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

### Article 217

#### Parent undertaking covering several Member States

1 Where Member States allow their supervisory authorities to make the decision referred to in Article 216, they shall also allow them to decide to conclude an agreement with supervisory authorities in other Member States where another related ultimate parent undertaking at national level is present, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

Where the supervisory authorities concerned have concluded an agreement as referred to in the first subparagraph, group supervision shall not be carried out at the level of any ultimate parent undertaking referred to in Article 216 present in Member States other than the Member State where the subgroup referred to in the first subparagraph of this paragraph is located.

[<sup>F3</sup>In such a case, the supervisory authorities shall explain their agreement to both the group supervisor and the ultimate parent undertaking at Union level. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).]

2 Article 216(2) to (6) shall apply *mutatis mutandis*.

[<sup>F13</sup> The Commission shall adopt delegated acts in accordance with Article 301a specifying the circumstances under which the decision referred to in paragraph 1 of this Article can be made.]

#### Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

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**F3** Inserted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).



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