

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 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.

[^{F12} 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

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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.

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⁽¹⁾ (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)⁽²⁾ 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⁽³⁾ (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

- 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 214

Scope of group supervision

[^{F1} 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.

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

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- (1) [^{F1}[OJ L 331, 15.12.2010, p. 12.](#)]
- (2) [^{F1}[OJ L 331, 15.12.2010, p. 48.](#)]
- (3) [^{F1}[OJ L 331, 15.12.2010, p. 84.](#)]

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