

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)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article  
53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank<sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure<sup>(2)</sup>,

Whereas:

- (1) 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<sup>(3)</sup> provides competent authorities in the financial sector with supplementary powers and tools for the supervision of groups composed of many regulated entities, which are active in different sectors of the financial markets. Such groups (financial conglomerates), are exposed to risks (group risks) which include: the risks of contagion, where risks spread from one end of the group to another; risk concentration, where the same type of risk materialises in various parts of the group at the same time; the complexity of managing many different legal entities; potential conflicts of interest; and the challenge of allocating regulatory capital to all the regulated entities which are part of the financial conglomerate, thereby avoiding the multiple use of capital. Financial conglomerates should therefore be subject to supervision supplementary to supervision on a stand alone, consolidated or group basis, without duplicating or affecting the group and regardless of the legal structure of the group.
- (2) It is appropriate to ensure consistency between the aims of Directive 2002/87/EC, on the one hand, and Council Directives 73/239/EEC<sup>(4)</sup> and 92/49/EEC<sup>(5)</sup> and Directives 98/78/EC<sup>(6)</sup>, 2002/83/EC<sup>(7)</sup>, 2004/39/EC<sup>(8)</sup>, 2005/68/EC<sup>(9)</sup>, 2006/48/EC<sup>(10)</sup>, 2006/49/EC<sup>(11)</sup>, 2009/65/EC<sup>(12)</sup>, 2009/138/EC<sup>(13)</sup> and 2011/61/EU<sup>(14)</sup> of the European Parliament and of

the Council, on the other, in order to enable appropriate supplementary supervision of insurance and banking groups, including where they are part of a mixed financial holding structure.

- (3) It is necessary that financial conglomerates are identified throughout the Union according to the extent to which they are exposed to group risks, on the basis of common guidelines to be issued by the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>(15)</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>(16)</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>(17)</sup> (ESMA) in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, through the Joint Committee of the European Supervisory Authorities (Joint Committee). It is also important that the requirements regarding the waiving of the application of supplementary supervision are applied in a risk-based manner in accordance with those guidelines. This is of particular importance in the case of the larger, internationally operating financial conglomerates.
- (4) The comprehensive and adequate monitoring of group risks in large, complex, internationally operating financial conglomerates, as well as the supervision of the group-wide capital policies of such groups, is only possible when competent authorities gather supervisory information and plan supervisory measures beyond the national scope of their mandate. It is therefore necessary that competent authorities coordinate supplementary supervision on internationally operating financial conglomerates among the competent authorities which are regarded as most relevant for the supplementary supervision of a financial conglomerate. The colleges of financial conglomerates' relevant competent authorities should act in accordance with the supplementary nature of Directive 2002/87/EC, and as such should not duplicate or replace but should, rather, add value to the activities of existing colleges relevant to the banking and insurance subgroups within those financial conglomerates. A college should be set up for a financial conglomerate only where neither a banking nor an insurance sectoral college is in place.
- (5) In order to ensure appropriate regulatory oversight, it is necessary that the legal structure and the governance and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches of banks, insurance undertakings and financial conglomerates with cross-border activities, are monitored by EBA, EIOPA, ESMA (hereinafter collectively referred to as 'the ESAs') and the Joint Committee, as appropriate, and that information is made available to the relevant competent authorities.
- (6) In order to ensure effective supplementary supervision of regulated entities in a financial conglomerate, in particular where the head office of one of its subsidiaries is in a third country, the undertakings to which this Directive applies should include any

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- undertaking, in particular any credit institution which has its registered office in a third country and which would require authorisation if its registered office were in the Union.
- (7) The supplementary supervision of large, complex, internationally operating financial conglomerates requires coordination throughout the Union, in order to contribute to the stability of the internal market for financial services. To that end, competent authorities need to agree upon the supervisory approaches to be applied to those financial conglomerates. The ESAs should issue, in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, through the Joint Committee, common guidelines for those common supervisory approaches, thus ensuring a comprehensive prudential framework of the supervisory tools and powers available in the banking, insurance, securities and financial conglomerates directives. The guidelines provided for in Directive 2002/87/EC should reflect the supplementary nature of supervision thereunder, and complement the sector-specific supervision as provided for by Directives 73/239/EEC, 92/49/EEC, 98/78/EC, 2002/83/EC, 2004/39/EC, 2006/48/EC, 2006/49/EC, 2009/138/EC and 2011/61/EU.
- (8) There is a genuine need to monitor and control potential group risks, posed to the financial conglomerate, arising from participations in other companies. For those cases where the specific supervisory powers provided for by Directive 2002/87/EC appear to be insufficient, the supervisory community should develop alternative methods to address and appropriately take into account these risks, preferably by work conducted by the ESAs through the Joint Committee. If a participation is the only element of identification of a financial conglomerate, supervisors should be allowed to assess whether the group is exposed to group risks and waive the need for supplementary supervision, if appropriate.
- (9) With regard to certain group structures, supervisors have been left without powers in the current crisis since the regimes provided for in the relevant directives have forced them to choose either sector-specific or supplementary supervision. While a complete review of Directive 2002/87/EC should be undertaken in the context of the G20 work on financial conglomerates, the necessary supervisory powers should be provided for as soon as possible.
- (10) It is appropriate to ensure consistency between the aims of Directive 2002/87/EC and Directive 98/78/EC. Directive 98/78/EC should therefore be amended to define and include mixed financial holding companies. In order to ensure timely coherent supervision, Directive 98/78/EC should be amended, notwithstanding the imminent application of Directive 2009/138/EC, which should be amended to the same effect.
- (11) While stress testing should occur regularly for the banking and insurance subgroups of a financial conglomerate, it is the role of the coordinator appointed in accordance with Directive 2002/87/EC to decide the appropriateness, parameters and timing of a stress test for an individual financial conglomerate as a whole. For Union-wide stress tests, carried out by the ESAs in a sector-specific context, the role of the Joint Committee should be to ensure that such stress tests occur in a consistent manner across sectors. For these reasons, the ESAs, through the Joint Committee, should be able to develop

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supplementary parameters for Union-wide stress tests, capturing the specific group risks that typically materialise in financial conglomerates and should be able to publish the results of those tests, where permitted by sectoral legislation. Experience from previous Union-wide stress tests should be taken into account. For example, stress tests should take account of liquidity and solvency risks of financial conglomerates.

- (12) The Commission should further develop a coherent and conclusive system of supervision of financial conglomerates. The upcoming complete review of Directive 2002/87/EC should cover non-regulated entities, in particular special purpose vehicles, and should develop a risk-based application of the waivers available to supervisors in determining a financial conglomerate while limiting the use of such waivers. Having regard to the sectoral Directives, the review should also consider systemically relevant financial conglomerates, the size, inter-connectedness or complexity of which make them particularly vulnerable. Such conglomerates should be identified by analogy with the evolving standards of the Financial Stability Board and of the Basel Committee on Banking Supervision. The Commission should consider proposing regulatory action in this field.
- (13) It is appropriate to ensure consistency between the aims of Directive 2002/87/EC and Directive 2006/48/EC. Directive 2006/48/EC should therefore be amended to define and include mixed financial holding companies.
- (14) The restored availability of powers at the mixed financial holding company level implies that certain provisions of Directives 98/78/EC, 2002/87/EC, 2006/48/EC or 2009/138/EC apply simultaneously at that level. Those provisions may be equivalent to each other, especially as regards the qualitative elements of the supervisory review processes. For example, identical fit and proper requirements for the management of holding companies are provided for by Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC. To avoid an overlap between those provisions and to ensure the effectiveness of top-level supervision, supervisors should be able to apply a particular provision only once, while complying with the equivalent provision in all other applicable directives. Where provisions do not have identical wording, they should be regarded as equivalent if they are similar in substance, in particular in terms of risk-based supervision. When assessing equivalence, supervisors should check, within colleges, whether, in regard to each applicable directive, the scope is covered and the objectives are achieved, without lowering supervisory standards. It should be possible for equivalence assessments to evolve in the course of changing supervisory frameworks and practices. Equivalence assessments should therefore be subject to an open, evolutionary process. That process should allow for case-by-case solutions so that all the relevant features of a particular group are taken into account. To ensure consistency within the supervisory framework for a particular group and to obtain a level playing field among all financial conglomerates within the Union, appropriate supervisory cooperation is necessary. To that end, the ESAs, through the Joint Committee, should develop guidelines aimed at the convergence of equivalence assessments and work towards issuing binding technical standards.

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- (15) In order to improve the supplementary supervision of financial entities in a financial conglomerate, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of technical adaptations to be made to Directive 2002/87/EC as regards the definitions, the alignment of terminology and the calculation methods set out in that Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (16) Since the objective of this Directive, namely improving the supplementary supervision of financial entities in a financial conglomerate, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (17) Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC should therefore be amended,

HAVE ADOPTED THIS DIRECTIVE:

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- (1) [OJ C 62, 26.2.2011, p. 1.](#)
- (2) Position of the European Parliament of 5 July 2011 (not yet published in the Official Journal) and decision of the Council of 8 November 2011.
- (3) [OJ L 35, 11.2.2003, p. 1.](#)
- (4) First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance ([OJ L 228, 16.8.1973, p. 3.](#)).
- (5) Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) ([OJ L 228, 11.8.1992, p. 1.](#)).
- (6) Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance and reinsurance undertakings in an insurance or reinsurance group ([OJ L 330, 5.12.1998, p. 1.](#)).
- (7) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance ([OJ L 345, 19.12.2002, p. 1.](#)).
- (8) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments ([OJ L 145, 30.4.2004, p. 1.](#)).
- (9) Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance ([OJ L 323, 9.12.2005, p. 1.](#)).
- (10) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions ([OJ L 177, 30.6.2006, p. 1.](#)).
- (11) Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions ([OJ L 177, 30.6.2006, p. 201.](#)).
- (12) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ([OJ L 302, 17.11.2009, p. 32.](#)).
- (13) 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) ([OJ L 335, 17.12.2009, p. 1.](#)).
- (14) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers ([OJ L 174, 1.7.2011, p. 1.](#)).
- (15) [OJ L 331, 15.12.2010, p. 12.](#)
- (16) [OJ L 331, 15.12.2010, p. 48.](#)
- (17) [OJ L 331, 15.12.2010, p. 84.](#)