

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

#### *F1* Article 1

##### **Subject matter**

This Directive lays down rules for supplementary supervision of regulated entities which have obtained an authorisation in accordance with Article 6 of Directive 73/239/EEC, Article 4 of Directive 2002/83/EC<sup>(1)</sup>, Article 5 of Directive 2004/39/EC<sup>(2)</sup>, Article 3 of Directive 2005/68/EC<sup>(3)</sup>, Article 6 of Directive 2006/48/EC<sup>(4)</sup>, Article 5 of Directive 2009/65/EC<sup>(5)</sup>, Article 14 of Directive 2009/138/EC<sup>(6)</sup> or Articles 6 to 11 of Directive 2011/61/EU<sup>(7)</sup>, and which are part of a financial conglomerate.

This Directive also amends the relevant sectoral rules which apply to entities regulated by those Directives.

#### **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 2*

##### **Definitions**

For the purposes of this Directive:

- (1) ‘credit institution’ means a credit institution within the meaning of Article 4(1) of Directive 2006/48/EC;
- (2) ‘insurance undertaking’ means an insurance undertaking within the meaning of Article 13(1), (2) or (3) of Directive 2009/138/EC;
- (3) ‘investment firm’ means an investment firm within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC, including the undertakings referred to in Article 3(1) (d) of 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<sup>(8)</sup> or an undertaking the registered office of which is in a third country and which would require authorisation under Directive 2004/39/EC if its registered office were in the Union;

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- (4) 'regulated entity' means a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm, an asset management company or an alternative investment fund manager;
- (5) 'asset management company' means a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC or an undertaking the registered office of which is in a third country and which would require authorisation under that Directive if its registered office were within the Union;
- (5a) 'alternative investment fund manager' means a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an undertaking the registered office of which is in a third country and which would require authorisation under that Directive if its registered office were within the Union;
- (6) 'reinsurance undertaking' means a reinsurance undertaking within the meaning of Article 13(4), (5) or (6) of Directive 2009/138/EC or a special purpose vehicle within the meaning of Article 13(26) of Directive 2009/138/EC;
- (7) 'sectoral rules' means Union legislation relating to the prudential supervision of regulated entities, in particular Directives 2004/39/EC, 2006/48/EC, 2006/49/EC and 2009/138/EC;
- (8) 'financial sector' means a sector composed of one or more of the following entities:
  - (a) a credit institution, a financial institution or an ancillary services undertaking within the meaning of Article 4(1), (5) or (21) of Directive 2006/48/EC (hereinafter referred to collectively as 'the banking sector');
  - (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 13(1), (2), (4) or (5) or of Article 212(1)(f) of Directive 2009/138/EC (hereinafter referred to collectively as 'the insurance sector');
  - (c) an investment firm within the meaning of Article 3(1)(b) of Directive 2006/49/EC (hereinafter referred to collectively as 'the investment services sector');
- (9) 'parent undertaking' means a parent undertaking as defined in Article 1 of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts<sup>(9)</sup> or any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;
- (10) 'subsidiary undertaking' means a subsidiary undertaking as defined in Article 1 of Directive 83/349/EEC or any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence or all subsidiaries of such subsidiary undertakings;
- (11) 'participation' means a participation within the meaning of the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies<sup>(10)</sup>, or the direct or indirect ownership of 20 % or more of the voting rights or capital of an undertaking;
- (12) 'group' means a group of undertakings which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, or undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC, including any subgroup thereof;

- (12a) ‘control’ means the relationship between a parent undertaking and a subsidiary undertaking as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between a natural or legal person and an undertaking;
- (13) ‘close links’ means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to the same person by a control relationship;
- (14) ‘financial conglomerate’ means a group or subgroup, where a regulated entity is at the head of the group or subgroup, or where at least one of the subsidiaries in that group or subgroup is a regulated entity, and which meets the following conditions:
- (a) where there is a regulated entity at the head of the group or subgroup:
    - (i) that entity is a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
    - (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
    - (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3) of this Directive; or
  - (b) where there is no regulated entity at the head of the group or subgroup:
    - (i) the group’s or subgroup’s activities occur mainly in the financial sector within the meaning of Article 3(1) of this Directive;
    - (ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and
    - (iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3) of this Directive;
- (15) ‘mixed financial holding company’ means a parent undertaking, other than a regulated entity, which, together with its subsidiaries — at least one of which is a regulated entity which has its registered office in the Union — and other entities, constitutes a financial conglomerate;
- (16) ‘competent authorities’ means the national authorities of the Member States which are empowered by law or regulation to supervise credit institutions, insurance undertakings, reinsurance undertakings, investment firms, asset management companies or alternative investment fund managers whether on an individual or group-wide basis;
- (17) ‘relevant competent authorities’ means:

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- (a) Member States' competent authorities responsible for the sectoral group-wide supervision of any of the regulated entities in a financial conglomerate, in particular of the ultimate parent undertaking of a sector;
  - (b) the coordinator appointed in accordance with Article 10 if different from the authorities referred to in point (a);
  - (c) where appropriate, other competent authorities relevant to the opinion of the authorities referred to in points (a) and (b);
- (18) 'intra-group transactions' means all transactions by which regulated entities within a financial conglomerate rely directly or indirectly on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;
- (19) 'risk concentration' means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of the regulated entities in a financial conglomerate, whether such exposures are caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of such risks.

Until the entry into force of any regulatory technical standards adopted in accordance with Article 21a(1)(b), the opinion referred to in point (17)(c) shall, in particular, take into account the market share of the regulated entities of the financial conglomerate in other Member States, in particular if it exceeds 5 %, and the importance in the financial conglomerate of any regulated entity established in another Member State.]

#### 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 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.

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.

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[<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>(11)</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>(12)</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>(13)</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).

## Article 4

### Identifying a financial conglomerate

1 Competent authorities which have authorised regulated entities shall, on the basis of Articles 2, 3 and 5, identify any group that falls under the scope of this Directive.

[<sup>F1</sup>For that purpose:

- competent authorities which have authorised regulated entities in the group shall cooperate closely,
- if a competent authority is of the opinion that a regulated entity authorised by that competent authority is a member of a group which may be a financial conglomerate and which has not already been identified in accordance with this Directive, the competent authority shall communicate its view to the other competent authorities concerned and to the Joint Committee.]

[<sup>F32</sup> The coordinator appointed in accordance with Article 10 shall inform the parent undertaking at the head of a group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of the appointment of the coordinator.

[<sup>F1</sup>The coordinator shall also inform the competent authorities which have authorised regulated entities in the group, the competent authorities of the Member State in which the mixed financial holding company has its head office and the Joint Committee.]]

[<sup>F13</sup> The Joint Committee shall publish and keep up-to-date on its website the list of financial conglomerates defined in accordance with Article 2(14). That information shall be available by hyperlink on each of the ESA's websites.

The name of each regulated entity referred to in Article 1 which is part of a financial conglomerate shall be entered on a list, which the Joint Committee shall publish and keep up-to-date on its website.]

#### 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 \(Text with EEA relevance\).](#)
- 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 \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

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- (1) [<sup>F1</sup>Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life insurance (OJ L 345, 19.12.2002, p. 1).]
- (2) [<sup>F1</sup>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).]
- (3) [<sup>F1</sup>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).]
- (4) [<sup>F1</sup>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).]
- (5) [<sup>F1</sup>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).]
- (6) [<sup>F1</sup>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).]
- (7) [<sup>F1</sup>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).]
- (8) [<sup>F1</sup>OJ L 177, 30.6.2006, p. 201.]
- (9) [<sup>F1</sup>OJ L 193, 18.7.1983, p. 1.]
- (10) [<sup>F1</sup>OJ L 222, 14.8.1978, p. 11.]
- (11) [<sup>F2</sup>OJ L 331, 15.12.2010, p. 12.]
- (12) [<sup>F2</sup>OJ L 331, 15.12.2010, p. 48.]
- (13) [<sup>F2</sup>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).
- 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).