

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 3

[^{F1}MEASURES TO FACILITATE SUPPLEMENTARY SUPERVISION AND POWERS OF THE JOINT COMMITTEE]

[^{F2}Article 9a

Role of the Joint Committee

The Joint Committee shall, in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, ensure coherent cross-sectoral and cross-border supervision and compliance with Union legislation.]

Textual Amendments

F2 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).

[^{F3}Article 9b

Stress testing

1 Member States may require that the coordinator ensure appropriate and regular stress testing of financial conglomerates. They shall require the relevant competent authorities to cooperate fully with the coordinator.

2 For the purpose of Union-wide stress tests the ESA may, through the Joint Committee and in cooperation with the European Systemic Risk Board, established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on the European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board⁽¹⁾, develop supplementary parameters that capture the specific risks associated with financial conglomerates, in accordance with Regulation (EU) No 1093/2010, Regulation (EU)

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No 1094/2010 and Regulation (EU) No 1095/2010. The coordinator shall communicate the results of the stress tests to the Joint Committee.]

Textual Amendments

- F3** 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 10

Competent authority responsible for exercising supplementary supervision (the coordinator)

[^{F1} In order to ensure adequate supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator, responsible for coordination and exercise of supplementary supervision, shall be appointed from among the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office. The identity of the coordinator shall be published on the Joint Committee's website.]

- 2 The appointment shall be based on the following criteria:
- a where a financial conglomerate is headed by a regulated entity, the task of coordinator shall be exercised by the competent authority which has authorised that regulated entity pursuant to the relevant sectoral rules;
 - b where a financial conglomerate is not headed by a regulated entity, the task of coordinator shall be exercised by the competent authority identified in accordance with the following principles:
 - (i) where the parent of a regulated entity is a mixed financial holding company, the task of coordinator shall be exercised by the competent authority which has authorised that regulated entity pursuant to the relevant sectoral rules;
 - (ii) [^{F4} where at least two regulated entities which have their registered office in the Union have as their parent the same mixed financial holding company, and one of those entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity authorised in that Member State.]

Where more than one regulated entity, being active in different financial sectors, have been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity active in the most important financial sector.

Where the financial conglomerate is headed by more than one mixed financial holding company with a head office in different Member States and there is a regulated entity in each of these States, the task of coordinator shall be exercised by the competent authority of the regulated entity with the largest balance sheet total if these entities are in the same financial sector, or by the competent authority of the regulated entity in the most important financial sector;

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- (iii) [^{F4}where at least two regulated entities which have their registered office in the Union have as their parent the same mixed financial holding company and none of those entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector;]
- (iv) where the financial conglomerate is a group without a parent undertaking at the top, or in any other case, the task of coordinator shall be exercised by the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector.

3 In particular cases, the relevant competent authorities may by common agreement waive the criteria referred to in paragraph 2 if their application would be inappropriate, taking into account the structure of the conglomerate and the relative importance of its activities in different countries, and appoint a different competent authority as coordinator. In these cases, before taking their decision, the competent authorities shall give the conglomerate an opportunity to state its opinion on that decision.

Textual Amendments

- F4** 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 11

Tasks of the coordinator

1 The tasks to be carried out by the coordinator with regard to supplementary supervision shall include:

- a coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules;
- b supervisory overview and assessment of the financial situation of a financial conglomerate;
- c assessment of compliance with the rules on capital adequacy and of risk concentration and intra-group transactions as set out in Articles 6, 7 and 8;
- d assessment of the financial conglomerate's structure, organisation and internal control system as set out in Article 9;
- e planning and coordination of supervisory activities in going concern as well as in emergency situations, in cooperation with the relevant competent authorities involved;
- f other tasks, measures and decisions assigned to the coordinator by this Directive or deriving from the application of this Directive.

[^{F1}In order to facilitate and establish supplementary supervision on a broad legal basis, the coordinator, and the other relevant competent authorities, and, where necessary, the other competent authorities concerned, shall have coordination arrangements in place. The coordination arrangements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process among the relevant competent

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authorities as referred to in Articles 3 and 4, Article 5(4), Article 6, Article 12(2) and Articles 16 and 18, and for cooperation with other competent authorities.

In accordance with Article 8 and the procedure set out in Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, the ESA, through the Joint Committee, shall develop guidelines aimed at the convergence of supervisory practices with regard to the consistency of supervisory coordination arrangements in accordance with Article 131a of Directive 2006/48/EC and Article 248(4) of Directive 2009/138/EC.]

2 The coordinator should, when it needs information which has already been given to another competent authority in accordance with the sectoral rules, contact this authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

[^{F43} Without prejudice to the possibility of delegating specific supervisory competences and responsibilities as provided for by Union legislative acts, the presence of a coordinator entrusted with specific tasks concerning the supplementary supervision of regulated entities in a financial conglomerate shall not affect the tasks and responsibilities of the competent authorities as provided for by the sectoral rules.]

[^{F34} The required cooperation under this Section and the exercise of the tasks listed in paragraphs 1, 2 and 3 of this Article and in Article 12 and, subject to confidentiality requirements and Union law, the appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate, shall be fulfilled through colleges, established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC.

The coordination arrangements referred to in the second subparagraph of paragraph 1 shall be separately reflected in the written coordination arrangements in place pursuant to Article 131 of Directive 2006/48/EC or Article 248 of Directive 2009/138/EC. The coordinator, as Chair of a college established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC, shall decide which other competent authorities participate in a meeting or in any activity of that college.]

Textual Amendments

- F3** 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 \(Text with EEA relevance\).](#)
- F4** 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 12

Cooperation and exchange of information between competent authorities

1 The competent authorities responsible for the supervision of regulated entities in a financial conglomerate and the competent authority appointed as the coordinator for that financial conglomerate shall cooperate closely with each other. Without prejudice to their respective responsibilities as defined under sectoral rules, these authorities, whether or not established in the same Member State, shall provide one another with any information which

is essential or relevant for the exercise of the other authorities' supervisory tasks under the sectoral rules and this Directive. In this regard, the competent authorities and the coordinator shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

This cooperation shall at least provide for the gathering and the exchange of information with regard to the following items:

- [^{F4}a identification of the group's legal structure and the governance and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the financial conglomerate, the holders of qualifying holdings at the ultimate parent level, as well as of the competent authorities of the regulated entities in the group;]
- b the financial conglomerate's strategic policies;
- c the financial situation of the financial conglomerate, in particular on capital adequacy, intra-group transactions, risk concentration and profitability;
- d the financial conglomerate's major shareholders and management;
- e the organisation, risk management and internal control systems at financial conglomerate level;
- f procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;
- g adverse developments in regulated entities or in other entities of the financial conglomerate which could seriously affect the regulated entities;
- h major sanctions and exceptional measures taken by competent authorities in accordance with sectoral rules or this Directive.

[^{F1}The competent authorities may also exchange with the following authorities such information as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: central banks, the European System of Central Banks, the European Central Bank and the European Systemic Risk Board in accordance with Article 15 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board⁽²⁾.]

2 Without prejudice to their respective responsibilities as defined under sectoral rules, the competent authorities concerned shall, prior to their decision, consult each other with regard to the following items, where these decisions are of importance for other competent authorities' supervisory tasks:

- a changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate, which require the approval or authorisation of competent authorities;
- b major sanctions or exceptional measures taken by competent authorities.

A competent authority may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions. In this case, the competent authority shall, without delay, inform the other competent authorities.

3 The coordinator may invite the competent authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the supplementary supervision pursuant to Article 10, to ask the parent undertaking for any information which would be relevant for the exercise of its coordination tasks as laid down in Article 11, and to transmit that information to the coordinator.

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Where the information referred to in Article 14(2) has already been given to a competent authority in accordance with sectoral rules, the competent authorities responsible for exercising supplementary supervision may apply to the first-mentioned authority to obtain the information.

4 Member States shall authorise the exchange of the information between their competent authorities and between their competent authorities and other authorities, as referred to in paragraphs 1, 2 and 3. The collection or possession of information with regard to an entity within a financial conglomerate which is not a regulated entity shall not in any way imply that the competent authorities are required to play a supervisory role in relation to these entities on a stand-alone basis.

Information received in the framework of supplementary supervision, and in particular any exchange of information between competent authorities and between competent authorities and other authorities which is provided for in this Directive, shall be subject to the provisions on professional secrecy and communication of confidential information laid down in the sectoral rules.

Textual Amendments

- F4** 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 \(Text with EEA relevance\).](#)

f²Article 12a

Cooperation and exchange of information with the Joint Committee

1 The competent authorities shall cooperate with the Joint Committee for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, and Regulation (EU) No 1095/2010.

2 The competent authorities shall without delay provide the Joint Committee with all information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively.

[The coordinators shall provide the Joint Committee with the information referred to in ~~in~~ Article 9(4) and point (a) of the second subparagraph of Article 12(1). The Joint Committee shall make available to the competent authorities information regarding the legal structure and the governance and organisational structure of financial conglomerates.]]

Textual Amendments

- F2** 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 \(European Securities and Markets Authority\) \(Text with EEA relevance\).](#)

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F3 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}Article 12b

Common guidelines

1 The ESA shall, through the Joint Committee, develop common guidelines on how risk-based assessments of financial conglomerates are to be conducted by the competent authority. Those guidelines shall, in particular, ensure that risk-based assessments include appropriate tools in order to assess group risks posed to the financial conglomerates.

2 The ESA shall, through the Joint Committee, issue common guidelines aimed at developing supervisory practices allowing for supplementary supervision of mixed financial holding companies to appropriately complement the group supervision under Directives 98/78/EC and 2009/138/EC or, as appropriate, consolidated supervision under Directive 2006/48/EC. Those guidelines shall allow all relevant risks to be incorporated in the supervision, while eliminating potential supervisory and prudential overlaps.]

Textual Amendments

F3 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 13

Management body of mixed financial holding companies

Member States shall require that persons who effectively direct the business of a mixed financial holding company are of sufficiently good repute and have sufficient experience to perform those duties.

Article 14

Access to information

[^{F1}1 Member States shall ensure that there are no legal impediments within their jurisdiction preventing the natural and legal persons included within the scope of supplementary supervision, whether or not a regulated entity, from exchanging with each other any information which would be relevant for the purposes of supplementary supervision and from exchanging information in accordance with this Directive and with the ESA in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, where necessary through the Joint Committee.]

2 Member States shall provide that, when approaching the entities in a financial conglomerate, whether or not a regulated entity, either directly or indirectly, their competent authorities responsible for exercising supplementary supervision shall have access to any information which would be relevant for the purposes of supplementary supervision.

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Article 15

Verification

Where, in applying this Directive, competent authorities wish in specific cases to verify the information concerning an entity, whether or not regulated, which is part of a financial conglomerate and is situated in another Member State, they shall ask the competent authorities of that other Member State to have the verification carried out.

The authorities which receive such a request shall, within the framework of their competences, act upon it either by carrying out the verification themselves, by allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself.

The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself.

Article 16

Enforcement measures

If the regulated entities in a financial conglomerate do not comply with the requirements referred to in Articles 6 to 9 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the regulated entities' financial position, the necessary measures shall be required in order to rectify the situation as soon as possible:

- by the coordinator with respect to the mixed financial holding company,
- by the competent authorities with respect to the regulated entities; to that end, the coordinator shall inform those competent authorities of its findings.

[^{F1}Without prejudice to Article 17(2), Member States may determine what measures may be taken by the competent authorities with respect to mixed financial holding companies. In accordance with Articles 16 and 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, the ESA, through the Joint Committee, may develop guidelines for measures in relation to mixed financial holding companies.]

The competent authorities involved, including the coordinator, shall where appropriate coordinate their supervisory actions.

Article 17

Additional powers of the competent authorities

1 Pending further harmonisation between sectoral rules, the Member States shall provide that their competent authorities shall have the power to take any supervisory measure deemed necessary in order to avoid or to deal with the circumvention of sectoral rules by regulated entities in a financial conglomerate.

2 Without prejudice to their criminal law provisions, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on mixed financial holding companies, or their effective managers, which infringe

laws, regulations or administrative provisions enacted to implement this Directive. In certain cases, such measures may require the intervention of the courts. The competent authorities shall cooperate closely to ensure that such penalties or measures produce the desired results.

Textual Amendments

- F1** 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) [^{F3}OJ L 331, 15.12.2010, p. 1.]
- (2) [^{F1}OJ L 331, 15.12.2010, p. 1.]

Textual Amendments

- F1** 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).
- F3** 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).