

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 II

Financial position

Section 1

Group solvency

Subsection 1

General provisions

Article 218

Supervision of group solvency

1 Supervision of the group solvency shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 246 and Chapter III.

2 In the case referred to in Article 213(2)(a), Member States shall require the participating insurance or reinsurance undertakings to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsections 2, 3 and 4.

3 In the case referred to in Article 213(2)(b), Member States shall require insurance and reinsurance undertakings in a group to ensure that eligible own funds are available in the group which are always at least equal to the group Solvency Capital Requirement as calculated in accordance with Subsection 5.

4 The requirements referred to in paragraphs 2 and 3 shall be subject to supervisory review by the group supervisor in accordance with Chapter III. Article 136 and Article 138(1) to (4) shall apply *mutatis mutandis*.

5 As soon as the participating undertaking has observed and informed the group supervisor that the group Solvency Capital Requirement is no longer complied with or that there is a risk of non-compliance in the following three months, the group supervisor shall inform the other supervisory authorities within the college of supervisors, which shall analyse the situation of the group.

Article 219

Frequency of calculation

1 The group supervisor shall ensure that the calculations referred to in Article 218(2) and (3) are carried out at least annually, either by the participating insurance or reinsurance undertakings or by the insurance holding company.

The relevant data for and the results of that calculation shall be submitted to the group supervisor by the participating insurance or reinsurance undertaking or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or by the undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group itself.

2 The insurance and reinsurance undertaking and the insurance holding company shall monitor the group Solvency Capital Requirement on an ongoing basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.

Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the group supervisor may require a recalculation of the group Solvency Capital Requirement.

Subsection 2

Choice of calculation method and general principles

Article 220

Choice of method

1 The calculation of the solvency at the level of the group of the insurance and reinsurance undertakings referred to in Article 213(2)(a) shall be carried out in accordance with the technical principles and one of the methods set out in Articles 221 to 233.

2 Member States shall provide that the calculation of the solvency at the level of the group of insurance and reinsurance undertakings referred to in Article 213(2)(a) shall be carried out in accordance with method 1, which is laid down in Articles 230 to 232.

However, Member States shall allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, after consulting the other supervisory authorities concerned and the group itself, to apply to that group method 2, which is laid down in Articles 233 and 234, or a combination of methods 1 and 2, where the exclusive application of method 1 would not be appropriate.

Article 221

Inclusion of proportional share

1 The calculation of the group solvency shall take account of the proportional share held by the participating undertaking in its related undertakings.

For the purposes of the first subparagraph, the proportional share shall comprise either of the following:

- a where method 1 is used, the percentages used for the establishment of the consolidated accounts; or
- b where method 2 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking.

However, regardless of the method used, where the related undertaking is a subsidiary undertaking and does not have sufficient eligible own funds to cover its Solvency Capital Requirement, the total solvency deficit of the subsidiary shall be taken into account.

Where in the opinion of the supervisory authorities, the responsibility of the parent undertaking owning a share of the capital is strictly limited to that share of the capital, the group supervisor may nevertheless allow for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

2 The group supervisor shall determine, after consulting the other supervisory authorities concerned and the group itself, the proportional share which shall be taken into account in the following cases:

- a where there are no capital ties between some of the undertakings in a group;
- b where a supervisory authority has determined that the holding, directly or indirectly, of voting rights or capital in an undertaking qualifies as a participation because, in its opinion, a significant influence is effectively exercised over that undertaking;
- c where a supervisory authority has determined that an undertaking is a parent undertaking of another because, in the opinion of that supervisory authority, it effectively exercises a dominant influence over that other undertaking.

Article 222

Elimination of double use of eligible own funds

1 The double use of own funds eligible for the Solvency Capital Requirement among the different insurance or reinsurance undertakings taken into account in that calculation shall not be allowed.

For that purpose, when calculating the group solvency and where the methods described in Subsection 4 do not provide for it, the following amounts shall be excluded:

- a the value of any asset of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of one of its related insurance or reinsurance undertakings;
- b the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of that participating insurance or reinsurance undertaking;

- c the value of any asset of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking which represents the financing of own funds eligible for the Solvency Capital Requirement of any other related insurance or reinsurance undertaking of that participating insurance or reinsurance undertaking.

2 Without prejudice to paragraph 1, the following may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking concerned:

- (a) surplus funds falling under Article 91(2) arising in a related life insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated;
- (b) any subscribed but not paid-up capital of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated.

However, the following shall in any event be excluded from the calculation:

- (i) subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking;
- (ii) subscribed but not paid-up capital of the participating insurance or reinsurance undertaking which represents a potential obligation on the part of a related insurance or reinsurance undertaking;
- (iii) subscribed but not paid-up capital of a related insurance or reinsurance undertaking which represents a potential obligation on the part of another related insurance or reinsurance undertaking of the same participating insurance or reinsurance undertaking.

3 Where the supervisory authorities consider that certain own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking other than those referred to in paragraph 2 cannot effectively be made available to cover the Solvency Capital Requirement of the participating insurance or reinsurance undertaking for which the group solvency is calculated, those own funds may be included in the calculation only in so far as they are eligible for covering the Solvency Capital Requirement of the related undertaking.

4 The sum of the own funds referred to in paragraphs 2 and 3 shall not exceed the Solvency Capital Requirement of the related insurance or reinsurance undertaking.

5 Any eligible own funds of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated that are subject to prior authorisation from the supervisory authority in accordance with Article 90 shall be included in the calculation only in so far as they have been duly authorised by the supervisory authority responsible for the supervision of that related undertaking.

Article 223

Elimination of the intra-group creation of capital

1 When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement arising out of reciprocal financing between the participating insurance or reinsurance undertaking and any of the following:

- a a related undertaking;

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- b a participating undertaking;
- c another related undertaking of any of its participating undertakings.

2 When calculating group solvency, no account shall be taken of any own funds eligible for the Solvency Capital Requirement of a related insurance or reinsurance undertaking of the participating insurance or reinsurance undertaking for which the group solvency is calculated where the own funds concerned arise out of reciprocal financing with any other related undertaking of that participating insurance or reinsurance undertaking.

3 Reciprocal financing shall be deemed to exist at least where an insurance or reinsurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds own funds eligible for the Solvency Capital Requirement of the first undertaking.

Article 224

Valuation

The value of the assets and liabilities shall be assessed in accordance with Article 75.

Subsection 3

Application of the calculation methods

Article 225

Related insurance and reinsurance undertakings

Where the insurance or reinsurance undertaking has more than one related insurance or reinsurance undertaking, the group solvency calculation shall be carried out by including each of those related insurance or reinsurance undertakings.

Member States may provide that where the related insurance or reinsurance undertaking has its head office in a Member State other than that of the insurance or reinsurance undertaking for which the group solvency calculation is carried out, the calculation takes account, in respect of the related undertaking, of the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down in that other Member State.

Article 226

Intermediate insurance holding companies

1 When calculating the group solvency of an insurance or reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking, through an insurance holding company, the situation of such an insurance holding company shall be taken into account.

For the sole purpose of that calculation, the intermediate insurance holding company shall be treated as if it were an insurance or reinsurance undertaking subject to the rules

laid down in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 in respect of the Solvency Capital Requirement and were subject to the same conditions as are laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3, in respect of own funds eligible for the Solvency Capital Requirement.

2 In cases where an intermediate insurance holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 98, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Article 98 to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

Any eligible own funds of an intermediate insurance holding company, which would require prior authorisation from the supervisory authority in accordance with Article 90 if they were held by an insurance or reinsurance undertaking, may, be included in the calculation of the group solvency only in so far as they have been duly authorised by the group supervisor.

Article 227

Related third-country insurance and reinsurance undertakings

1 When calculating, in accordance with Article 233, the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, the latter shall, solely for the purposes of that calculation, be treated as a related insurance or reinsurance undertaking.

However, where the third country in which that undertaking has its head office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that laid down in Title I, Chapter VI, Member States may provide that the calculation take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third country concerned.

2 The verification of whether the third-country regime is at least equivalent shall be carried out by the group supervisor, at the request of the participating undertaking or on its own initiative.

In so doing, the group supervisor shall consult the other supervisory authorities concerned and CEIOPS before taking a decision on equivalence.

3 The Commission may adopt implementing measures specifying the criteria to assess whether the solvency regime in a third country is equivalent to that laid down in Title I, Chapter VI.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

4 The Commission may adopt, after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the regulatory procedure referred to in Article 301(2), and taking into account the criteria adopted in accordance with paragraph 3 of this Article, a decision as to whether the solvency regime in a third country is equivalent to that laid down in Title I, Chapter VI.

Those decisions shall be regularly reviewed to take into account any changes to the solvency regime laid down in Title I, Chapter VI, and to the solvency regime in the third country.

5 Wherein accordance with paragraph 4 the Commission adopts a decision on equivalence of the solvency regime in a third country, paragraph 2 shall not apply.

Where a decision adopted by the Commission in accordance with paragraph 4 concludes that the solvency regime in a third country is not equivalent, the option referred to in the second subparagraph of paragraph 1 to take into account the Solvency Capital Requirement and eligible own funds as laid down by the third country concerned shall not be applicable and the third-country insurance or reinsurance undertaking shall be treated exclusively in accordance with the first subparagraph of paragraph 1.

Article 228

Related credit institutions, investment firms and financial institutions

When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, Member States shall allow their participating insurance and reinsurance undertakings to apply methods 1 or 2 set out in Annex I to Directive 2002/87/EC *mutatis mutandis*. However, method 1 set out in that Annex shall be applied only where the group supervisor is satisfied as to the level of integrated management and internal control regarding the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Member States shall however allow their supervisory authorities, where they assume the role of group supervisor with regard to a particular group, to decide, at the request of the participating undertaking or on their own initiative, to deduct any participation as referred to in the first paragraph from the own funds eligible for the group solvency of the participating undertaking.

Article 229

Non-availability of the necessary information

Where the information necessary for calculating the group solvency of an insurance or reinsurance undertaking, concerning a related undertaking with its head office in a Member State or a third country, is not available to the supervisory authorities concerned, the book value of that undertaking in the participating insurance or reinsurance undertaking shall be deducted from the own funds eligible for the group solvency.

In that case, the unrealised gains connected with such participation shall not be recognised as own funds eligible for the group solvency.

Subsection 4

Calculation methods

Article 230

Method 1 (Default method): Accounting consolidation-based method

1 The calculation of the group solvency of the participating insurance or reinsurance undertaking shall be carried out on the basis of the consolidated accounts.

The group solvency of the participating insurance or reinsurance undertaking is the difference between the following:

- a the own funds eligible to cover the Solvency Capital Requirement, calculated on the basis of consolidated data;
- b the Solvency Capital Requirement at group level calculated on the basis of consolidated data.

The rules laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 and in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 shall apply for the calculation of the own funds eligible for the Solvency Capital Requirement and of the Solvency Capital Requirement at group level based on consolidated data.

2 The Solvency Capital Requirement at group level based on consolidated data (consolidated group Solvency Capital Requirement) shall be calculated on the basis of either the standard formula or an approved internal model, in a manner consistent with the general principles contained in Title I, Chapter VI, Section 4, Subsections 1 and 2 and Title I, Chapter VI, Section 4, Subsections 1 and 3, respectively.

The consolidated group Solvency Capital Requirement shall have as a minimum the sum of the following:

- a the Minimum Capital Requirement as referred to in Article 129 of the participating insurance or reinsurance undertaking;
- b the proportional share of the Minimum Capital Requirement of the related insurance and reinsurance undertakings.

That minimum shall be covered by eligible basic own funds as determined in Article 98(4).

For the purposes of determining whether such eligible own funds qualify to cover the minimum consolidated group Solvency Capital Requirement, the principles set out in Articles 221 to 229 shall apply *mutatis mutandis*. Article 139(1) and (2) shall apply *mutatis mutandis*.

Article 231

Group internal model

1 In the case of an application for permission to calculate the consolidated 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, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, the supervisory authorities concerned shall cooperate to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.

An application as referred to in the first subparagraph shall be submitted to the group supervisor.

The group supervisor shall inform the other supervisory authorities concerned without delay.

2 The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor.

The group supervisor shall forward the complete application to the other supervisory authorities concerned without delay.

3 During the period referred to in paragraph 2, the group supervisor and any of the other supervisory authorities concerned may consult CEIOPS. CEIOPS shall also be consulted where the participating undertaking so requests.

Where CEIOPS is being consulted, all the supervisory authorities concerned shall be informed and the period referred to in paragraph 2 shall be extended by two months.

4 Where CEIOPS has not been consulted in accordance with the first subparagraph of paragraph 3, and in the absence of a joint decision of the supervisory authorities concerned within six months from the date of receipt of the complete application by the group supervisor, the group supervisor shall request CEIOPS, within a further two months, to deliver advice to all the supervisory authorities concerned. The group supervisor shall take a decision within three weeks of the transmission of that advice, taking full account thereof.

5 Irrespective of whether CEIOPS has been consulted, the group supervisor's decision shall state the full reasons and shall take into account the views expressed by the other supervisory authorities concerned.

The group supervisor shall provide the applicant and the other supervisory authorities concerned with the decision.

The supervisory authorities concerned shall comply with the decision.

6 In the absence of a joint decision within the periods set out in paragraphs 2 and 3 respectively, the group supervisor shall make its own decision on the application.

In making its decision, the group supervisor shall duly take into account the following:

- a any views and reservations of the other supervisory authorities concerned expressed during the applicable period;
- b where CEIOPS has been consulted, its advice.

The decision shall state the full reasons and shall contain an explanation of any significant deviation from the positions adopted by CEIOPS.

The group supervisor shall transmit the decision to the applicant and the other supervisory authorities concerned.

That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

7 Where any of the supervisory authorities concerned considers that the risk profile of an insurance or reinsurance undertaking under its supervision deviates significantly from the assumptions underlying the internal model approved at group level, and as long as that undertaking has not properly addressed the concerns of the supervisory authority, that authority may, in accordance with Article 37, impose a capital add-on to the Solvency Capital

Requirement of that insurance or reinsurance undertaking resulting from the application of such internal model.

In exceptional circumstances, where such capital add-on would not be appropriate, the supervisory authority may require the undertaking concerned to calculate its Solvency Capital Requirement on the basis of the standard formula referred to in Title I, Chapter VI, Section 4, Subsections 1 and 2. In accordance with Article 37(1)(a) and (c), the supervisory authority may impose a capital add-on to the Solvency Capital Requirement of that insurance or reinsurance undertaking resulting from the application of the standard formula.

The supervisory authority shall explain any decision referred to in the first and second subparagraphs to both the insurance or reinsurance undertaking and the group supervisor.

Article 232

Group capital add-on

In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the group supervisor shall pay particular attention to any case where the circumstances referred to in Article 37(1)(a) to (c) may arise at group level, in particular where:

- (a) a specific risk existing at group level would not be sufficiently covered by the standard formula or the internal model used, because it is difficult to quantify;
- (b) a capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings is imposed by the supervisory authorities concerned, in accordance with Articles 37 and 231(7).

Where the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed.

Article 37(1) to (5), together with implementing measures taken in accordance with Article 37(6), shall apply *mutatis mutandis*.

Article 233

Method 2 (Alternative method): Deduction and aggregation method

1 The group solvency of the participating insurance or reinsurance undertaking shall be the difference between the following:

- a the aggregated group eligible own funds, as provided for in paragraph 2;
- b the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings and the aggregated group Solvency Capital Requirement, as provided for in paragraph 3.

2 The aggregated group eligible own funds are the sum of the following:

- a the own funds eligible for the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;

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- b the proportional share of the participating insurance or reinsurance undertaking in the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings.
- 3 The aggregated group Solvency Capital Requirement is the sum of the following:
- a the Solvency Capital Requirement of the participating insurance or reinsurance undertaking;
- b the proportional share of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.
- 4 Where the participation in the related insurance or reinsurance undertakings consists, wholly or in part, of an indirect ownership, the value in the participating insurance or reinsurance undertaking of the related insurance or reinsurance undertakings shall incorporate the value of such indirect ownership, taking into account the relevant successive interests, and the items referred to in paragraph 2(b) and paragraph 3(b) shall include the corresponding proportional shares, respectively, of the own funds eligible for the Solvency Capital Requirement of the related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.
- 5 In the case of an application for permission to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company, Article 231 shall apply *mutatis mutandis*.
- 6 In determining whether the aggregated group Solvency Capital Requirement, calculated as set out in paragraph 3, appropriately reflects the risk profile of the group, the supervisory authorities concerned shall pay particular attention to any specific risks existing at group level which would not be sufficiently covered, because they are difficult to quantify.
- Where the risk profile of the group deviates significantly from the assumptions underlying the aggregated group Solvency Capital Requirement, a capital add-on to the aggregated group Solvency Capital Requirement may be imposed.
- Article 37(1) to (5), together with implementing measures taken in accordance with Article 37(6), shall apply *mutatis mutandis*.

Article 234

Implementing measures

The Commission shall adopt implementing measures specifying the technical principles and methods set out in Articles 220 to 229 and the application of Articles 230 to 233 to ensure uniform application within the Community.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

Subsection 5

Supervision of group solvency for insurance and reinsurance undertakings that are subsidiaries of an insurance holding company*Article 235***Group solvency of an insurance holding company**

Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company, the group supervisor shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company applying Article 220(2) to Article 233.

For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Title I, Chapter VI, Section 4, Subsections 1, 2 and 3 as regards the Solvency Capital Requirement and subject to the same conditions as laid down in Title I, Chapter VI, Section 3, Subsections 1, 2 and 3 as regards the own funds eligible for the Solvency Capital Requirement.

Subsection 6

Supervision of group solvency for groups with centralised risk management*Article 236***Subsidiaries of an insurance or reinsurance undertaking: conditions**

Member States shall provide that the rules laid down in Articles 238 and 239 shall apply to any insurance or reinsurance undertaking which is the subsidiary of an insurance or reinsurance undertaking where all of the following conditions are satisfied:

- (a) the subsidiary, in relation to which the group supervisor has not made a decision under Article 214(2), is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with this Title;
- (b) the risk-management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;
- (c) the parent undertaking has received the agreement referred to in the third subparagraph of Article 246(4);
- (d) the parent undertaking has received the agreement referred to in Article 256(2);
- (e) an application for permission to be subject to Articles 238 and 239 has been submitted by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 237.

Article 237

Subsidiaries of an insurance or reinsurance undertaking: decision on the application

1 In the case of applications for permission to be subject to the rules laid down in Articles 238 and 239, the supervisory authorities concerned shall work together within the college of supervisors, in full consultation, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the supervisory authority having authorised the subsidiary. That supervisory authority shall inform and forward the complete application to the other supervisory authorities within the college of supervisors without delay.

2 The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within three months from the date of receipt of the complete application by all supervisory authorities within the college of supervisors.

3 During the period referred to in paragraph 2, in the case of diverging views concerning the approval of the application referred to in paragraph 1, the group supervisor or any of the other supervisory authorities concerned may consult CEIOPS. Where CEIOPS is being consulted, all supervisory authorities concerned shall be informed and the period referred to in paragraph 2 shall be extended by one month.

Where CEIOPS has been consulted, the supervisory authorities concerned shall duly consider such advice before taking their joint decision.

4 The supervisory authority having authorised the subsidiary shall provide to the applicant the joint decision referred to in paragraphs 2 and 3, shall state the full reasons and shall, where CEIOPS has been consulted, contain an explanation of any significant deviation from the position adopted by CEIOPS. The joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

5 In the absence of a joint decision of the supervisory authorities concerned within the periods set out in paragraphs 2 and 3, the group supervisor shall take its own decision with regard to the application.

In taking its decision, the group supervisor shall duly consider the following:

- a any views and reservations of the supervisory authorities concerned expressed during the applicable period;
- b any reservations of the other supervisory authorities within the college of supervisors expressed during the applicable period;
- c where CEIOPS has been consulted, its advice.

The decision shall state the full reasons and shall contain an explanation of any significant deviation from the reservations of the other supervisory authorities concerned and the advice of CEIOPS. The group supervisor shall provide the applicant and the other supervisory authorities concerned with a copy of the decision.

Article 238

Subsidiaries of an insurance or reinsurance undertaking: determination of the Solvency Capital Requirement

1 Without prejudice to Article 231, the Solvency Capital Requirement of the subsidiary shall be calculated as set out in paragraphs 2, 4, and 5 of this Article.

2 Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 231 and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose to set a capital add-on to the Solvency Capital Requirement of that subsidiary 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 Solvency Capital Requirement on the basis of the standard formula. The supervisory authority shall discuss its proposal within the college of supervisors and communicate the grounds for such proposals to both the subsidiary and the college of supervisors.

3 Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in exceptional circumstances, propose that the undertaking replace a subset of the parameters used in the standard formula calculation by parameters specific to that undertaking when calculating the life, non-life and health underwriting risk modules, as set out in Article 110, or in the cases referred to in Article 37, to set a capital add-on to the Solvency Capital Requirement of that subsidiary.

The supervisory authority shall discuss its proposal within the college of supervisors and communicate the grounds for such proposal to both the subsidiary and the college of supervisors.

4 The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority having authorised the subsidiary or on other possible measures.

5 Where the supervisory authority and the group supervisor disagree, the matter shall, within one month from the proposal of the supervisory authority, be referred for consultation to CEIOPS, which shall give its advice within two months of such referral.

The supervisory authority having authorised that subsidiary shall duly consider such advice before taking its final decision.

The decision shall state the full reasons and shall take into account the views including reservations of the other supervisory authorities within the college of supervisors and the advice from CEIOPS.

The decision shall be submitted to the subsidiary and to the college of supervisors.

Article 239

Subsidiaries of an insurance or reinsurance undertaking: non-compliance with the Solvency and Minimum Capital Requirements

1 In the event of non-compliance with the Solvency Capital Requirement and without prejudice to Article 138, the supervisory authority having authorised the subsidiary shall, without delay, forward to the college of supervisors the recovery plan submitted by the subsidiary in order to achieve, within six months from the observation of non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

The college of supervisors shall do everything within its power to reach an agreement on the proposal of the supervisory authority regarding the approval of the recovery plan within four months from the date on which non-compliance with the Solvency Capital Requirement was first observed.

In the absence of such agreement, the supervisory authority having authorised the subsidiary shall decide whether the recovery plan should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

2 Where the supervisory authority having authorised the subsidiary identifies, in accordance with Article 136, deteriorating financial conditions, it shall notify the college of supervisors without delay of the proposed measures to be taken. Save in emergency situations, the measures to be taken shall be discussed within the college of supervisors.

The college of supervisors shall do everything within its power to reach an agreement on the proposed measures to be taken within one month of notification.

In the absence of such agreement, the supervisory authority having authorised the subsidiary shall decide whether the proposed measures should be approved, taking due account of the views and reservations of the other supervisory authorities within the college of supervisors.

3 In the event of non-compliance with the Minimum Capital Requirement and without prejudice to Article 139, the supervisory authority having authorised the subsidiary shall, without delay, forward to the college of supervisors the short-term finance scheme submitted by the subsidiary in order to achieve, within three months from the date on which non-compliance with the Minimum Capital Requirement was first observed, the reestablishment of the level of eligible own funds covering the Minimum Capital Requirement or the reduction of its risk profile to ensure compliance with the Minimum Capital Requirement. The college of supervisors shall also be informed of any measures taken to enforce the Minimum Capital Requirement at the level of the subsidiary.

Article 240

Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary

- 1 The rules provided for in Articles 238 and 239 shall cease to apply where:
 - a the condition referred to in Article 236(a) is no longer complied with;

- b the condition referred to in Article 236(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time;
- c the conditions referred to in Article 236(c) and (d) are no longer complied with.

In the case referred to in point (a) of the first subparagraph, where the group supervisor decides, after consulting the college of supervisors, no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the supervisory authority concerned and the parent undertaking.

For the purposes of Article 236(b), (c) and (d), the parent undertaking shall be responsible for ensuring that the conditions are complied with on an ongoing basis. In the event of non-compliance, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

Without prejudice to the third subparagraph, the group supervisor shall verify at least annually, on its own initiative, that the conditions referred to in Article 236(b), (c) and (d) continue to be complied with. The group supervisor shall also perform such verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with those conditions.

Where the verification performed identifies weaknesses, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

Where, after consulting the college of supervisors, the group supervisor determines that the plan referred to in the third or fifth subparagraph is insufficient or subsequently that it is not being implemented within the agreed period of time, the group supervisor shall conclude that the conditions referred to in Article 236(b), (c) and (d) are no longer complied with and it shall immediately inform the supervisory authority concerned.

2 The regime provided for in Articles 238 and 239 shall be applicable again where the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Article 237.

Article 241

Subsidiaries of an insurance or reinsurance undertaking: implementing measures

In order to ensure the uniform application of Articles 236 to 240, the Commission shall adopt implementing measures specifying:

- (a) the criteria to be applied when assessing whether the conditions stated in Article 236 are satisfied;
- (b) the criteria to be applied when assessing what should be considered an emergency situation under Article 239(2); and
- (c) the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties in accordance with Articles 237 to 240.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

Article 242

Review

1 By 31 October 2014, the Commission shall make an assessment of the application of Title III, in particular as regards the cooperation of supervisory authorities within, and functionality of, the college of supervisors, the legal status of CEIOPS, and the supervisory practices concerning setting the capital add-ons, and shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals for the amendment of this Directive.

2 By 31 October 2015, the Commission shall make an assessment of the benefit of enhancing group supervision and capital management within a group of insurance or reinsurance undertakings including a reference to COM(2008)0119 and the report of the Committee on Economic and Monetary Affairs of the European Parliament on this proposal of 16 October 2008 (A6-0413/2008). That assessment shall include possible measures to enhance a sound cross-border management of insurance groups notably of risks and asset management. In its assessment, the Commission shall, *inter alia*, take into account new developments and progress concerning:

- a a harmonised framework on early intervention;
- b practices in centralised group risk management and functioning of group internal models including stress testing;
- c intra-group transactions and risk concentrations;
- d the behaviour of diversification and concentration effects over time;
- e a legally binding framework for the mediation of supervisory disputes;
- f a harmonised framework on asset transferability, insolvency and winding-up procedures which eliminates the relevant national company or corporate law barriers to asset transferability;
- g an equivalent level of protection of policy holders and beneficiaries of the undertakings of the same group particularly in crisis situations;
- h a harmonised and adequately funded EU-wide solution for insurance guarantee schemes;
- i a harmonised and legally binding framework between competent authorities, central banks and ministries of finance concerning crisis management, resolution and fiscal burden-sharing which aligns supervisory powers with fiscal responsibilities.

The Commission shall present a report to the European Parliament and the Council, accompanied, where appropriate, by proposals for the amendment of this Directive.

Article 243

Subsidiaries of an insurance holding company

Articles 236 to 242 shall apply *mutatis mutandis* to insurance and reinsurance undertakings which are the subsidiary of an insurance holding company.

Section 2

Risk concentration and intra-group transactions

Article 244

Supervision of risk concentration

1 Supervision of the risk concentration at group level shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 246 and Chapter III.

2 The Member States shall require insurance and reinsurance undertakings or insurance holding companies to report on a regular basis and at least annually to the group supervisor any significant risk concentration at the level of the group.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by a insurance or reinsurance undertaking, by the insurance holding company or by the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The risk concentrations shall be subject to supervisory review by the group supervisor.

3 The group supervisor, after consulting the other supervisory authorities concerned and the group, shall identify the type of risks insurance and reinsurance undertakings in a particular group shall report in all circumstances.

When defining or giving their opinion about the type of risks, the group supervisor and the other supervisory authorities concerned shall take into account the specific group and risk-management structure of the group.

In order to identify significant risk concentration to be reported, the group supervisor, after consulting the other supervisory authorities concerned and the group, shall impose appropriate thresholds based on solvency capital requirements, technical provisions, or both.

When reviewing the risk concentrations, the group supervisor shall in particular monitor the possible risk of contagion in the group, the risk of a conflict of interests, and the level or volume of risks.

4 The Commission may adopt implementing measures, as regards the definition and identification of a significant risk concentration and the reporting on such a risk concentration, for the purposes of paragraphs 2 and 3.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

Article 245

Supervision of intra-group transactions

1 Supervision of intra-group transactions shall be exercised in accordance with paragraphs 2 and 3 of this Article, Article 246 and Chapter III.

2 The Member States shall require insurance and reinsurance undertakings or insurance holding companies to report on a regular basis and at least annually to the group supervisor all significant intra-group transactions by insurance and reinsurance undertakings within a group, including those performed with a natural person with close links to an undertaking in the group.

In addition, Member States shall require reporting of very significant intra-group transactions as soon as practicable.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or by the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The intra-group transactions shall be subject to supervisory review by the group supervisor.

3 The group supervisor, after consulting the other supervisory authorities concerned and the group, shall identify the type of intra-group transactions insurance and reinsurance undertakings in a particular group must report in all circumstances. Article 244(3) shall apply *mutatis mutandis*.

4 The Commission may adopt implementing measures, as regards the definition and identification of a significant intra-group transaction and the reporting on such an intra-group transaction, for the purposes of paragraphs 2 and 3.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 301(3).

Section 3

Risk management and internal control

Article 246

Supervision of the system of governance

1 The requirements set out in Title I, Chapter IV, Section 2 shall apply *mutatis mutandis* at the level of the group.

Without prejudice to the first subparagraph, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to Article 213(2)(a) and (b) so that those systems and reporting procedures can be controlled at the level of the group.

2 Without prejudice to paragraph 1, the group internal control mechanisms shall include at least the following:

- a adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;
- b sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

3 The systems and reporting procedures referred to in paragraphs 1 and 2 shall be subject to supervisory review by the group supervisor, in accordance with the rules laid down in Chapter III.

4 Member States shall require the participating insurance or reinsurance undertaking or the insurance holding company to undertake at the level of the group the assessment required by Article 45. The own-risk and solvency assessment conducted at group level shall be subject to supervisory review by the group supervisor in accordance with Chapter III.

Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, as referred to in Article 230, the participating insurance or reinsurance undertaking or the insurance holding company shall provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

Where the participating insurance or reinsurance undertaking or the insurance holding company so decides, and subject to the agreement of the group supervisor, it may undertake any assessments required by Article 45 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.

Before granting an agreement in accordance with the third subparagraph, the group supervisor shall consult the members of the college of supervisors and duly take into account their views or reservations.

Where the group exercises the option provided in the third subparagraph, it shall submit the document to all supervisory authorities concerned at the same time. The exercise of that option shall not exempt the subsidiaries concerned from the obligation to ensure that the requirements of Article 45 are met.