

Directive 2009/138/EC of the European Parliament and of the Council
of 25 November 2009 on the taking-up and pursuit of the business of
Insurance and Reinsurance (Solvency II) (recast) (Text with EEA relevance)

TITLE III

**SUPERVISION OF INSURANCE AND
REINSURANCE UNDERTAKINGS IN A GROUP**

CHAPTER I

Group supervision: definitions, cases of application, scope and levels

Section 1

Definitions

Article 212

Definitions

- 1 For the purposes of this Title, the following definitions shall apply:
- a ‘participating undertaking’ means an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;
 - b ‘related undertaking’ means either a subsidiary undertaking or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship as set out in Article 12(1) of Directive 83/349/EEC;
 - c ‘group’ means a group of undertakings that:
 - (i) consists of a participating undertaking, its subsidiaries and the entities in which the participating undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship as set out in Article 12(1) of Directive 83/349/EEC; or
 - (ii) is based on the establishment, contractually or otherwise, of strong and sustainable financial relationships among those undertakings, and that may include mutual or mutual-type associations, provided that:
 - one of those undertakings effectively exercises, through centralised coordination, a dominant influence over the decisions, including financial decisions, of the other undertakings that are part of the group; and,
 - the establishment and dissolution of such relationships for the purposes of this Title are subject to prior approval by the group supervisor,

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where the undertaking exercising the centralised coordination shall be considered as the parent undertaking, and the other undertakings shall be considered as subsidiaries;

- d 'group supervisor' means the supervisory authority responsible for group supervision, determined in accordance with Article 247;
- [^{F1}e 'college of supervisors' means a permanent but flexible structure for the cooperation, coordination and facilitation of decision making concerning the supervision of a group;]
- [^{F2}f 'insurance holding company' means a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking;
- g 'mixed-activity insurance holding company' means a parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;
- h 'mixed financial holding company' means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC.]

2 For the purposes of this Title, the supervisory authorities shall also consider as a parent undertaking any undertaking which, in the opinion of the supervisory authorities, effectively exercises a dominant influence over another undertaking.

They shall also consider as a subsidiary undertaking any undertaking over which, in the opinion of the supervisory authorities, a parent undertaking effectively exercises a dominant influence.

They shall also consider as participation the holding, directly or indirectly, of voting rights or capital in an undertaking over which, in the opinion of the supervisory authorities, a significant influence is effectively exercised.

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).
- F2** 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).

Section 2

Cases of application and scope

Article 213

Cases of application of group supervision

1 Member States shall provide for supervision, at the level of the group, of insurance and reinsurance undertakings which are part of a group, in accordance with this Title.

The provisions of this Directive which lay down the rules for the supervision of insurance and reinsurance undertakings taken individually shall continue to apply to such undertakings, except where otherwise provided under this Title.

[^{F2} Member States shall ensure that supervision at the level of the group applies to the following:

- a insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 218 to 258;
- b insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the Union, in accordance with Articles 218 to 258;
- c insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking, in accordance with Articles 260 to 263;
- d insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 265.

3 In the cases referred to in points (a) and (b) of paragraph 2, where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in the Union is either a related undertaking of, or is itself a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244 of this Directive, the supervision of intra-group transactions referred to in Article 245 of this Directive, or both, at the level of that participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company.

4 Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the group supervisor may, after consulting the other supervisory authorities concerned, apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.

5 Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the group supervisor may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provisions of the Directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

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6 The group supervisor shall inform the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁽¹⁾ (EBA) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (EIOPA)⁽²⁾ of the decisions taken under paragraphs 4 and 5. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010⁽³⁾ (ESMA) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of those guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.]

Textual Amendments

- F2** Substituted by [Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate \(Text with EEA relevance\).](#)

Article 214

Scope of group supervision

[^{F21} The exercise of group supervision in accordance with Article 213 shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking, the insurance holding company, the mixed financial holding company or the mixed-activity insurance holding company taken individually, without prejudice to Article 257 as far as insurance holding companies or mixed financial holding companies are concerned.]

2 The group supervisor may decide on a case-by-case basis not to include an undertaking in the group supervision referred to in Article 213 where:

- a the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Article 229;
- b the undertaking which should be included is of negligible interest with respect to the objectives of group supervision; or
- c the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision.

However, where several undertakings of the same group, taken individually, may be excluded pursuant to point (b) of the first subparagraph, they must nevertheless be included where, collectively, they are of non-negligible interest.

Where the group supervisor is of the opinion that an insurance or reinsurance undertaking should not be included in the group supervision under points (b) or (c) of the first subparagraph, it shall consult the other supervisory authorities concerned before taking a decision.

Where the group supervisor does not include an insurance or reinsurance undertaking in the group supervision under point (b) or (c) of the first subparagraph, the supervisory

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authorities of the Member State in which that undertaking is situated may ask the undertaking which is at the head of the group for any information which may facilitate their supervision of the insurance or reinsurance undertaking concerned.

Textual Amendments

- F2** 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 \(Text with EEA relevance\).](#)

Section 3

Levels

Article 215

Ultimate parent undertaking at Community level

[^{F21} Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company referred to in Article 213(2)(a) and (b) is itself a subsidiary undertaking of another insurance or reinsurance undertaking or of another insurance holding company or of another mixed financial holding company which has its head office in the Union, Articles 218 to 258 shall apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union.

2 Where the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial holding company which has its head office in the Union, as referred to in paragraph 1, is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244, the supervision of intra-group transactions referred to in Article 245, or both, at the level of that ultimate parent undertaking or company.]

Textual Amendments

- F2** 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 216

Ultimate parent undertaking at national level

[^{F21} Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company which has its head office in the Union, as referred to in Article 213(2)(a) and (b), does not have its head office in the same Member State as the ultimate parent undertaking at Union level referred to in Article 215, Member States

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may allow their supervisory authorities to decide, after consulting the group supervisor and that ultimate parent undertaking at Union level, to subject the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at national level to group supervision.

[^{F3}In such a case, the supervisory authority shall explain its decision to both the group supervisor and the ultimate parent undertaking at Union level. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).

Articles 218 to 258 shall apply *mutatis mutandis*, subject to paragraphs 2 to 6 of this Article.]]

2 The supervisory authority may restrict group supervision of the ultimate parent undertaking at national level to one or several sections of Chapter II.

3 Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, the choice of method made in accordance with Article 220 by the group supervisor in respect of the ultimate parent undertaking at Community level referred to in Article 215 shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

4 Where the supervisory authority decides to apply to the ultimate parent undertaking at national level Chapter II, Section 1, and where the ultimate parent undertaking at Community level referred to in Article 215 has obtained, in accordance with Article 231 or Article 233(5), permission to calculate the 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, that decision shall be recognised as determinative and applied by the supervisory authority in the Member State concerned.

In such a situation, where the supervisory authority considers that the risk profile of the ultimate parent undertaking at national level deviates significantly from the internal model approved at Community level, and as long as that undertaking does not properly address the concerns of the supervisory authority, that supervisory authority may decide to impose a capital add-on to the group Solvency Capital Requirement of that undertaking 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 group Solvency Capital Requirement on the basis of the standard formula.

[^{F1}The supervisory authority shall explain such decisions to both the undertaking and the group supervisor. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).]

5 Where the supervisory authority decides to apply Chapter II, Section 1 to the ultimate parent undertaking at national level, that undertaking shall not be permitted to introduce, in accordance with Articles 236 or 243, an application for permission to subject any of its subsidiaries to Articles 238 and 239.

6 Where Member States allow their supervisory authorities to make the decision referred to in paragraph 1, they shall provide that no such decisions can be made or maintained where the ultimate parent undertaking at national level is a subsidiary of the ultimate parent undertaking at Community level referred to in Article 215 and the latter has obtained in accordance with Articles 237 or 243 permission for that subsidiary to be subject to Articles 238 and 239.

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[^{F17} The Commission may adopt delegated acts in accordance with Article 301a specifying the circumstances under which the decision referred to in paragraph 1 of this Article can be made.]

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).
- F2** 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** Inserted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Article 217

Parent undertaking covering several Member States

1 Where Member States allow their supervisory authorities to make the decision referred to in Article 216, they shall also allow them to decide to conclude an agreement with supervisory authorities in other Member States where another related ultimate parent undertaking at national level is present, with a view to carrying out group supervision at the level of a subgroup covering several Member States.

Where the supervisory authorities concerned have concluded an agreement as referred to in the first subparagraph, group supervision shall not be carried out at the level of any ultimate parent undertaking referred to in Article 216 present in Member States other than the Member State where the subgroup referred to in the first subparagraph of this paragraph is located.

[^{F3}In such a case, the supervisory authorities shall explain their agreement to both the group supervisor and the ultimate parent undertaking at Union level. The group supervisor shall inform the college of supervisors in accordance with Article 248(1)(a).]

2 Article 216(2) to (6) shall apply *mutatis mutandis*.

[^{F13} The Commission shall adopt delegated acts in accordance with Article 301a specifying the circumstances under which the decision referred to in paragraph 1 of this Article can be made.]

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

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F3 Inserted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

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.

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F² 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, by the participating insurance or reinsurance undertaking, by the insurance holding company or by the mixed financial 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 the mixed financial 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 undertaking, reinsurance undertaking, insurance holding company and mixed financial 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.]

Textual Amendments

F2 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 \(Text with EEA relevance\)](#).

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

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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

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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;
- 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.

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F² 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 or a mixed financial holding company, the situation of such an insurance holding company or mixed financial holding company shall be taken into account.

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

2 In cases where an intermediate insurance holding company or intermediate mixed financial 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 or intermediate mixed financial 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.]

Textual Amendments

- F2** 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 \(Text with EEA relevance\)](#).

F¹ Article 227

Equivalence concerning related third-country insurance and re-insurance undertakings

1 When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, in accordance with Article 233, the third-country insurance or reinsurance undertaking 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.

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2 Where no delegated act has been adopted in accordance with paragraph 4 or 5 of this Article, 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. EIOPA shall assist the group supervisor in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

The group supervisor, assisted by EIOPA, shall consult the other supervisory authorities concerned before taking a decision on equivalence. That decision shall be taken in accordance with the criteria adopted in accordance with paragraph 3. The group supervisor shall not take any decision in relation to a third country that is contradicting any decision taken vis-à-vis that third country previously save where it is necessary to take into account significant changes to the supervisory regime laid down in Title I, Chapter VI and to the supervisory regime in the third country.

Where supervisory authorities disagree with the decision taken in accordance with subparagraph 2, they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the group supervisor. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

3 The Commission may adopt delegated acts in accordance with Article 301a specifying the criteria for assessing whether the solvency regime of a third country is equivalent to that laid down in Title I, Chapter VI.

4 If the criteria adopted in accordance with paragraph 3 have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the supervisory regime of that third country is equivalent to that laid down in Title I, Chapter VI.

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

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

5 By way of derogation from paragraph 4, and even where the criteria specified in accordance with paragraph 3 have not been fulfilled, the Commission may, for the period referred to in paragraph 6, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the solvency regime of a third country applied to undertakings with the head office in that third country is provisionally equivalent to that laid down in Title I, Chapter VI, where:

- a it can be shown that a solvency regime capable of being assessed equivalent in accordance with paragraph 4 is currently in place or may be adopted and applied by the third country;
- b the third country has a solvency regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency;
- c the third country's law, in principle, allows cooperation, and exchange of confidential supervisory information, with EIOPA and supervisory authorities;
- d the third country has an independent system of supervision; and
- e the third country has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities.

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EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

6 The initial period of provisional equivalence referred to in paragraph 5 shall be 10 years, unless before the expiry of that period:

- a that delegated act has been revoked; or
- b a delegated act has been adopted in accordance with paragraph 4 to the effect that the supervisory regime of that third country has been deemed to be equivalent to that laid down in Title I, Chapter VI.

Provisional equivalence shall be subject to renewals for further periods of 10 years where the criteria referred to in paragraph 5 continue to be met. The Commission shall adopt any such delegated act in accordance with Article 301a and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

Any delegated acts determining provisional equivalence shall take into account the reports by the Commission in accordance with Article 177(2). Such delegated acts shall be reviewed regularly by the Commission. EIOPA shall assist the Commission in the assessment of those decisions. The Commission shall inform the Parliament of any reviews taking place and shall report to the European Parliament on its conclusions.

7 Where, in accordance with paragraph 5, a delegated act determining that the supervisory regime of a third country is provisionally equivalent has been adopted, that third country shall be deemed to be equivalent of the purposes of the second subparagraph of paragraph 1.]

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

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.

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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).

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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*.

f¹ 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 members of the college of supervisors and forward the complete application to them, 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.

3 If, within the six-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the six-month period or after a joint decision has been reached.

If, in accordance with Article 41(2) and (3) and Article 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the group supervisor shall take a final decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The six-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

4 EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5 Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the group supervisor shall provide the applicant with a document setting out the full reasons.

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6 In the absence of the adoption of a joint decision within six months from the date of receipt of the complete application by the group, the group supervisor shall make its own decision on the application.

The group supervisor shall duly take into account any views and reservations of the other supervisory authorities concerned expressed during that six-month period.

The group supervisor shall provide the applicant and the other supervisory authorities concerned with a document setting out its fully reasoned decision.

That decision shall be recognised as determinative and shall be 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 other members of the college of supervisors.

EIOPA may issue guidelines to ensure consistent and coherent application of this paragraph.]

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

Article 232

Group capital add-on

[^{F1}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 (d) may arise at group level, in particular where:]

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- (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.

[^{F1}Article 37(1) to (5), together with the delegated acts and implementing technical standards taken in accordance with Article 37(6), (7) and (8) shall apply *mutatis mutandis*.]

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#).

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;
 - 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

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related insurance or reinsurance undertakings and of the Solvency Capital Requirement of the related insurance or reinsurance undertakings.

[^{F25} 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 or mixed financial 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.

[^{F1}Article 37(1) to (5), together with the delegated acts and implementing technical standards taken in accordance with Article 37(6), (7) and (8), shall apply *mutatis mutandis*.]

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).
- F2** 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).

[^{F1}Article 234

Delegated acts concerning Articles 220 to 229 and 230 to 233

The Commission shall adopt delegated acts in accordance with Article 301a specifying the technical principles and methods set out in Articles 220 to 229 and the application of Articles 230 to 233, reflecting the economic nature of specific legal structures.]

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Subsection 5

[^{F2}Supervision of group solvency for insurance and reinsurance undertakings that are subsidiaries of an insurance holding company or a mixed financial holding company]

[^{F2}Article 235

Group solvency of an insurance holding company or a mixed financial holding company

1 Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company or mixed financial 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 or mixed financial holding company applying Article 220(2) to Article 233.

2 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 Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I as regards the Solvency Capital Requirement and subject to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I 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.

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l^{F1} 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 cooperation, 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 the other members of the college of supervisors and forward the complete application to them, 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 If, within the three-month period referred to in paragraph 2, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the group supervisor shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

EIOPA shall take its decision within one month. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached.

If, in accordance with Article 41(2) and (3) and Article 44(1)(3) of Regulation (EU) No 1094/2010, the decision proposed by the panel is rejected, the group supervisor shall take a final decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

4 EIOPA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in paragraph 2 with regard to the applications for permissions referred to in paragraph 1, with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

5 Where the supervisory authorities concerned have reached a joint decision referred to in paragraph 2, the supervisory authority having authorised the subsidiary shall provide the applicant with the decision stating the full reasons. The joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

6 In the absence of a joint decision of the supervisory authorities concerned within the three-month period set out in paragraph 2, the group supervisor shall take its own decision with regard to the application.

During that period the group supervisor shall duly consider the following:

- a any views and reservations of the supervisory authorities concerned;

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b any reservations of the other supervisory authorities within the college of supervisors.

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. The group supervisor shall provide the applicant and the other supervisory authorities concerned with a copy of the decision. The decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.]

Textual Amendments

F1 Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

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.

[^{F1}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.

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

[^{F15} Where the supervisory authority and the group supervisor disagree, either supervisor may, within one month from the proposal of the supervisory authority, refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within one month of such referral. The one-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation. The matter shall not be referred to EIOPA after the end of the one-month period referred to in this subparagraph or after an agreement has been reached within the college in accordance with paragraph 4 of this Article.

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19 of that Regulation, and shall take its decision in conformity with EIOPA's decision.

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

The decision shall state the full reasons on which it is based.

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

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

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.

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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.

[^{F34} The supervisory authority or the group supervisor may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 where they disagree regarding either of the following:

- a on the approval of the recovery plan, including any extension of the recovery period, within the four-month period referred to in paragraph 1; or
- b on the approval of the proposed measures, within the one-month period referred to in paragraph 2.

In those cases, EIOPA may act in accordance with the powers conferred to it by that Article, and shall take its decision within one month of such referral.

The matter shall not be referred to EIOPA:

- a after the end of the four-month or the one-month period respectively referred to in the first subparagraph;
- b after an agreement has been reached within the college in accordance with the second subparagraph of paragraph 1 or the second subparagraph of paragraph 2;
- c in the case of emergency situations as referred to in paragraph 2.

The four-month or the one-month period respectively shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

The supervisory authority having authorised that subsidiary shall defer its decision and await any decision that EIOPA may take in accordance with Article 19(3) of that regulation, and shall take its final decision in conformity with EIOPA's decision. That decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned.

The decision shall state the full reasons on which it is based.

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

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Textual Amendments

- F3** Inserted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

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:
- the condition referred to in Article 236(a) is no longer complied with;
 - 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;
 - 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.

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[^{F1}Article 241

Subsidiaries of an insurance or reinsurance undertaking: delegated acts

The Commission shall adopt delegated acts in accordance with Article 301a specifying:

- (a) the criteria for assessing whether the conditions stated in Article 236 are satisfied;
- (b) the criteria for assessing what should be considered an emergency situation under Article 239(2);
- (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.]

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

Article 242

Review

[^{F1} By 31 December 2017, 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 and the supervisory practices concerning setting the capital add-ons, and shall present a report to the European Parliament and to the Council accompanied, where appropriate, by proposals for the amendment of this Directive.]

2 By [^{F1}31 December 2018], 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;

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- 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.

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

[^{F2}Article 243

Subsidiaries of an insurance holding company and mixed financial holding company

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

Textual Amendments

- F2** 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 \(Text with EEA relevance\).](#)

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.

^{F2} Member States shall require insurance and reinsurance undertakings or insurance holding companies or mixed financial 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, unless Article 215(2) applies.

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, the mixed financial holding company or 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 referred to in the first subparagraph 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.

[^{F14} The Commission shall adopt delegated acts in accordance with Article 301a as regards the definition of a significant risk concentration for the purposes of paragraphs 2 and 3 of this Article.

5 In order to ensure consistent harmonisation in relation to supervision of risk concentration, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the identification of a significant risk concentration and the determination of appropriate thresholds for the purposes of paragraph 3.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

6 In order to ensure uniform conditions of application of this Article, EIOPA shall develop draft implementing technical standards on the forms and templates for reporting on such risk concentrations for the purposes of paragraph 2.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 September 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.]

Textual Amendments

F1 Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority](#)

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(European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

F2 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 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.

[^{F22} Member States shall require insurance and reinsurance undertakings, insurance holding companies and mixed financial 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, unless Article 215(2) applies.

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, the mixed financial holding company or 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*.

[^{F14} The Commission shall adopt delegated acts in accordance with Article 301a as regards the definition of a significant intra-group transaction for the purposes of paragraphs 2 and 3 of this Article.

5 In order to ensure consistent harmonisation in relation to supervision of intra-group transactions, EIOPA may develop draft regulatory technical standards to specify the identification of a significant intra-group transaction for the purposes of paragraph 3.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

6 In order to ensure uniform conditions of application of this Article, EIOPA may develop draft implementing technical standards on the procedures, forms and templates for the reporting on such intra-group transactions for the purposes of paragraph 2.

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Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.]

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).
- F2** 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).

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.

[^{F24} Member States shall require the participating insurance undertaking or reinsurance undertaking, the insurance holding company or the mixed financial 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, the insurance holding company or the mixed financial holding

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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.

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company may, subject to the agreement of the group supervisor, undertake any assessments required pursuant to 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.

Textual Amendments

- F2** 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 \(Text with EEA relevance\).](#)

CHAPTER III

Measures to facilitate group supervision

Article 247

Group Supervisor

1 A single supervisor, responsible for coordination and exercise of group supervision (group supervisor), shall be designated from among the supervisory authorities of the Member States concerned.

2 Where the same supervisory authority is competent for all insurance and reinsurance undertakings in a group, the task of group supervisor shall be exercised by that supervisory authority.

In all other cases and subject to paragraph 3, the task of group supervisor shall be exercised:

- a where a group is headed by an insurance or reinsurance undertaking, by the supervisory authority which has authorised that undertaking;
- [^{F2}b where a group is not headed by an insurance or reinsurance undertaking, by the following supervisory authority:
 - (i) where the parent of an insurance or reinsurance undertaking is an insurance holding company or mixed financial holding company, the supervisory authority which has authorised that insurance or reinsurance undertaking,

- (ii) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or mixed financial holding company, and one of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority of the insurance or reinsurance undertaking authorised in that Member State,
- (iii) where the group is headed by more than one insurance holding company or mixed financial holding company which have their head offices in different Member States and there is an insurance or reinsurance undertaking in each of those Member States, the supervisory authority of the insurance or reinsurance undertaking with the largest balance sheet total,
- (iv) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or mixed financial holding company and none of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total, or
- (v) where the group is a group without a parent undertaking, or in any circumstances not referred to in points (i) to (iv), the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total.]

[^{F13} In particular cases, the supervisory authorities concerned may, at the request of any of the other supervisory authorities, take a joint decision to derogate from the criteria set out in paragraph 2 where their application would be inappropriate, taking into account the structure of the group and the relative importance of the insurance and reinsurance undertakings' activities in different countries, and designate a different supervisory authority as group supervisor.

For that purpose, any of the supervisory authorities concerned may request that a discussion be opened on whether the criteria referred to in paragraph 2 are appropriate. Such a discussion shall not take place more often than annually.

The supervisory authorities concerned shall do everything within their power to reach a joint decision on the choice of the group supervisor within three months from the request for discussion. Before taking their decision, the supervisory authorities concerned shall give the group an opportunity to state its opinion.

The designated group supervisor shall submit the joint decision to the group stating the full reasons.

4 If, within the three-month period referred to in the third subparagraph of paragraph 3, any of the supervisory authorities concerned has referred the matter to EIOPA in accordance with Article 19 of Regulation (EU) No 1094/2010, the supervisory authorities concerned shall defer their joint decision and await any decision that EIOPA may take in accordance with Article 19(3) of that Regulation, and shall take their joint decision in conformity with EIOPA's decision. That joint decision shall be recognised as determinative and shall be applied by the supervisory authorities concerned. The three-month period shall be deemed the conciliation period within the meaning of Article 19(2) of that Regulation.

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5 EIOPA shall take its decision within one month of a referral under paragraph 4. The matter shall not be referred to EIOPA after the end of the three-month period or after a joint decision has been reached. The designated group supervisor shall submit the joint decision to the group and to the college of supervisors stating the full reasons.

6 In the absence of a joint decision, the task of group supervisor shall be exercised by the supervisory authority identified in accordance with paragraph 2 of this Article.

7 EIOPA shall inform the European Parliament, the Council and the Commission of any major difficulties with the application of paragraphs 2, 3 and 6 on at least an annual basis.

In the event that any major difficulties arise from the application of the criteria set out in paragraphs 2 and 3 of this Article, the Commission shall adopt delegated acts in accordance with Article 301a further specifying those criteria.]

8 Where a Member State has more than one supervisory authority for the prudential supervision of insurance and reinsurance undertakings, such Member State shall take the necessary measures to ensure coordination between those authorities.

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).
- F2** 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 248

Rights and duties of the group supervisor and the other supervisors College of supervisors

1 The rights and duties assigned to the group supervisor with regard to group supervision shall comprise the following:

- a coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;
- b supervisory review and assessment of the financial situation of the group;
- c assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 218 to 245;
- d assessment of the system of governance of the group, as set out in Article 246, and of whether the members of the administrative, management or supervisory body of the participating undertaking fulfil the requirements set out in Articles 42 and 257;
- e planning and coordination, through regular meetings held at least annually or through other appropriate means, of supervisory activities in going-concern as well as in emergency situations, in cooperation with the supervisory authorities concerned and taking into account the nature, scale and complexity of the risks inherent in the business of all undertakings that are part of the group;

- f other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 231 and 233 and leading the process for permitting the application of the regime established in Articles 237 to 240.

2 In order to facilitate the exercise of the group supervision tasks referred to in paragraph 1, a college of supervisors, chaired by the group supervisor, shall be established.

The college of supervisors shall ensure that cooperation, exchange of information and consultation processes among the supervisory authorities that are members of the college of supervisors, are effectively applied in accordance with Title III, with a view to promoting the convergence of their respective decisions and activities.

[^{F3}Where the group supervisor fails to carry out the tasks referred to in paragraph 1 or where the members of the college of supervisors do not cooperate to the extent required in this paragraph, any of the supervisory authorities concerned may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.]

[^{F13} The membership of the college of supervisors shall include the group supervisor, the supervisory authorities of all the Member States in which the head offices of all subsidiary undertakings are situated, and EIOPA in accordance with Article 21 of Regulation (EU) No 1094/2010.]

The supervisory authorities of significant branches and related undertakings shall also be allowed to participate in the college of supervisors. However, their participation shall be limited to achieving the objective of an efficient exchange of information.

The effective functioning of the college of supervisors may require that some activities be carried out by a reduced number of supervisory authorities therein.

4 Without prejudice to any measure adopted pursuant to this Directive, the establishment and functioning of the college of supervisors shall be based on coordination arrangements concluded by the group supervisor and the other supervisory authorities concerned.

[^{F1}Where diverging views concerning the coordination arrangements arise, any member of the college of supervisors may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article. The group supervisor shall take its final decision in conformity with EIOPA's decision. The group supervisor shall transmit the decision to the other supervisory authorities concerned.]

After consulting the supervisory authorities concerned, the group supervisor shall duly consider any advice produced by CEIOPS within two months of receipt thereof before taking its final decision. The decision shall state the full reasons and shall contain an explanation of any significant deviation from any advice given by CEIOPS. The group supervisor shall transmit the decision to the other supervisory authorities concerned.

5 Without prejudice to any measure adopted pursuant to this Directive, the coordination arrangements referred to in paragraph 4 shall specify the procedures for:

- a the decision-making process among the supervisory authorities concerned in accordance with Articles 231, 232 and 247;
- b consultation under paragraph 4 of this Article and under Article 218(5).

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[^{F1}Without prejudice to the rights and duties allocated by this Directive to the group supervisor and to other supervisory authorities, the coordination arrangements may entrust additional tasks to the group supervisor, the other supervisory authorities or EIOPA where this would result in the more efficient supervision of the group and would not impair the supervisory activities of the members of the college of supervisors in respect of their individual responsibilities.]

In addition, the coordination arrangements may set out procedures for:

- a consultation among the supervisory authorities concerned, in particular as referred to in Articles 213 to 217, 219 to 221, 227, 244 to 246, 250, 256, 260 and 262;
- b cooperation with other supervisory authorities.

[^{F16} EIOPA shall issue guidelines for the operational functioning of colleges of supervisors on the basis of comprehensive reviews of their work in order to assess the level of convergence between them. Such reviews shall be carried out at least every three years. Member States shall ensure that the group supervisor transmits to EIOPA the information on the functioning of the colleges of supervisors and on any difficulties encountered that are relevant for those reviews.]

In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA may develop draft regulatory technical standards to specify the operational functioning of colleges of supervisors based on the guidelines referred to in the first subparagraph.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

7 In order to ensure consistent harmonisation in relation to the coordination between supervisory authorities, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify the coordination of group supervision for the purposes of paragraphs 1 to 6.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

8 The Commission shall adopt delegated acts in accordance with Article 301a in regard to the definition of ‘significant branch’.]

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#).
- F3** Inserted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\)](#).

Article 249

Cooperation and exchange of information between supervisory authorities

1 The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, in particular in cases where an insurance or reinsurance undertaking encounters financial difficulties.

[^{F1}With the objective of ensuring that the supervisory authorities, including the group supervisor, have the same amount of relevant information available to them, without prejudice to their respective responsibilities, and irrespective of whether they are established in the same Member State, they shall provide one another with such information in order to allow and facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In that regard, the supervisory authorities concerned and the group supervisor shall communicate to one another without delay all relevant information as soon as it becomes available, or exchange information on request. The information referred to in this subparagraph includes, but is not limited to, information about actions of the group and supervisory authorities, and information provided by the group.]

[^{F4}The group supervisor shall provide the supervisory authorities concerned and EIOPA with information regarding the group, in accordance with Article 19, Article 51(1) and Article 254(2), in particular regarding the legal structure and the governance and organisational structure of the group.]

[^{F3}1a Where a supervisory authority has not communicated relevant information or a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within two weeks, the supervisory authorities may refer the matter to EIOPA.

Where the matter is referred to it, EIOPA may, without prejudice to Article 258 TFEU, act in accordance with the powers conferred on it by Article 19 of Regulation (EU) No 1094/2010.]

2 The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall each call immediately for a meeting of all supervisory authorities involved in group supervision in at least the following circumstances:

- a where they become aware of a significant breach of the Solvency Capital Requirement or a breach of the Minimum Capital Requirement of an individual insurance or reinsurance undertaking;
- b where they become aware of a significant breach of the Solvency Capital Requirement at group level calculated on the basis of consolidated data or the aggregated group Solvency Capital Requirement, in accordance with whichever calculation method is used in accordance with Title III, Chapter II, Section 1, Subsection 4;
- c where other exceptional circumstances are occurring or have occurred.

[^{F13} In order to ensure consistent harmonisation in relation to the coordination and exchange of information between supervisory authorities, EIOPA shall, subject to Article 301b, develop draft regulatory technical standards to specify:

- a the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned;

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- b the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

4 In order to ensure uniform conditions of application in relation to the coordination and exchange of information between supervisory authorities, EIOPA shall develop draft implementing technical standards on the procedures and templates for the submission of information to the group supervisor as well as the procedure for the cooperation and the exchange of information between supervisory authorities as laid down in this Article.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 September 2015.;

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.]

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).
- F3** Inserted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).
- F4** 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).

F¹ Article 250

Consultation between supervisory authorities

1 Without prejudice to Article 248, the supervisory authorities concerned shall, where a decision is of importance for the supervisory tasks of other supervisory authorities, prior to that decision, consult each other in the college of supervisors with regard to the following:

- a changes in the shareholder structure, organisational or management structure of insurance and reinsurance undertakings in a group, which require the approval or authorisation of supervisory authorities;
- b the decision on the extension of the recovery period under Article 138(3) and (4);
- c major sanctions or exceptional measures taken by supervisory authorities, including the imposition of a capital add-on to the Solvency Capital Requirement under Article 37 and the imposition of any limitation on the use of an internal model for the calculation of the Solvency Capital Requirement under Title I, Chapter VI, Section 4, Subsection 3.

For the purposes of points (b) and (c) of the first subparagraph, the group supervisor shall always be consulted.

In addition, the supervisory authorities concerned shall, where a decision is based on information received from other supervisory authorities, consult each other prior to that decision.

2 Without prejudice to Article 248, a supervisory authority may decide not to consult other supervisory authorities in cases of urgency or where such consultation could jeopardise the effectiveness of the decision. In that case, the supervisory authority shall, without delay, inform the other supervisory authorities concerned.]

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

Article 251

Requests from the group supervisor to other supervisory authorities

The group supervisor may invite the supervisory authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the group supervision pursuant to Article 247, to request from the parent undertaking any information which would be relevant for the exercise of its coordination rights and duties as laid down in Article 248, and to transmit that information to the group supervisor.

The group supervisor shall, when it needs information referred to in Article 254(2) which has already been given to another supervisory authority, contact that authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

Article 252

Cooperation with authorities responsible for credit institutions and investment firms

Where an insurance or reinsurance undertaking and either a credit institution as defined in Directive 2006/48/EC or an investment firm as defined in Directive 2004/39/EC, or both, are directly or indirectly related or have a common participating undertaking, the supervisory authorities concerned and the authorities responsible for the supervision of those other undertakings shall cooperate closely.

Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular as set out in this Title.

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Article 253

Professional secrecy and confidentiality

Member States shall authorise the exchange of information between their supervisory authorities and between their supervisory authorities and other authorities, as referred to in Articles 249 to 252.

Information received in the framework of group supervision, and in particular any exchange of information between supervisory authorities and between supervisory authorities and other authorities which is provided for in this Title, shall be subject to the provisions of Article 295.

Article 254

Access to information

1 Member States shall ensure that the natural and legal persons included within the scope of group supervision, and their related undertakings and participating undertakings, are able to exchange any information which could be relevant for the purposes of group supervision.

[^{F12} Member States shall provide that their authorities responsible for exercising group supervision have access to any information relevant for the purpose of that supervision regardless of the nature of the undertaking concerned. Article 35(1) to (5) shall apply *mutatis mutandis*.

The group supervisor may limit regular supervisory reporting with a frequency shorter than one year at the level of the group where all insurance or reinsurance undertakings within the group benefit from the limitation in accordance with Article 35(6) taking into account the nature, scale and complexity of the risks inherent in the business of the group.

The group supervisor may exempt from reporting on an item-by-item basis at the level of the group where all insurance or reinsurance undertakings within the group benefit from the exemption in accordance with Article 35(7), taking into account the nature, scale and complexity of the risks inherent in the business of the group and the objective of financial stability.]

The supervisory authorities concerned may address the undertakings in the group directly to obtain the necessary information, only where such information has been requested from the insurance undertaking or reinsurance undertaking subject to group supervision and has not been supplied by it within a reasonable period of time.

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

Article 255

Verification of information

1 Member States shall ensure that their supervisory authorities may carry out within their territory, either directly or through the intermediary of persons whom they appoint for that purpose, on-site verification of the information referred to in Article 254 on the premises of any of the following:

- a the insurance or reinsurance undertaking subject to group supervision;
- b related undertakings of that insurance or reinsurance undertaking;
- c parent undertakings of that insurance or reinsurance undertaking;
- d related undertakings of a parent undertaking of that insurance or reinsurance undertaking.

2 Where supervisory authorities wish in specific cases to verify the information concerning an undertaking, whether regulated or not, which is part of a group and is situated in another Member State, they shall ask the supervisory 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 that request either by carrying out the verification directly, 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 group supervisor shall be informed of the action taken.

The supervisory authority which made the request may, where it so wishes, participate in the verification when it does not carry out the verification directly.

[^{F3}Where the request to another supervisory authority to have a verification carried out in accordance with this paragraph has not been acted upon within two weeks, or where the supervisory authority is unable in practice to exercise its right to participate in accordance with the third subparagraph, the requesting authority may refer the matter to EIOPA and may request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

In accordance with Article 21 of Regulation (EU) No 1094/2010, EIOPA shall be entitled to participate in on-site examinations where they are carried out jointly by two or more supervisory authorities.]

Textual Amendments

- F3** Inserted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

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Article 256

Group solvency and financial condition report

[^{F21} Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group. Articles 51, 53, 54 and 55 shall apply *mutatis mutandis*.

2 A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the agreement of the group supervisor, provide a single report on its solvency and financial condition which shall comprise the following:

- a the information at the level of the group to be disclosed in accordance with paragraph 1;
- b the information for any of the subsidiaries within the group, which information must be individually identifiable and must be disclosed in accordance with Articles 51, 53, 54 and 55.

Before granting the agreement in accordance with the first subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors.]

3 Where the report referred to in paragraph 2 fails to include information which the supervisory authority having authorised a subsidiary within the group requires comparable undertakings to provide, and where the omission is material, the supervisory authority concerned shall have the power to require the subsidiary concerned to disclose the necessary additional information.

[^{F14} The Commission shall adopt delegated acts in accordance with Article 301a further specifying the information which must be disclosed and the deadlines for the annual disclosure of the information as regards the single solvency and financial condition report in accordance with paragraph 2 and the report on the solvency and financial condition report at the level of the group in accordance with paragraph 1.]

[^{F35} In order to ensure uniform conditions of application in relation to the single and group solvency and financial condition report, EIOPA shall develop draft implementing technical standards on the procedures and templates for, and the means of, disclosure of the single and group solvency and financial report as laid down in this Article.

EIOPA shall submit those draft implementing technical standards to the Commission by 30 June 2015.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.]

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

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- F2** 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** Inserted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

[^{F3}Article 256a

Group structure

Member States shall require insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, at the level of the group, on an annual basis, the legal structure and the governance and organisational structure, including a description of all subsidiaries, material related undertakings and significant branches belonging to the group.]

Textual Amendments

- F3** Inserted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

[^{F2}Article 257

Administrative, management or supervisory body of insurance holding companies and mixed financial holding companies

Member States shall require that all persons who effectively run the insurance holding company or the mixed financial holding company are fit and proper to perform their duties.

Article 42 shall apply *mutatis mutandis*.]

Textual Amendments

- F2** Substituted by Directive 2011/89/EU of the European Parliament and of the Council of 16 November 2011 amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate (Text with EEA relevance).

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Article 258

Enforcement measures

[^{F21} Where the insurance or reinsurance undertakings in a group do not comply with the requirements provided for in Articles 218 to 246 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 financial position of the insurance or reinsurance undertakings, measures necessary to rectify the situation as soon as possible shall be adopted by:

- a the group supervisor with respect to insurance holding companies and mixed financial holding companies;
- b the supervisory authorities with respect to insurance and reinsurance undertakings.

Where, in the case referred to in point (a) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance holding company or mixed financial holding company has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Where, in the case referred to in point (b) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance or reinsurance undertaking has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Without prejudice to paragraph 2, Member States shall determine the measures which may be taken by their supervisory authorities with respect to insurance holding companies and mixed financial holding companies.

The supervisory authorities concerned, including the group supervisor, shall, where appropriate, coordinate their measures.

2 Without prejudice to their criminal law provisions, Member States shall impose sanctions on or adopt measures relating to insurance holding companies and mixed financial holding companies which infringe laws, regulations or administrative provisions brought into force to transpose this Title, or in relation to the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such sanctions or measures are effective, in particular where the central administration or main establishment of an insurance holding company or mixed financial holding company is not located in the same Member State as its head office.]

[^{F13} The Commission may adopt delegated acts in accordance with Article 301a for the coordination of enforcement measures referred to in paragraphs 1 and 2 of this Article.]

Textual Amendments

- F1** Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

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F2 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).

[^{F1}Article 259

Reporting of EIOPA

1 EIOPA shall report to the European Parliament annually in accordance with Article 50 of Regulation (EU) No 1094/2010.

2 EIOPA shall report, inter alia, on all relevant and significant experiences of the supervisory activities and cooperation between supervisors in the framework of Title III, and, in particular:

- a the process of the nomination of the group supervisor, the number of group supervisors and their geographical spread;
- b the working of the college of supervisors, in particular the involvement and commitment of supervisory authorities where they are not the group supervisor.

3 EIOPA may, for the purposes of paragraph 1 of this Article, also report on the main lessons drawn from the reviews referred to in Article 248(6), where appropriate.]

Textual Amendments

F1 Substituted by Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1094/2010 and (EU) No 1095/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

CHAPTER IV

Third countries

[^{F1}Article 260

Parent undertakings outside the Union: verification of equivalence

1 In the case referred to in Article 213(2)(c), the supervisory authorities concerned shall verify whether the insurance and reinsurance undertakings, the parent undertaking of which has its head office outside the Union, are subject to supervision, by a third-country supervisory authority, which is equivalent to that provided for by this Title on the supervision at the level of the group of insurance and reinsurance undertakings referred to in Article 213(2)(a) and (b).

Where no delegated act has been adopted in accordance with paragraph 2, 3 or 5 of this Article, the verification shall be carried out by the supervisory authority, which would be the group supervisor if the criteria set out in Article 247(2) were to apply (the ‘acting group supervisor’), at the request of the parent undertaking or of any of the insurance and reinsurance undertakings authorised in the Union or on its own initiative. EIOPA

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shall assist the acting group supervisor in accordance with Article 33(2) of Regulation (EU) No 1094/2010.

In so doing, that acting group supervisor shall, assisted by EIOPA, consult the other supervisory authorities concerned, before taking a decision on equivalence. That decision shall be taken in accordance with the criteria adopted in accordance with paragraph 2. The acting group supervisor shall not take any decision in relation to a third country that is in opposition to any previous decision taken vis-à-vis that third country, save where it is necessary to take into account significant changes to the supervisory regime laid down in Title I and to the supervisory regime in the third country.

Where supervisory authorities disagree with the decision taken in accordance with the third subparagraph, they may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010 within three months after notification of the decision by the acting group supervisor. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

2 The Commission may adopt delegated acts in accordance with Article 301a specifying the criteria for assessing whether the prudential regime in a third country for the supervision of groups is equivalent to that laid down in this Title.

3 If the criteria adopted in accordance with paragraph 2 of this Article have been fulfilled by a third country, the Commission may, in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the prudential regime of that third country is equivalent to that laid down in this Title.

Such a delegated act shall be regularly reviewed to take into account any changes to the prudential regime for the supervision of groups laid down in this Title, and to the prudential regime in the third country for the supervision of groups, and to any other change in regulation that may affect the decision on equivalence.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

4 In the absence of a delegated act adopted by the Commission in accordance with paragraph 3 or 5 of this Article, Article 262 shall apply.

5 By way of derogation from paragraph 3, and even if the criteria specified in paragraph 2 have not been fulfilled, the Commission may, for a limited period and in accordance with Article 301a, and assisted by EIOPA in accordance with Article 33(2) of Regulation (EU) No 1094/2010, adopt delegated acts determining that the prudential regime of a third country applied to undertakings the parent undertaking of which has its head office outside the Union on 1 January 2014 is temporarily equivalent to that laid down in Title I, if that third country has complied with at least the following criteria:

- a it has given a commitment to the Union to adopt and apply a prudential regime that is capable of being assessed equivalent in accordance with paragraph 3, before the end of that limited period and to engage in the equivalence assessment process;
- b it has established a work programme to fulfil the commitment under point (a);
- c it has allocated sufficient resources to fulfil the commitment under point (a);
- d it has a prudential regime that is risk based and establishes quantitative and qualitative solvency requirements and requirements relating to supervisory reporting and transparency and to the supervision of groups;

- e it has entered into written arrangements to cooperate and exchange confidential supervisory information with EIOPA and supervisory authorities as defined in Article 13(10);
- f it has an independent system of supervision;
- g it has established obligations on professional secrecy for all persons acting on behalf of its supervisory authorities, in particular on the exchange of information with EIOPA and supervisory authorities as defined in Article 13(10).

Any delegated acts on temporary equivalence shall take into account the reports by the Commission in accordance with Article 177(2). Those delegated acts shall be regularly reviewed, on the basis of progress reports by the relevant third country, which are presented to and assessed by the Commission annually. EIOPA shall assist the Commission in the assessment of those progress reports.

EIOPA shall publish and keep up to date on its website a list of all third countries referred to in the first subparagraph.

The Commission may adopt delegated acts in accordance with Article 301a further specifying the conditions laid down in the first subparagraph. Delegated acts may also cover powers for supervisory authorities to impose additional supervisory reporting requirements during the period of temporary equivalence.

6 The limited period referred to in paragraph 5 shall end on 31 December 2020 or on the date on which, in accordance with paragraph 3, the prudential regime of that third country has been deemed to be equivalent to that laid down in this Title, whichever is the earlier.

That period may be extended by a maximum of one more year, where such time is necessary for EIOPA and the Commission to carry out the assessment of equivalence for the purposes of paragraph 3.

7 Where a delegated act determining that the prudential regime of a third country is temporarily equivalent is adopted in accordance with paragraph 5, Member States shall apply Article 261, unless there is an insurance or reinsurance undertaking situated in a Member State which has a balance sheet total that exceeds the balance sheet total of the parent undertaking situated outside the Union. In that case, the task of the group supervisor shall be exercised by the acting group supervisor.]

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

Article 261

Parent undertakings outside the Community: equivalence

1 In the event of equivalent supervision referred to in Article 260, Member States shall rely on the equivalent group supervision exercised by the third-country supervisory authorities, in accordance with paragraph 2.

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2 Articles 247 to 258 shall apply *mutatis mutandis* to the cooperation with third-country supervisory authorities.

[^{F2}Article 262

Parent undertakings registered in a third country: absence of equivalence

[^{F1} In the absence of equivalent supervision referred to in Article 260, or where a Member State does not apply Article 261 in the event of temporary equivalence in accordance with Article 260(7), that Member State shall apply either of the following to insurance and reinsurance undertakings:

- a Articles 218 to 235, and Articles 244 to 258, *mutatis mutandis*;
- b one of the methods set out in paragraph 2.]

The general principles and methods set out in Articles 218 to 258 shall apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking.

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

- a a Solvency Capital Requirement determined in accordance with the principles of Article 226 where it is an insurance holding company or mixed financial holding company;
- b a Solvency Capital Requirement determined in accordance with the principles of Article 227, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

2 Member States shall allow their supervisory authorities to apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings in a group. Those methods shall be agreed by the group supervisor, after consulting the other supervisory authorities concerned.

The supervisory authorities may in particular require the establishment of an insurance holding company which has its head office in the Union, or a mixed financial holding company which has its head office in the Union and apply this Title to the insurance and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.

The methods chosen shall allow the objectives of the group supervision as defined in this Title to be achieved and shall be notified to the other supervisory authorities concerned and the Commission.]

Textual Amendments

- F1** Substituted by [Directive 2014/51/EU of the European Parliament and of the Council of 16 April 2014 amending Directives 2003/71/EC and 2009/138/EC and Regulations \(EC\) No 1060/2009, \(EU\) No 1094/2010 and \(EU\) No 1095/2010 in respect of the powers of the European Supervisory Authority \(European Insurance and Occupational Pensions Authority\) and the European Supervisory Authority \(European Securities and Markets Authority\).](#)

- F2** 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 263

Parent undertakings outside the Community: levels

[^{F2}Where the parent undertaking referred to in Article 260 is itself a subsidiary of an insurance holding company or a mixed financial holding company which has its head office in a third country or of a third-country insurance or reinsurance undertaking, Member States shall apply the verification provided for in Article 260 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.]

Supervisory authorities may, however, in the absence of equivalent supervision referred to in Article 260, carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.]

In such a case, the supervisory authority referred to in the second subparagraph of Article 260(1) shall explain its decision to the group.

Article 262 shall apply *mutatis mutandis*.

Textual Amendments

- F2** 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 264

Cooperation with third-country supervisory authorities

1 The Commission may submit proposals to the Council for the negotiation of agreements with one or more third countries regarding the means of exercising group supervision over:

- a insurance or reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 213 which have their head office situated in a third country; and
- b third-country insurance undertakings or third-country reinsurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 213 which have their head office in the Community.

2 The agreements referred to in paragraph 1 shall, in particular, seek to ensure that:

- a the supervisory authorities of the Member States are able to obtain the information necessary for the supervision at the level of the group of insurance and reinsurance

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- undertakings which have their head office in the Community and which have subsidiaries or hold participations in undertakings outside the Community; and
- b the supervisory authorities of third countries are able to obtain the information necessary for the supervision at the level of the group of third-country insurance and reinsurance undertakings which have their head office in their territories and which have subsidiaries or hold participations in undertakings in one or more Member States.
- 3 Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Insurance and Occupational Pensions Committee, examine the outcome of the negotiations referred to in paragraph 1.

CHAPTER V

Mixed-activity insurance holding companies

Article 265

Intra-group transactions

- 1 Member States shall ensure that, where the parent undertaking of one or more insurance or reinsurance undertakings is a mixed-activity insurance holding company, the supervisory authorities responsible for the supervision of those insurance or reinsurance undertakings exercise general supervision over transactions between those insurance or reinsurance undertakings and the mixed-activity holding company and its related undertakings.
- 2 Articles 245, 249 to 255 and 258 shall apply *mutatis mutandis*.

Article 266

Cooperation with third countries

As concerns cooperation with third countries, Article 264 shall apply *mutatis mutandis*.

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- (1) [^{F2}OJ L 331, 15.12.2010, p. 12.]
- (2) [^{F2}OJ L 331, 15.12.2010, p. 48.]
- (3) [^{F2}OJ L 331, 15.12.2010, p. 84.]

Textual Amendments

- F2** 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 \(Text with EEA relevance\).](#)