

GUIDELINES

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on exclusion of undertakings from the scope of
group supervision

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eiopa

European Insurance and
Occupational Pensions Authority

GUIDELINES ON EXCLUSION OF UNDERTAKINGS FROM THE SCOPE OF GROUP SUPERVISION

INTRODUCTION

1. In accordance with Article 16 of Regulation (EU) No 1094/2010 (EIOPA Regulation)¹ and Article 214(3) of Directive 2009/138/EC (Solvency II Directive)², EIOPA issues these Guidelines to further specify the exceptional circumstances where the exclusion of one or more undertakings from the scope of group supervision in accordance with Article 214(2) would result in a case that would not trigger the application of group supervision under Article 213(2), points (a), (b), and (c) of the Solvency II Directive and the cases where it may be justified to exclude the ultimate parent undertaking, including insurance holding companies, from the scope of group supervision.
2. These Guidelines are addressed to supervisory authorities as defined in the Solvency II Directive.
3. If not defined in these Guidelines, the terms have the meaning defined in the legal acts referred to in the introduction.
4. The Guidelines apply from 30 January 2027.

GUIDELINE 1 – CIRCUMSTANCES UNDER WHICH UNDERTAKINGS SHOULD NOT BE ELIGIBLE FOR EXCLUSION BASED ON ARTICLE 214(2) WHERE EXCLUSION WOULD LEAD TO NON-APPLICATION OF GROUP SUPERVISION

5. The group supervisor should not exclude an undertaking from the scope of group supervision where it leads to non-application of group supervision under Article 213(2), points (a) to (c) of the Solvency II Directive in any of the following circumstances:
 - (a) there are material intra-group transactions, including the provision of ancillary services, between the undertaking or its related undertakings and any insurance or reinsurance undertakings in the group;
 - (b) the undertaking coordinates financial or investment decisions or exercises significant influence over the operations or processes of any other insurance or reinsurance undertakings in the group;
 - (c) the application of Articles 229 or 229a of the Solvency II Directive to the undertaking would allow a better understanding of the risks that could possibly affect the other insurance or reinsurance undertakings in the group instead of non-application of group supervision.

¹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pension Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

² Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II), (OJ L 335, 17.12.2009, p. 1).

GUIDELINE 2 – ADDITIONAL CIRCUMSTANCES TO EXCLUDE UNDERTAKINGS BASED ON ARTICLE 214(2)(A) WHERE EXCLUSION WOULD LEAD TO NON-APPLICATION OF GROUP SUPERVISION

6. The group supervisor should consider the exclusion of one or more undertakings from the scope of group supervision based on legal impediments to information exchange between authorities in accordance with Article 214(2)(a) of the Solvency II Directive, leading to non-application of group supervision under Article 213(2), points (a) to (c) of the Solvency II Directive, only where the following conditions apply:
 - (a) the undertaking is located in a third country with no equivalence decision under Articles 227 and 260 of the Solvency II Directive;
 - (b) the third country supervisory authority of the undertaking is not a party to the IAIS Multilateral Memorandum of Understanding;
 - (c) based on available information the size of the undertaking in terms of total assets, and of technical provisions, where applicable, taken individually and collectively, is small in comparison with that of other undertakings of the group and the group as a whole;
 - (d) all risks that might be posed by the undertaking and its related undertakings, based on the available information, are adequately identified and managed at the level of the individual insurance and reinsurance undertakings of the group, in particular they are reflected in the own risk and solvency assessment and in the solvency position of those insurance and reinsurance undertakings.
7. Where the conditions listed above apply, the group supervisor should consider the possibility of signing a memorandum of understanding with the third country supervisory authority of the non-equivalent jurisdiction instead of applying Article 214(2)(a) of the Solvency II Directive.

GUIDELINE 3 – ADDITIONAL CIRCUMSTANCES TO EXCLUDE UNDERTAKINGS BASED ON ARTICLE 214(2) POINT (B) OR (C) WHERE EXCLUSION WOULD LEAD TO NON-APPLICATION OF GROUP SUPERVISION

8. The group supervisor should consider the exclusion of one or more undertakings from the scope of group supervision in accordance with Article 214(2), points (b) or (c) of the Solvency II Directive, leading to non-application of group supervision under Article 213(2), points (a) to (c) of the Solvency II Directive, only where the following conditions apply:
 - (a) the undertaking fulfils the conditions set out in Guideline 2, points (c) and (d);
 - (b) where the undertaking is a parent undertaking, the risks that the parent undertaking is exposed to stem almost exclusively from the risks of the insurance or reinsurance undertakings that are part of the group.

GUIDELINE 4 – APPLICATION OF GROUP SUPERVISION AT THE LEVEL OF AN INTERMEDIATE PARTICIPATING UNDERTAKING WHEN EXCLUDING THE ULTIMATE PARENT UNDERTAKING

9. The group supervisor should consider the exclusion of the ultimate parent undertaking from the scope of group supervision in accordance with Article 214(2) of the Solvency II Directive and apply group supervision at the level of an intermediate participating undertaking, only where the following conditions apply:
 - (a) the ultimate parent undertaking is not in any of the circumstances set out in Guideline 1, with the exception that dividend payments to the ultimate parent undertaking should not be regarded as material intra-group transactions for the purposes of Guideline 1, point (a);
 - (b) all the relevant group risks arising from all other undertakings, which could possibly affect the insurance or reinsurance undertakings, and all the interconnections and intra-group transactions with all other undertakings, which could possibly affect the insurance or reinsurance undertakings, are properly captured at the level of the intermediate participating undertaking;
 - (c) the group supervisor has sufficient information on the intra-group transactions between the ultimate parent undertaking or its related undertakings and the other undertakings in the group, that could possibly affect the insurance or reinsurance undertakings.

GUIDELINE 5 – REASSESSMENT OF EXCLUSIONS

10. When reassessing the decision to exclude one or more undertakings from the scope of group supervision as required under Article 214(3) of the Solvency II Directive, the group supervisor should confirm whether all the conditions justifying the exclusion are still applicable.
11. For the purpose of reassessing exclusions, the group supervisor should monitor regularly the intra-group transactions between the individual insurance and reinsurance undertakings and the excluded undertakings and their related undertakings through existing or additional reporting.

COMPLIANCE AND REPORTING RULES

12. This document contains Guidelines issued under Article 16 of the EIOPA Regulation. In accordance with Article 16(3) of the EIOPA Regulation, competent authorities and financial institutions are required to make every effort to comply with guidelines and recommendations.
13. Competent authorities that comply or intend to comply with these Guidelines should incorporate them into their regulatory or supervisory framework in an appropriate manner.
14. Competent authorities are to confirm to EIOPA whether they comply or intend to comply with these Guidelines, with reasons for non-compliance, within two months after the issuance of the translated versions.
15. In the absence of a response by this deadline, competent authorities will be considered as non-compliant to the reporting and reported as such.

FINAL PROVISION ON REVIEWS

16. These Guidelines will be subject to a review by EIOPA.