



Financial Services  
Commission

# Solvency II

Commentary around Solvency II Requirements for Insurance  
Groups

## **1. Introduction**

Solvency II (“SII”) increases the responsibilities on both insurers and the Gibraltar Financial Services Commission (“GFSC”) in respect of groups.

The GFSC is required under SII to supervise groups in order that they are able to identify risks present within the group to which insurers and their policyholders may be exposed which are not apparent when looking at the solo entities. Under SII, groups will face a range of group-specific considerations which embrace all three pillars of SII.

This document sets some of the more relevant SII requirements when considering the scope and application of group supervision under the SII Directive (“the Directive”). It includes some commentary to how they might apply to different group structures. We are engaged in discussions with the European Insurance and Occupational Pensions Authority (EIOPA) to ensure that our application of these requirements maintains consistency with other jurisdictions within the EEA.

This is not an exhaustive explanation of all requirements. We therefore encourage you to familiarise yourself with the relevant sections of the Directive and regulatory texts more fully<sup>1</sup>.

This document also describes the process where groups may apply for certain reliefs or waivers.

We further note that as part of our supervisory approach, each licensee receives a level of supervision that includes regular review of their business model, financial situation, and their risks. To inform this approach, licensees should expect more regular conversations about the wider group and its financial arrangements over the months ahead.

## **2. Scope of group supervision**

For all groups we will identify a parent entity from which the scope of group supervision will flow. All subsidiary entities to this parent will be included in the group scope, unless a group applies for the exclusion of selected entities, as described in 2.3 below.

For a group entirely within the EEA we expect that this entity will be the ultimate parent, as described in 2.1. For cases where the ultimate parent is outside of the EEA, section 2.2 sets out our considerations.

### **2.1. Groups with an ultimate parent entity within the EEA**

Article 215 of the Directive indicates that for a group within the EEA Articles 218 to 258 (which we will call ‘full application of SII group supervision’) apply only at the level of the ultimate (re)insurance undertaking or insurance holding company. That is, one Solvency II group is formed around all entities, beginning with the ultimate parent.

Recital (99) of the Directive states that “*Group supervision should apply in any case at the level of the ultimate parent undertaking which has its head office in the [EEA] Community*”, or “*at a limited number of lower levels*” where the supervisory authority deems it necessary. Further, Article 216 allows for group supervision to be applied at the national level of the head office – where this is a different jurisdiction to the ultimate parent. However, neither of these articles indicates that the

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<sup>1</sup> In particular, of the Solvency II Directive: Title III (Supervision of Insurance and Reinsurance Undertakings in a Group); of the Delegated Regulations: Title II (Insurance Groups); and the EIOPA ‘Guidelines on group solvency’.

ultimate parent and its risk should be automatically removed from the group scope. The GFSC only expects to allow this exclusion where the criteria of 2.3 can be met.

## **2.2. Groups with an ultimate parent entity outside of the EEA**

Where the ultimate parent of the group is a non-EEA entity, our starting point will still be to consider this ultimate parent.

The Directive states through Article 213 that, at a minimum, the non-EEA parent undertaking of the EEA insurer should be captured by group supervision. In a structure of multiple levels of non-EEA undertakings and holding companies, the Directive does not explicitly say anything further as it is mindful of the practical difficulties of exercising group supervision in certain circumstances. For example, where an EEA insurer is a subsidiary of a large international group, it may not be practical to apply the rules of Solvency II to the whole group.

From a supervisory perspective we do not want to ignore the potential for financial contagion or funding risks from non-EEA portions of a group, which may be most materially driven from the ultimate parent. Article 262 of the Directive gives scope for ‘other [supervisory] measures’, and it is our view that such measures may be used in these circumstances. These measures will be pursued at the level of the EEA insurance undertaking. While these measures will be decided upon on a case-by-case basis, section 3.2.2 gives some further indication on the type of measures to be considered.

In summary, for such groups, the scope should be decided as such to ensure that the material transactions and risks to the insurance undertaking are captured. There will then be a discussion between the firm and GFSC in order to decide on the measures that may be practically used to mitigate these risks. We are seeking information on the nature of the activities of the wider group to inform these decisions.

## **2.3. Excluding entities from SII group supervision**

As per Article 214(2) entities may be excluded from the group, but only if specific conditions are met. That is, if it can be demonstrated that the entities are of “negligible interest with respect to the objectives of group supervision” and “the inclusion of the undertaking would be inappropriate or misleading with respect to the objectives of the group supervision”; or “the undertaking is situated in a third country where there are legal impediments to the transfer of the necessary information [which would influence the ability to accurately report and calculate a group SCR]”.

Where a group wishes to exclude an entity, it will need to apply to the GFSC. Firms should set out why the firm believes that the conditions set out in Article 214(2) of the Directive are met.

The GFSC will assess applications to exclude entities from the scope of group supervision under Article 214 on a case-by-case basis.

With respect to a holding company, we would not ordinarily expect this to be of “negligible interest”. On this topic, EIOPA has not been able to envisage any circumstances in which it would be possible to exclude an undertaking from the scope of the group supervision when it leads to not applying group supervision, especially on the basis that an undertaking is of negligible interest with respect to the objectives of group supervision. Typically, the assets and liabilities of the holding company are fundamental to considerations of the group solvency position, and accordingly the holding company would not be of negligible interest.

We also note that for undertakings outside of the EEA, legal impediment to the transfer of information necessary for the group SCR calculation will not necessarily be seen as a reason to remove the undertaking from the group scope. The situation will be considered alongside the formation of the ‘other measures’ described in section 3.2.2.

### **3. Cases of application of group supervision**

The separate cases of group supervision are set out in Article 213(2) of the Directive. It is important to note that different cases of group supervision may apply at the same time, particularly where there is a parent outside of the EEA. We set out illustrations of this below.

#### **3.1. Parent undertaking is an insurance undertaking or insurance holding company within the EEA**

Cases of Article 213(2)(a) and (b). Full group supervision will be applied as set out in Articles 218 to 258 of the Directive.

#### **3.2. Parent undertaking is an insurance undertaking or insurance holding company outside of the EEA**

The case of Article 213(2)(c) applies. This section should be read in conjunction with section 2.2 as the application of group supervision in this case is interlinked with the decision around the scope of group supervision.

This application of group supervision is prescribed in a different fashion, depending on whether the parent undertaking is in an “equivalent” jurisdiction.

##### **3.2.1. Equivalent jurisdiction**

Where the wider group is in a third-country jurisdiction deemed to be equivalent by the European Commission (in a manner described in Article 260), Article 261 indicates that the supervision exercised by the third-country supervisory authorities shall be relied upon as equivalent. In these situations we are opening a dialogue with the authorities concerned to ensure cooperation on group supervision.

##### **3.2.2. Non-equivalent jurisdictions**

As already referred to in section 2.2 for non-equivalent jurisdictions, Article 262 of the Directive gives scope for the supervisory authorities to pursue “other measures” that may ensure that the objectives of Solvency II supervision are met.

The default position of Solvency II, in Article 262(1), is that requirements of full group supervision apply *mutatis mutandis*. It is, however, recognised that there are practical challenges in this application. Therefore, Article 262(2) allows for the possibility of these other measures, where these methods allow for the objectives of group supervision to be achieved. We consider the main objective to be adequate protection of policyholders and beneficiaries, which can be accomplished by adequate solvency protection covering the risks from the group, adequate systems of governance, and appropriate reporting.

One method explicitly mentioned is the establishment of an insurance holding company with its head office in the EEA. This is a method we will consider. However, in a number of structures – and particularly simple structures – we may see no added benefit in the establishment of this holding company.

Other measures may look to capture the risks of the wider group at the level of the EEA insurance undertaking or sub-group. This may include capital mitigation or specific forms of private regulatory

reporting. Their precise nature, however, must be assessed on a case by case basis. A decision will be formed following discussion with the firm.

We would also require the Own Risk and Solvency Assessment (ORSA) to identify the form and mitigation of group risks, with due consideration given in decisions of economic capital.

For such groups, we are therefore seeking a discussion on the nature of the activities of the wider group, the suitable scope of the insurance group under Solvency II, and on the possibility of applying such other measures.

### **3.3. Parent undertaking is a mixed-activity insurance holding company**

Where the parent of the insurer is deemed to be a mixed activity insurance holding company (MAIHC), the case of Article 213(2)(d) is met.

A MAIHC is a holding company that is not an insurance holding company. The Directive defines an insurance holding company as an undertaking whose main business is to acquire holdings in subsidiary undertakings that are wholly or mainly insurance undertakings. In interpreting 'main business' and 'mainly insurance undertakings' we would look at the composition of the group and each of the individual companies that form the group. The factors which will be taken into account include:

- whether the main activity of the undertaking is to acquire or hold shares and securities of insurance undertakings or insurance holding companies;
- the proportion of the gross assets of the undertaking represented by its participations in insurance undertakings;
- the proportion of the net assets of the undertaking represented by its participations in insurance undertakings;
- the proportion of income (being gross written premiums, turnover or other similar items) of the group from insurance business; and
- the risk to capital within the group from the insurance business carried on within the group.

As per Article 265, SII only requires general supervision over transactions between insurance and reinsurance undertakings and the mixed activity holding company and its related undertakings. The other requirements of group supervision, in particular group solvency calculations do not apply. This level of supervision applies irrespective of whether the MAIHC is within or outside of the EEA.

We would still, however, expect the ORSA to identify the form and mitigation of group risks.

### **3.4. Mixed financial holding company**

A mixed financial holding company (MFHC) is a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity which has its head office in the EEA, and other entities, constitutes a financial conglomerate<sup>2</sup>. Full SII group supervision will be applied to these groups, in the same way as an insurance holding company, with some additional elements of supplementary supervision. Further details are contained in the Financial Conglomerates Directive 2002/87/EC which sets out the supplementary supervision required of such entities.

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<sup>2</sup> To qualify as a financial conglomerate at least one of the entities in the group must be within the insurance sector and at least one entity within the banking or investment services sector and the consolidated and/or aggregated activities of the entities in the group within the insurance sector and the consolidated and/or aggregated activities of the entities within the banking and investment services sector are both significant

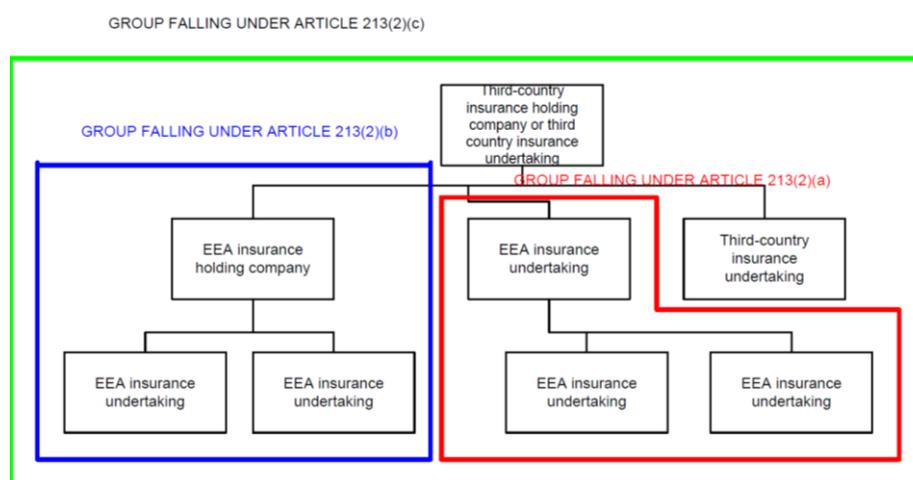
### 3.5. Illustrations of the different levels of group supervision

To illustrate EIOPA’s intentions regarding the scope of Group Supervision, the following two examples may prove useful. For both, the levels different levels reflect the situation of an ultimate parent is outside of the EEA. These diagrams are from the [final EIOPA report on Guidelines on group solvency](#)<sup>3</sup>.

It should be noted that different levels of group supervision are not mutually-exclusive and will take place simultaneously.

#### Example 1

Where the group is headed by a parent that is outside of the EEA, the scope of group supervision is still intended by EIOPA to apply to all of the entities, as indicated by the green box.



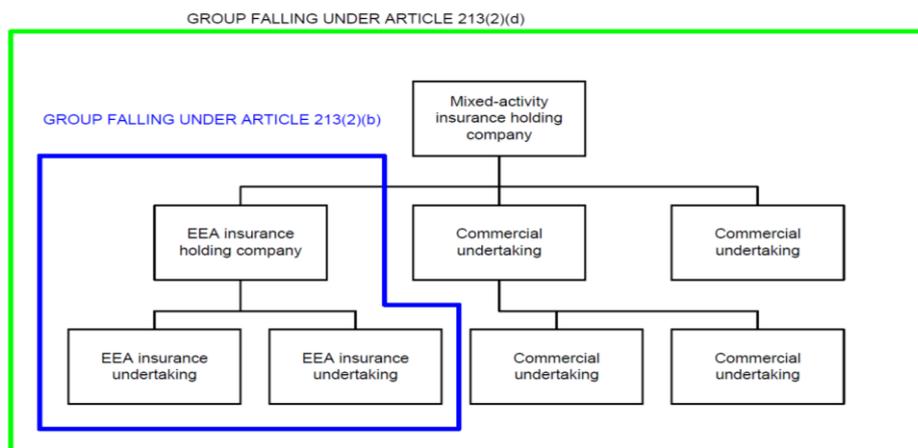
However, different levels apply. In this instance sub-groups are formed in respect of the EEA insurance undertakings. For these subgroups there will be full application of SII group supervision (e.g. calculation of group SCR requirements and group reporting requirements). This is as described in section 3.1.

The full group has a non-EEA parent, where the situation is as described in section 3.2.

In this situation we would look to apply Solvency II group requirements to the EEA sub-group, and, as per Article 262, we may consider the application of other Supervisory measures for the wider non-EEA portion of the group.

<sup>3</sup> The document preceded the final publication of these guidelines. In addition to the guidelines it includes a large supporting section of Explanatory Text.

Example 2



In this instance there is an EEA sub-group with an insurance holding company parent, which would be supervised as per section 3.1.

The ultimate parent is a non-EEA mixed activity insurance holding company and so section 3.3 applies to the wider group: the SII requirement for the reporting of intra-group transactions.

We would also expect the ORSA for the EEA insurance sub-group to describe the group arrangements and the mitigations of the corresponding risks.

Questions received to date

In respect of situations where a holding company is outside of the EEA, we have received queries relating to interpretation and application of Guideline 5 of the EIOPA Guidelines on group solvency. In particular, to paragraph 1.17 in the finalised Guidelines:

*“Where the parent insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company is headquartered outside the EEA and is not subject to an equivalent third country supervision, group solvency supervision should be applied at the level of the ultimate parent undertaking in the European Union where a group, as defined by Article 213(2) (a) or (b) of the Solvency II Directive, exists.”*

Clarification of this paragraph has been given by EIOPA in their formal Q&A process relating to Solvency II Guidelines, available on the [Q&A section](#) of their website. Within the [group solvency spreadsheet](#) EIOPA states that this paragraph is simply to reiterate that the cases of application of group supervision in Article 213(2)(a) to (d) apply to sub-groups with a parent undertaking situated in the EEA, where this sub-group is part of a wider group with an ultimate parent situated in a non-equivalent third country. More fully, they state in the same response that Guideline 4 (of the same Guidelines) indicates that the cases of application of group supervision in Article 213(2)(a) to (d) are not mutually exclusive. That is, group supervision additionally takes place at the level of the wider EEA group with a non-EEA parent, as per illustrated example diagrams above.

We have also received queries on recital (99) of the Directive with respect to this situation. As, however, explained in section 1.1 this does not give reason to automatically remove an ultimate parent, or other holding companies from the group scope. We make the similar considerations whether the holding company is within or outside of the EEA.

#### **4. Pillar 1 and the calculation of group solvency**

##### **4.1. Choice of calculation method for group solvency**

There are two approaches to calculate solvency at the level of the group. Article 220(2) states that group solvency shall be calculated in accordance with method 1.

Article 220(3) of the Directive allows the GFSC to decide, after due consultation with other regulators if relevant, to apply to the group method 2 (i.e. deduction and aggregation method) or a combination of methods 1 and 2, where the exclusive application of method 1 (i.e. accounting consolidation-based method) would not be appropriate.

It should be noted that the SCR calculated using Method 1 is also subject to a minimum, similar to the requirement to meet the MCR for a solo entity. Please see Articles 230-233 of the Directive for more information of the calculations.

##### **4.2. Inclusion of non-insurance undertakings into the calculation**

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company responsible for calculating the group solvency should ensure that they cover all risks and related undertakings belonging to the group, unless otherwise excluded in Article 214(2) of the Solvency II Directive. The calculation should therefore include insurance related entities such as brokers or service entities as ancillary service undertakings or as investments.

More detailed information on the application of methods of calculating group solvency is set out in EIOPA's Guidelines on group solvency.

##### **4.3. Transitional provision in respect of group solvency**

The Directive envisages a transitional period for groups to meet the group solvency requirements of two years after the start of Solvency 2, if required. As is set out in the Directive (and as amended by Omnibus 2), to qualify for this transitional period it is necessary for the group to currently comply with the "Adjusted Solvency" referred to in Article 9 of Directive 98/78/EC.

Firms currently submit this data via their annual Parent Undertaking Solvency Margin Calculation return, as specified in the Insurance Groups Directive and which is described in Guidance Note 13. If any group plans to take advantage of the transitional period in respect of the group solvency requirement, it should therefore review its prospective 2015 year end position under the current rules to ensure that the group is likely to meet the qualifying requirements.

#### **5. Application of pillar 2 and pillar 3**

##### **5.1. Responsibilities of the various entities within a group**

Insurers are responsible for providing guidance to related undertakings, including the parent, on the requirements for groups, and for ensuring the accuracy and completeness of information from related undertakings. Where the parent is not an authorised firm, the parent should nonetheless take responsibility for compliance with group requirements. As a reminder, the GFSC has the power to require parents, subsidiaries and controllers of insurers to provide information and failure to

comply with such a request is an offence. Article 254 of the Directive, as amended by Omnibus 2, provides the Solvency 2 perspective on this issue.

The GFSC can determine in accordance with Article 219 of the Directive (after consulting other supervisory authorities if relevant), the relevant entity within the group which will be responsible for the group solvency calculations. The GFSC's expectation is that for most firms in Gibraltar this will be the insurer itself.

It is sufficient for one entity – and that could be the insurer - to undertake the following activities on behalf of the group:

- (a) to submit the relevant data for and the results of the group eligible own funds and the group SCR to the GFSC;
- (b) to ensure ongoing compliance with the conditions for the prudent management of subsidiaries, production of a single document covering all relevant ORSAs and production of a single SFCR;
- (c) to inform the GFSC in an event of non-compliance with the group SCR within the appropriate timeframes;
- (d) to submit a realistic recovery plan and take measures to ensure compliance with the group SCR in an event of non-compliance with the group SCR within the appropriate timeframes.

### **5.2. Evidence of systems of governance**

Firms are reminded that the systems of governance requirements and the corresponding Guidelines of systems of governance apply at the level of the group.

Following a review of the historical Systems of Governance (“SoG”) self-assessments, the responses showed that many firms did not consider themselves to be part of a group under Solvency II. The GFSC has written to most firms to determine their group status and we would therefore expect firms to take appropriate measures to evidence the fulfilment of their requirements. In particular, Guidelines (GL) 46-50 are applicable to all groups and the GFSC requires firms to hold sufficient documentation around these group governance specific areas:

- GL 46 Entity responsible for the fulfilment of the group governance requirements
- GL 47 Responsibilities for setting internal governance requirements
- GL 48 System of Governance at group level
- GL 49 Risks with significant impact at group level
- GL 50 Group risk management

Firms should be preparing accordingly to meet these requirements at group level with effect from 1<sup>st</sup> January, 2016.

### **5.3. Group own risk and solvency assessment (“ORSA”) report**

Groups are reminded that they are also required to produce an ORSA for the group. The group ORSA should reflect the nature of the group structure and its risk profile and cover the material risks arising from all the entities that are part of the group.

A group may however apply to the GFSC to produce a single ORSA covering both the group and the subsidiaries of the group. In addition to the ORSA conducted at group level, the GFSC expects the group-wide ORSA document to include sufficient details on the solo firms included within the scope

of the group-wide ORSA such that Article 45 of the Directive (solo ORSA) is satisfied in respect of each of the insurers within the group.

Further details on the contents of a Group ORSA can be found in EIOPA's Guidelines on own risk and solvency assessment.

### **5.4. Quantitative Reporting Template ("QRT") requirements**

Solvency II places a more rigorous set of reporting obligations upon groups which, like their solo counterparts, must report specific quantitative reporting templates. The number of templates required relates to the scope of group supervision that is applicable for each group.

In cases where a firm's parent undertaking is a mixed-activity insurance holding company, the firm is expected to report four additional templates from the solo set (namely S.36.01-04). As a result, and unlike the other methods of group reporting, these firms will not be required to additionally report Group QRTs. For further information on the submission requirements for each template, please consult the [Final Report on the ITS on Regular Supervisory Reporting](#).

There are some subtleties that firms should be aware of when fulfilling their reporting obligations:

- It is the group entity, not the solo entity, that will report the group QRTs.
- Both the group entity and the solo entity must have LEIs in order to report to the GFSC.
- Template specifics, reporting exemptions and input requirements are detailed in the Implementing Technical Standards on Regular Supervisory Reporting and 'log files' within EIOPA's latest taxonomy releases found here: <https://eiopa.europa.eu/regulation-supervision/insurance/reporting-format>
- Firms should engage with the GFSC at the earliest opportunity to discuss any concerns they may have about the group status that has been determined by the GFSC.

### **5.5. Single solvency and financial conditional report**

A group may apply to produce a single report on its solvency and financial condition (SFCR) at the level of the group which also covers its subsidiaries. The individual subsidiaries must however be individually identifiable within the report.

We expect such an SFCR to cover the same level of detail on the insurers within the group as is required in the solo SFCR.