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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	21 August 2026
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	C(2026) 4973 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... supplementing Directive (EU) 2009/138/EC of the European Parliament and of the Council with regard to regulatory technical standards specifying the factors to be considered to identify undertakings that are under dominant or significant influence and undertakings that are managed on a unified basis, and the conditions and criteria to be used to determine which activities carried out by insurance and reinsurance undertakings under the right of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market

Delegations will find attached document C(2026) 4973 final.

Encl.: C(2026) 4973 final

EUROPEAN
COMMISSION

Brussels, 16.7.2026
C(2026) 4973 final

COMMISSION DELEGATED REGULATION (EU) …/...

of 16.7.2026

supplementing Directive (EU) 2009/138/EC of the European Parliament and of the Council with regard to regulatory technical standards specifying the factors to be considered to identify undertakings that are under dominant or significant influence and undertakings that are managed on a unified basis, and the conditions and criteria to be used to determine which activities carried out by insurance and reinsurance undertakings under the right of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market

(Text with EEA relevance)

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Directive (EU) 2025/2[1], which amends Directive 2009/138/EC[2] ('the Solvency II Directive') extends the power for supervisors to identify undertakings forming *de facto* part of a group. It also requires enhanced supervisory cooperation and information exchange between home and host supervisory authorities in relation to significant cross-border activities.

Article 212 of the Solvency II Directive as amended by Directive (EU) 2025/2, facilitates the identification of undertakings which form a group, in particular with respect to groups which are not in the scope of Directive 2013/34/EU[3] and horizontal groups, with no or weak capital links between undertakings, in particular where holdings are kept below thresholds for treatment as a qualifying holding or participation. For that purpose, supervisory authorities should identify the existence of a group on the basis of the factors listed in Article 212(4) of the Solvency II Directive. In accordance with Article 212(5) of the Solvency II Directive, this Regulation specifies the existing factors by setting out elements that supervisory authorities should consider in the assessment of the factors listed in Article 212(4).

Directive (EU) 2025/2 also introduces Article 152aa in the Solvency II Directive, which provides that cross-border activities are significant where the total annual gross written premium income arising from the activities carried out by the insurer in the host Member State, whether under the right of establishment or the freedom to provide services, exceeds EUR 15 million, or where the supervisory authority of the host Member State considers such activities to be relevant for the host Member State's market. Based on the mandate of Article 152aa(2) of the Solvency II Directive, this Regulation specifies the conditions and criteria for that "relevance" determination.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

EIOPA carried out an impact assessment incorporating a cost-benefit analysis and conducted a public consultation between 1 October 2024 and 2 January 2025 on the draft Regulatory Technical Standards (RTS) specifying the factors that supervisory authorities shall consider to identify undertakings that are under dominant or significant influence and undertakings that are managed on a unified basis. A stakeholder event was held on 27 November 2024 to discuss the consultation paper. Thirteen stakeholders provided feedback. Based on the stakeholder feedback, the content of the draft RTS was refined, without changing the general approach set out in the consultation paper. Moreover, editorial changes were made to improve the legal clarity of the provisions.

EIOPA carried out an impact assessment incorporating a cost-benefit analysis and conducted a public consultation between 1 October 2024 and 2 January 2025 on the draft Regulatory

[1] Directive (EU) 2025/2 of the European Parliament and of the Council of 27 November 2024 amending Directive 2009/138/EC as regards proportionality, quality of supervision, reporting, long-term guarantee measures, macro-prudential tools, sustainability risks and group and cross-border supervision, and amending Directives 2002/87/EC and 2013/34/EU (OJ L, 2025/2, 8.1.2025, ELI: http://data.europa.eu/eli/dir/2025/2/oj).

[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, ELI: http://data.europa.eu/eli/dir/2009/138/oj).

[3] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Technical Standards (RTS) on relevant insurance and reinsurance undertakings with respect to the host Member State's market. A stakeholder event was held on 27 November 2024 to discuss the consultation paper. Seven stakeholders provided feedback on the consultation paper. Based on the stakeholder feedback, the content of the draft RTS was refined, without changing the general approach set out in the consultation paper.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

This Delegated Regulation is adopted pursuant to Articles 212(5) and 152aa(2) of the Solvency II Directive, as amended by Directive (EU) 2025/2.

It specifies the factors supervisory authorities must consider to identify dominant or significant influence of a natural person or undertaking over another undertaking or to identify undertakings managed on a unified basis. It details the four factors listed in Article 212(4) of the Solvency II Directive, namely control or ability to influence decisions, strong reliance, coordinated financial or investment decisions, coordinated and consistent strategies setting supporting elements specifying those factors. National supervisory authorities are required to evaluate the significance and continuity of those supporting elements on a case-by-case basis, basing their decisions on a body of evidence rather than on standalone conditions.

By providing clear criteria for identification, this Regulation will promote supervisory convergence and support effective and efficient group supervision, thereby contributing to the protection of policyholders and to the objective of burden reduction.

In addition, acting under the mandate of Article 152aa(2), this Regulation specifies the criteria and conditions for host supervisory authorities to determine whether cross-border insurance activities are of relevance to the host Member State's market. The legal framework focuses on two main elements: the concentration of activities and their material impact on policyholders and financial stability.

By incorporating qualitative and quantitative factors without fixed thresholds, this Regulation ensures supervisory flexibility while accounting for national market specificities. Specific metrics include market share based on gross written premiums and the level of potential detriment to consumers.

This Regulation will support the effective and efficient supervision of cross-border activities, thereby contributing to the proper functioning of the internal market and the protection of policyholders.

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supplementing Directive (EU) 2009/138/EC of the European Parliament and of the Council with regard to regulatory technical standards specifying the factors to be considered to identify undertakings that are under dominant or significant influence and undertakings that are managed on a unified basis, and the conditions and criteria to be used to determine which activities carried out by insurance and reinsurance undertakings under the right of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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)[4], and in particular Article 152aa (2), third subparagraph, and Article 212(5), third subparagraph thereof,

Whereas:

(1) In case of dominant influence or significant influence, or for horizontal groups with no capital links between different undertakings, the group supervisors should be able to identify the existence of a group, according to objective criteria, to ensure predictability for market participants, while taking into account the group's specificities.

(2) To identify undertakings that are under dominant or significant influence and undertakings that are managed on a unified basis, supervisory authorities should consider a targeted set of elements, to specify the respective factors set out in Article 212(4) of Directive 2009/138/EC. Supervisory authorities should consider all those elements when performing their assessment, taking into account the group's specificities. Nevertheless, supervisory authorities should have the possibility to deem compliance with one or more of those elements sufficient to conclude that the corresponding factor set out in Article 212(4) of Directive 2009/138/EC is met. Supervisory authorities should not consider those factors in isolation, and their assessment should take into account the type of undertakings involved and their organisational structure.

(3) To identify undertakings that are under dominant or significant influence and undertakings that are managed on a unified basis, supervisory authorities should assess the existence of contractual rights. In the absence of contractual rights, or where those contractual rights are not sufficient in themselves to identify the control or ability of a natural person or an undertaking to influence decisions, including financial ones, of

[4] OJ L 335, 17.12.2009, p. 1, ELI: http://data.europa.eu/eli/dir/2009/138/oj.

another undertaking, supervisory authorities should take into account additional qualitative factors.

(4) When assessing whether activities carried out by insurance or reinsurance undertakings under the right of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market, supervisory authorities should perform a comprehensive assessment focusing on the protection of policyholders and beneficiaries and the financial stability of the host Member State's market.

(5) High concentrations of cross-border activities can indicate a significant reliance on the host Member State's market by insurance or reinsurance undertakings, which could pose systemic risks. Therefore, supervisory authorities should look at the concentrations of insurance or reinsurance undertaking's cross-border activities carried out in the host Member State's market.

(6) Recent failures of insurance and reinsurance undertakings operating cross-border have demonstrated the need for supervisory authorities to ensure that those activities are properly managed by those undertakings. Supervisory authorities should therefore look at the impact of those activities on the insurance market and on the policyholders and beneficiaries in the host Member State. That assessment should consider different granularity of cross-border activities of the insurance or reinsurance undertaking concerned compared to that undertaking's total activity or to the whole insurance market of the host Member State, including specific segments, lines of business, insurance risks or type of insurance products.

(7) Policyholders and beneficiaries benefit from the availability of alternative insurance products that can meet similar demands and needs. While the cross border distribution of insurance products in a host Member State market can increase the range of available products that meet similar demands and needs, it may also reduce it. Reduction or unavailability of alternative comparable products may result in particular where cross border products or policies possess a significant price advantage over competing products or have bespoke product features that few or no other products possess. A lower degree of substitutability between products as a result of cross border activity can exacerbate the consequences on policyholders and beneficiaries of a potential failure of a cross border undertaking. Therefore, supervisory authorities should consider the level of substitutability and the potential detriment to policyholders and beneficiaries in the host Member State's market.

(8) The conditions and criteria that supervisory authorities are to use when determining which activities of insurance or reinsurance undertakings are of relevance with respect to the host Member State's market should provide the supervisory authority of the host Member State with a framework for identifying those insurance or reinsurance undertakings. At the same time, the insurance markets of the Member States have their own specificities as regards to specific segments, lines of business, insurance risks or type of insurance products. Therefore, considering the intrinsic differences among those national insurance markets, it is necessary to leave some degree of flexibility to the supervisory authority of the host Member State to exercise its judgment within the parameters of those conditions and criteria.

(9) Under current rules, supervisory authorities across the Union often fail to reach a common view on how to identify some specific group structures and to ensure effective supervisory cooperation in addressing issues related to an insurance or reinsurance undertaking which is operating on a cross-border basis. Article 152aa(2)

and Article 212(5) of Directive 2009/138/EC mandate the Commission to adopt regulatory technical standards to specify, respectively, criteria to determine where the insurance or reinsurance cross-border activity is of relevance with respect to the host Member State's market, and factors to identify groups. Those criteria aim to improve cooperation and information-sharing between host and home supervisory authorities, and support effective and efficient group supervision. By harmonising supervisory practices and framing public authorities' discretion, those criteria are beneficial to both the protection of policyholders and the competitiveness of European insurers and reinsurers. It is therefore, necessary to include those regulatory technical standards in a single delegated Regulation.

(10) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Insurance and Occupational Pensions Authority.

(11) The European Insurance and Occupational Pensions Authority has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Insurance and Reinsurance Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council[5],

HAS ADOPTED THIS REGULATION:

Article 1

Control or ability to influence decisions of an undertaking

1. When assessing whether a natural person or undertaking is able to influence the decisions of another undertaking as referred to in Article 212(4), point (a), of Directive 2009/138/EC, supervisory authorities shall consider the following contractual rights:

   (a) the capital or voting rights related to any contractual rights, including potential voting rights stemming from warrants, options, convertible instruments or forward contracts;

   (b) any contractual arrangements between a natural person or undertaking suspected of being able to influence the decisions of the undertaking concerned and either vote holders or other entities that can influence decisions in the undertaking concerned;

   (c) membership rights, where the undertaking concerned is a mutual or mutual-type undertaking;

2. Where the contractual rights referred to in paragraph 1 are missing or where those contractual rights are not sufficient in themselves to identify the control or ability of a natural person or an undertaking to influence decisions, including financial ones, of another undertaking, supervisory authorities shall consider whether such control or ability to influence is achieved through the following elements:

[5] 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 Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48, ELI: http://data.europa.eu/eli/reg/2010/1094/oj).

(a) the ability, regardless of any contractual right, including through the presence of the same shareholders' representatives at the general assemblies or through joint proposals for decisions of those representatives:

(i) to influence the nomination process for electing members of the administrative, management or supervisory body of the undertaking concerned, including the obtaining of proxies from other holders of voting rights;

(ii) to appoint or approve persons who effectively run the undertaking concerned or are responsible for key, critical or important functions;

(iii) to influence the undertaking concerned to enter into, or veto any changes to significant transactions;

(iv) to influence material changes in the financial and solvency position or business model of the undertaking concerned;

(b) whether the administrative, management or supervisory bodies of those undertakings have the same members;

(c) whether members of the administrative, management or supervisory body of the undertaking concerned, or the persons who effectively run that undertaking or are responsible for other key, critical or important functions in that undertaking are related parties to the natural person or undertaking that is suspected of being able to influence the decisions of the undertaking concerned, within the meaning of the International Accounting Standard 24 adopted by Commission Regulation (EU) 2023/1803[6], or perform the same function in the other undertaking that is suspected of being able to influence the decisions of the undertaking concerned;

(d) whether members of the administrative, management or supervisory body of the undertaking concerned, or the persons who effectively run that undertaking, or are responsible for key, critical or important functions in that undertaking, are current or former employees of the natural person or of any entity of the group of the other undertaking that is suspected of being able to influence the decisions of the undertaking concerned.

Article 2

Strong reliance on an undertaking or legal or natural person

1. For the purposes of Article 212(4), point (b), of Directive 2009/138/EC, any of the following shall be considered as corresponding to financial transactions or operations:

(a) equity, subordinated liabilities;

(b) cost-sharing;

(c) tax arrangement;

(d) debt transfer agreement;

(e) securities lending or repurchase agreement;

6 Commission Regulation (EU) 2023/1803 of 13 September 2023 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council (OJ L 237, 26.9.2023, p. 1, ELI: http://data.europa.eu/eli/reg/2023/1803/oj).

(f) loans or other financing arrangements;

(g) off-balance sheet commitment or solidarity agreement;

(h) guarantees of a significant portion of obligations;

(i) reinsurance agreement.

2. For the purposes of Article 212(4), point (b), of Directive 2009/138/EC, any of the following shall be considered as corresponding to non-financial transactions or operations:

(a) outsourcing of key, critical or important operational functions or activities;

(b) the sharing of any technical or operational functions or activities, including hardware or software, information systems or employees;

(c) the sharing of a brand, pricing, claims handling, service provider, distribution channel, communication or marketing;

(d) the provision of essential technical information to the undertaking concerned.

Article 3

Coordination of financial or investment decisions

1. When assessing whether there is evidence of coordination of financial or investment decisions between two or more undertakings, as referred to in Article 212(4), point (c), of Directive 2009/138/EC, supervisory authorities shall consider the following elements:

(a) the existence of decision-making bodies, including committees, within which employees from those undertakings work together and decide about group financial or investment strategies, or that are composed of persons designated by the group;

(b) the existence of similar investment strategies or risk exposures of those undertakings;

(c) the existence of similar or coordinated representation of, and feedback by, those undertakings to the supervisory authorities in particular in relation to financial or investment strategies.

2. Where supervisory authorities identify at least two of the elements referred to in paragraph 1, the evidence of coordination of financial or investment decisions is deemed to be met.

Article 4

Coordinated and consistent strategies, operations or processes

1. When assessing whether there is evidence of coordinated and consistent strategies, operations or processes between two or more undertakings as referred to in Article 212(4), point (d), of Directive 2009/138/EC, supervisory authorities shall consider the existence of any contractual rights or memoranda or articles of association.

2. Where the contractual rights referred to in paragraph 1 are missing or where those contractual rights are not sufficient in themselves to identify coordinated and consistent strategies, operations or processes, supervisory authorities shall also consider whether such coordination is achieved through the following elements:

(a) the same or similar business strategies, pricing, claims handling, reserving and relevant service providers;

(b) similar policies in relation to risk management and capital management, including a similar and coordinated dividend distribution policy;

(c) similar risk management or internal control systems;

(d) similar outsourcing arrangements of functions or of insurance or reinsurance activities, or service providers with close links to those undertakings;

(e) the same physical location of the head office, or shared real estate;

(f) similar or coordinated representation and feedback to the supervisory authorities.

Article 5

Conditions and criteria for assessing the relevance of cross-border insurance and reinsurance activities for the host Member State's market

1. When assessing whether the activities carried out by an insurance or reinsurance undertaking under the right of establishment or under the freedom to provide services are of relevance with respect to the host Member State's market in accordance with Article 152aa(1), point (b), of Directive 2009/138/EC, the supervisory authority of that host Member State shall consider the following conditions and criteria:

(a) whether the insurance or reinsurance undertaking's activities are concentrated having regard to:

(i) the share of the insurance or reinsurance undertaking's activities in the host Member State, measured as the annual gross written premium income corresponding to the activities carried out by that undertaking in that host Member State, compared to that undertaking's total annual gross written premium income;

(ii) the market share held by the insurance or reinsurance undertaking in the host Member State's market, measured in terms of whole insurance market, or life insurance and reinsurance market, or non-life insurance and reinsurance market;

(b) whether the activities carried out by the insurance or reinsurance undertaking have a material impact on any of the following:

(i) specific lines of business, insurance risks or insurance products considered important by the supervisory authority of the host Member State due to specificities of the national insurance market, including compulsory insurance;

(ii) the protection of policyholders and beneficiaries in the host Member State.

2. For the purposes of paragraph 1, point (a)(ii), the supervisory authority of the host Member State shall measure the market share referred to in that paragraph as one or both of the following:

(a) in respect of the insurance or reinsurance undertaking's non-life activities, a percentage of the annual gross written premium income corresponding to those activities carried out by the insurance or reinsurance undertaking in that host

Member State compared to the total of the annual gross written premium income for non-life activities in the host Member State's non-life insurance and reinsurance market;

(b) in respect of the insurance or reinsurance undertaking's life activities, a percentage of the gross technical provisions or the annual gross written premium income corresponding to those activities carried out by the insurance or reinsurance undertaking in that host Member State compared to the total gross technical provisions, respectively to the total of the annual gross written premium income, for life activities in the host Member State's life insurance and reinsurance market.

3. For the purposes of paragraph 1, point (b), the supervisory authority of the host Member State shall assess the materiality of the impact with regard to the following factors:

(a) the market share of specific lines of business, insurance risks, or insurance products in the host Member State's market;

(b) the level of substitutability in the host Member State's market, where substitutability shall be assessed in accordance with the same conditions as those set out in the delegated act adopted pursuant to Article 5(12) of Directive 2025/1 of the European Parliament and of the Council[7];

(c) the potential detriment to policyholders and beneficiaries in the host Member State's market.

4. For the purposes of paragraph 3, point (a), the supervisory authority of the host Member State shall use any quantitative criteria for determining market shares of specific lines of business, insurance risks or insurance products, including the following criteria:

(a) the level of premiums or technical provisions;

(b) the number of policyholders or insured persons;

(c) the number of policies;

(d) the sum insured;

(e) the number of insured vehicles.

5. For the purposes of paragraph 3, point (c), the supervisory authority of the host Member State shall use any quantitative or qualitative criteria for determining the potential detriment to policyholders and beneficiaries, including:

(a) whether the number of complaints is higher than average;

(b) the commission rates;

(c) the gross written premium growth in the previous financial year.

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7 Directive (EU) 2025/1 of the European Parliament and of the Council of 27 November 2024 establishing a framework for the recovery and resolution of insurance and reinsurance undertakings and amending Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132 and Regulations (EU) No 1094/2010, (EU) No 648/2012, (EU) No 806/2014 and (EU) 2017/1129 (OJ L, 2025/1, 8.1.2025, ELI: http://data.europa.eu/eli/dir/2025/1/oj).

Article 6

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 16.7.2026

For the Commission
The President
Ursula VON DER LEYEN