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EBI European
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EBI YRG Virtual Workshop Session - No. 1

Perspectives of insurance group supervision
– *EIOPA Consultation Paper on the Opinion on the 2020 review of Solvency II (BoS-19/465) –*

Syllabus

§ 1 Introduction

§ 2 Basics of insurance group supervision

§ 3 Consultation Paper on the Opinion on the 2020 review of Solvency II, BoS-19/465

§ 4 Concluding remarks

§ 1 Introduction

- Insurance supervisory law is governed by the **Solvency II Directive** (2009/138/EC) and **amended** by the **Omnibus II Directive** (2014/51/EU)
- Additionally various supplementing issues are addressed in the **Solvency II Regulation** (2015/35/EU)
- **Group supervision** is extensively laid down in **Artt. 212 ff. Solvency II Directive**
- It displays a highly **progressive framework** with a unique handling of the group as a whole
- In **Germany**, the Solvency II Directive was effectively transposed in the "Versicherungsaufsichtsgesetz" (i.E. Insurance supervisory act) in 2016

§ 2 Basics of insurance group supervision

Selected definitions for insurance group supervision
↓
Important for **Art. 213 Solvency II Directive**

Art. 13

Para. 15
Parent Undertaking

Para. 16
Subsidiary Undertaking

Para. 17
„Close links“

Para. 18
Control

Para. 20
Participation

Art. 212

Para. 1 lit. a
Participating Undertaking

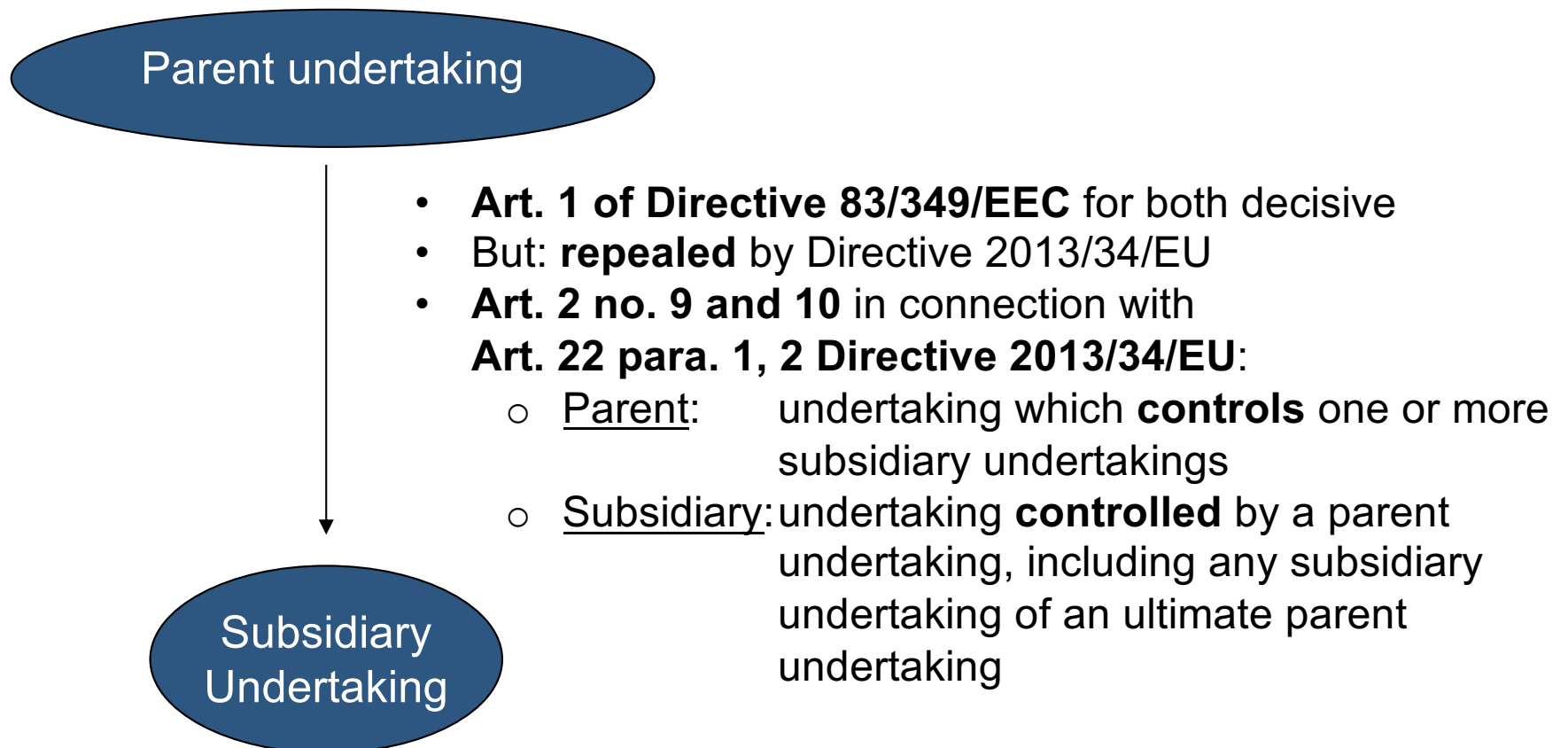
Para. 1 lit. b
Related Undertaking

Para. 1 lit. c
Group

para. 1 lit. f
Insurance Holding Company

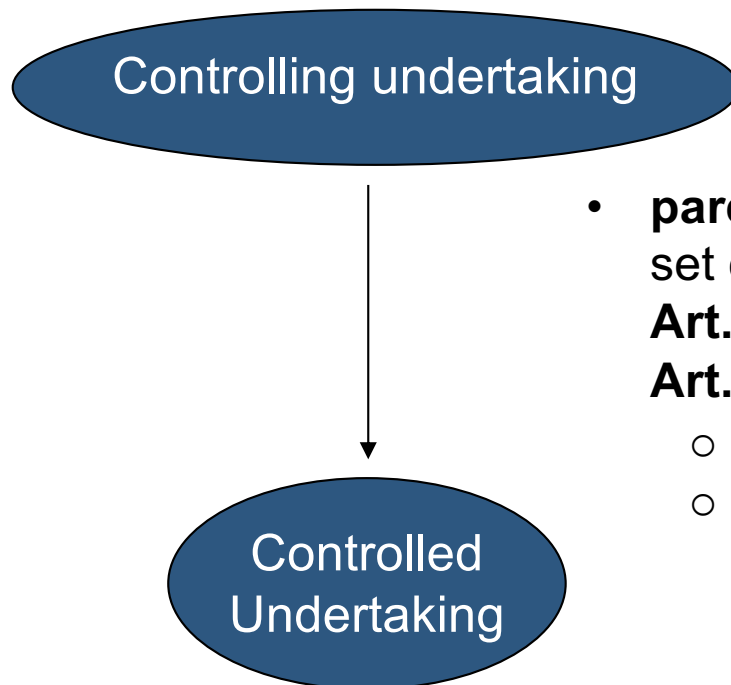
§ 2 Basics of insurance group supervision

Art. 13 para. 15 et. seq., Parent and subsidiary undertaking



§ 2 Basics of insurance group supervision

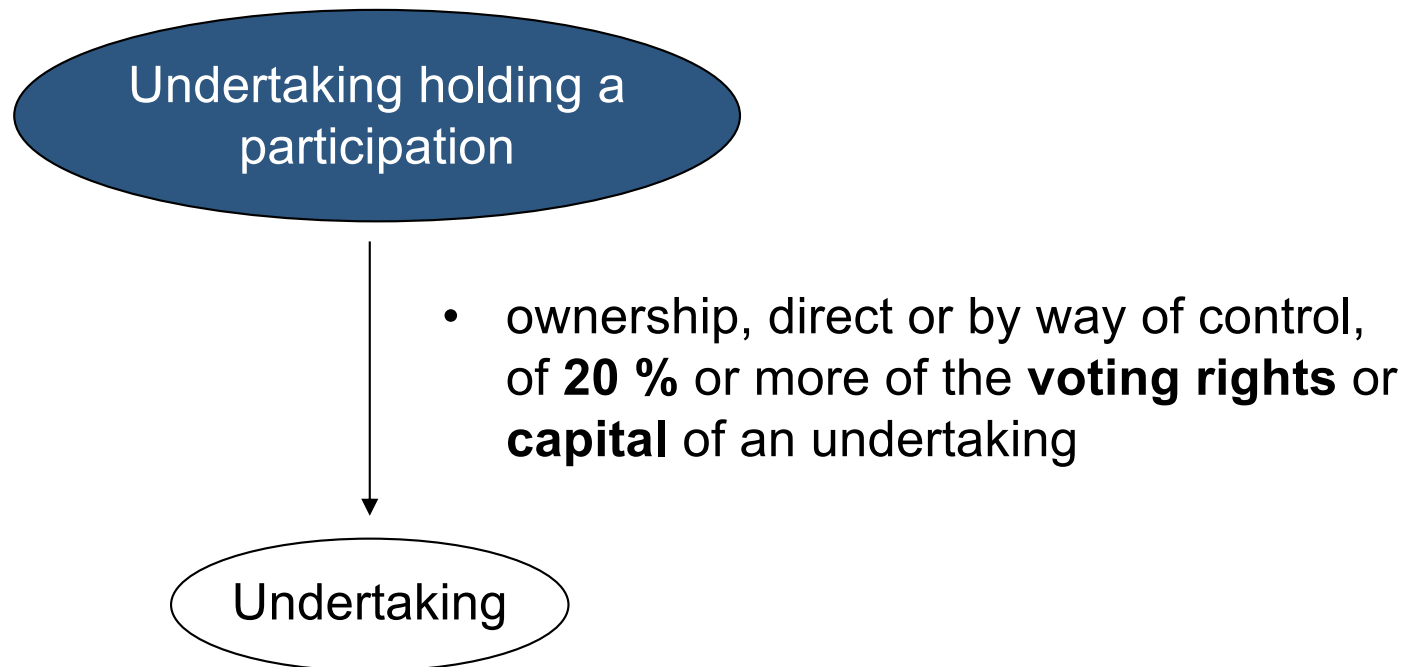
Art. 13 para. 18 Control



- **parent** undertaking and a **subsidiary** undertaking set out in Art. 1 Directive 83/349/EEC, now **Art. 2 no. 9 and 10** in connection with **Art. 22 para. 1, 2 Directive 2013/34/EU**
 - e.g. Majority of the voting rights (**para. 1 lit. a**)
 - e.g. right to appoint/remove majority of the members of the AMS body (**para. 1 lit. b**)
 - no clear definition
 - Lack of clarity (EIOPA)
- **or a similar relationship** between
 - any natural or legal person and an undertaking

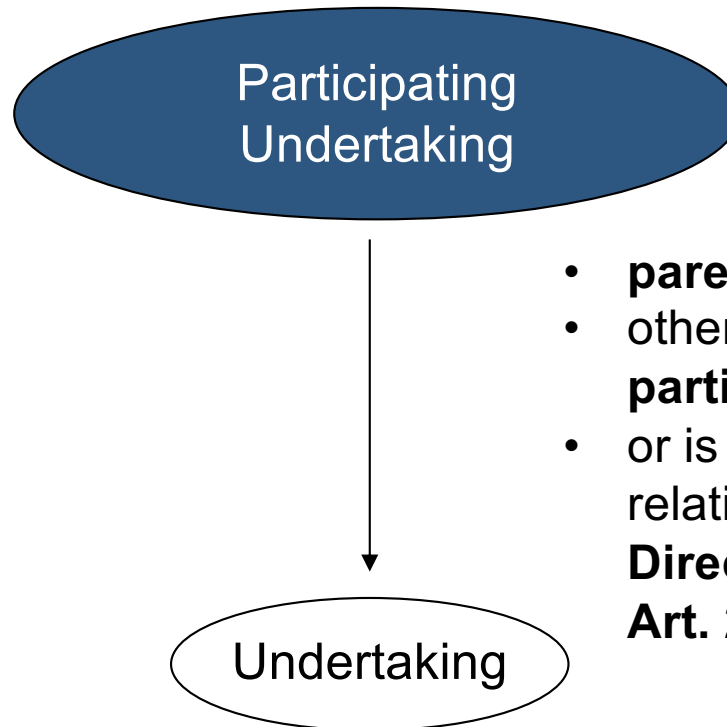
§ 2 Basics of insurance group supervision

Art. 13 para. 20, Participation



§ 2 Basics of insurance group supervision

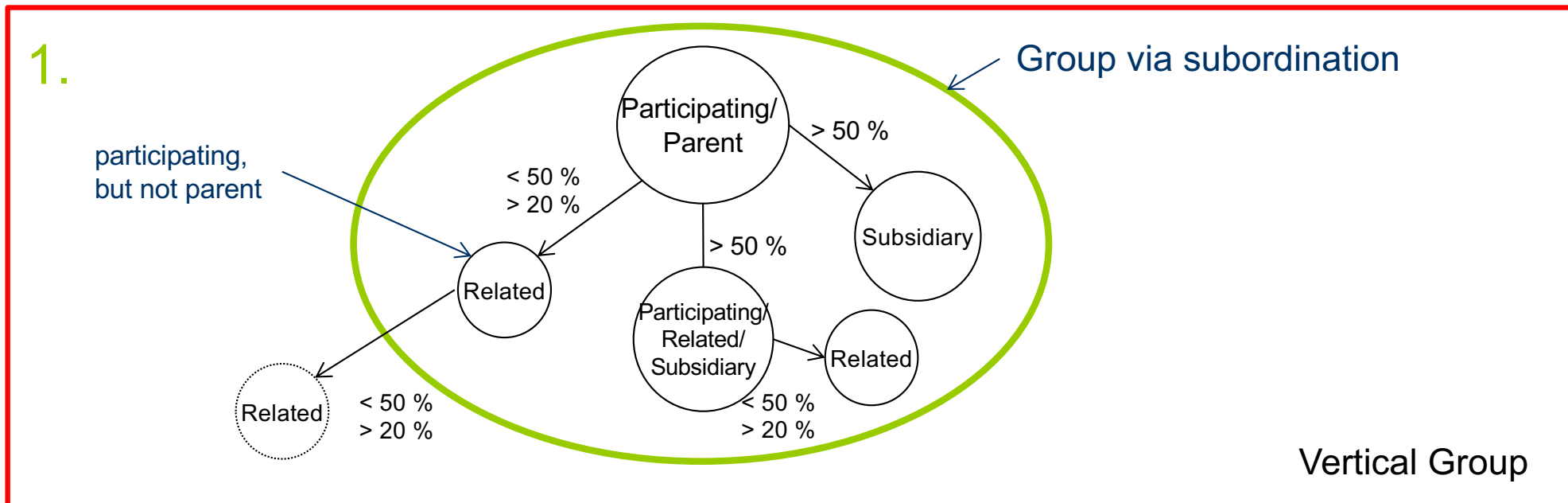
Art. 212 para. 1 lit. a, Participating Undertaking



- **parent undertaking** or
- other **undertaking** which **holds a participation**,
- or is **linked** with another undertaking by a relationship as set out in **Article 12 para. 1 Directive 83/349/EEC** which is **Art. 22 para. 7 Directive 2013/34/EU**

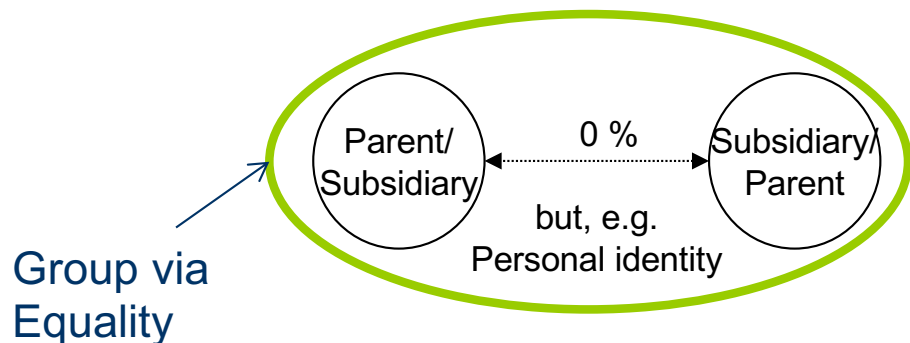
§ 2 Basics of insurance group supervision

Art. 212 para. 1 lit. c, Group

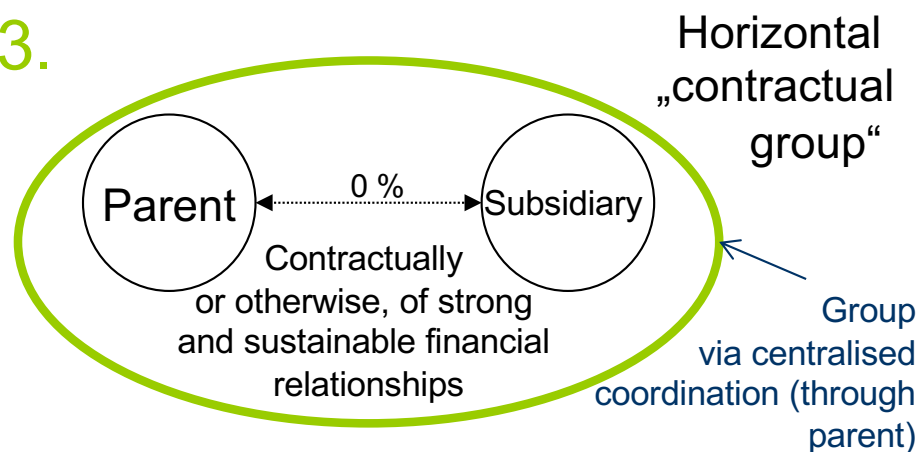


Horizontal Group

2.



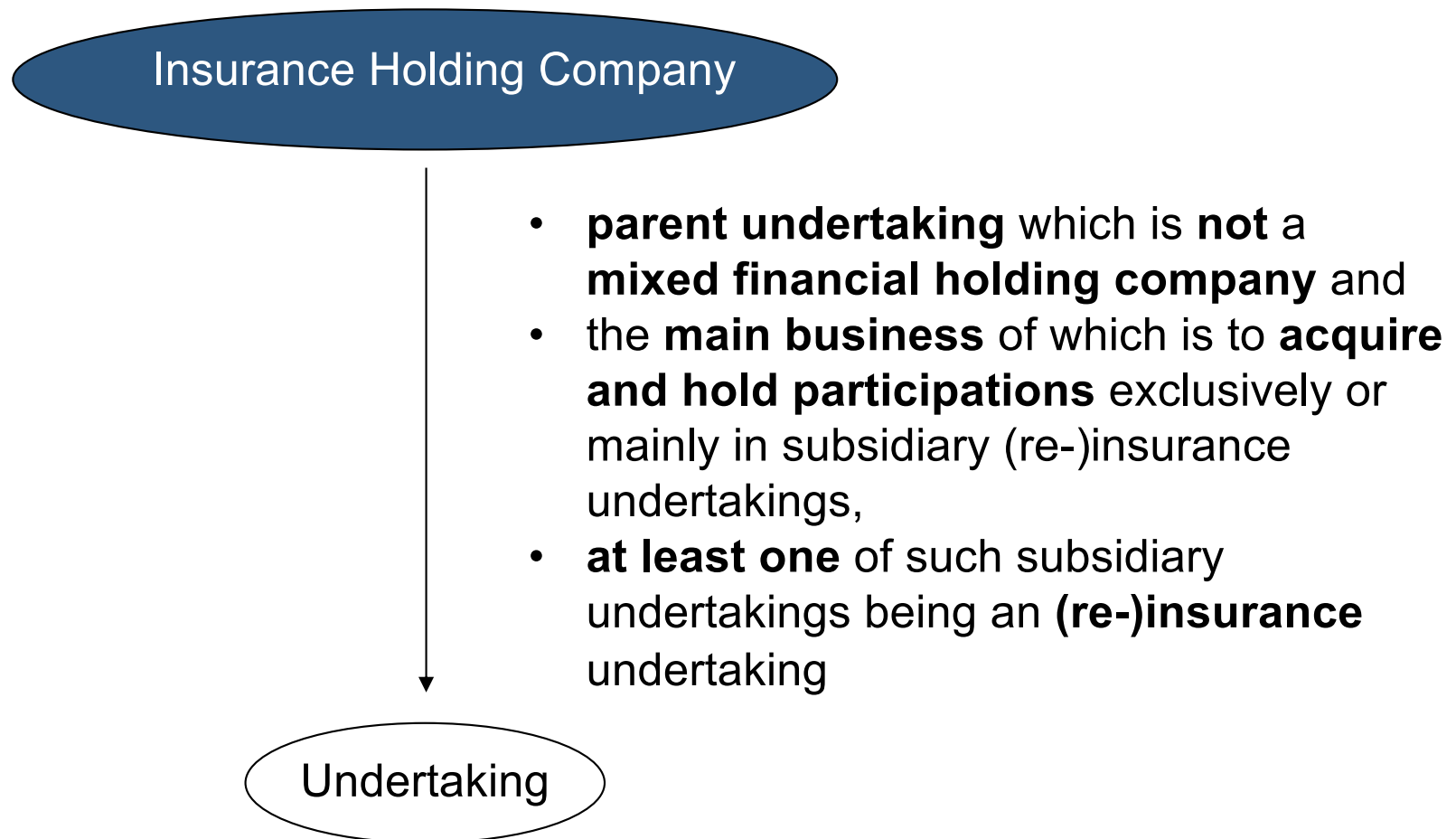
3.



Source (in german): Kraft in Gründl/Kraft, Solvency II, Eine Einführung, 3. Aufl. 2019, p. 147.

§ 2 Basics of insurance group supervision

Art. 212 para. 1 lit. f, Insurance Holding Company



§ 3 Consultation Paper on the Opinion on the 2020 review of Solvency II, BoS-19/465

- Published on 15.10.2019 with over 700 pages
- Different topics (e.g. LTG measures and measures on equity risk, Own funds, Solvency Capital Requirement standard formula, Proportionality etc.)
- Under no. 9 group supervision (around 100 pages)
- Regarding these, EIOPA identified different policy issues
- Among all issues being tackled, the focus should be guided to **two** aspects:

1. Scope of Application of Group Supervision

2. Governance Requirements at group level

§ 3 Consultation Paper on the Opinion on the 2020 review of Solvency II, BoS-19/465

1. Scope of Application of Group Supervision – **Definition of the Group, including issues of dominant influence and scope of the group supervision**
 - Policy Issue 1 – Article 212, **identification of groups**:
 - There might be **strong links** between (re-)insurance companies (e.g. partly or fully the same shareholders or management bodies) but the **requirements** of Art. 212 Solvency II Directive may **not** be **met** (e.g. no capital ties, no exercised dominant influence)
 - EIOPA = amend this Article to allow the supervisory authorities to consider as undertakings linked to each other the undertakings which are effectively managed on a unified basis (***de facto group***)

§ 3 Consultation Paper on the Opinion on the 2020 review of Solvency II, BoS-19/465

1. Scope of Application of Group Supervision – **Definition of the Group, including issues of dominant influence and scope of the group supervision**
 - Policy Issue 2 – Article 213, **application of group supervision**
 - **Not always possible** to identify an insurance group accurately or to apply group supervision in a significant or relevant way (e.g. no specific company in this group is responsible for the group supervision requirements)
 - EIOPA = provide supervisory authorities to require undertakings to structure in such a way, which **enables to exercise group supervision**

§ 3 Consultation Paper on the Opinion on the 2020 review of Solvency II, BoS-19/465

1. Scope of Application of Group Supervision – **Definition of the Group, including issues of dominant influence and scope of the group supervision**
 - Policy Issue 3: Scope of groups
 - **Unclear** that “**subsidiaries**” and “**participations**” of “influenced subsidiaries” (e.g. subsidiaries over which a dominant influence is exercised) are included in the **scope** of the group
 - **Unclear**, whether **percentages** of control shall be **added up** in cases of joint subsidiaries and participations held by “influenced subsidiaries” of the same undertaking which exerts the influence
 - EIOPA = **clarify** that “**subsidiaries**” and “**participations**” of “influenced subsidiaries” are **within** the **scope** of the same group as the undertaking which exerts the dominance influence
 - EIOPA = **clarify** that **percentages** of control and of ownership **can be added up** for joint subsidiaries and joint participations when these joint subsidiaries and joint participations are held by “influenced subsidiaries” of a unique undertaking

§ 3 Consultation Paper on the Opinion on the 2020 review of Solvency II, BoS-19/465

1. Scope of Application of Group Supervision – **Definition of Insurance Holding Companies and other challenges related to Insurance holding companies and Mixed financial holding companies**
 - Policy Issue 2: Article 214 para. 1 and **powers over holdings**
 - A **holding** company can be **excluded** from the scope of supervision, except for fit and proper requirements
 - Seems to contradict other articles of the Solvency II Directive containing explicit requirements for adequate capital at group level (e.g. 218, 219 and 235) and Art. 257 on some governance requirements
 - **Assumption** that these requirements can be fulfilled by a supervised **subsidiary** in the group
 - **Not possible** if the subsidiary not empowered to ensure compliance with the group requirements and has no responsibility for the group governance requirements
 - In some Member States group requirements cannot be upheld towards to the holding company of the group (not really in Germany, cf. §§ 292 et seq. VAG)

§ 3 Consultation Paper on the Opinion on the 2020 review of Solvency II, BoS-19/465

1. Scope of Application of Group Supervision – **Definition of Insurance Holding Companies and other challenges related to Insurance holding companies and Mixed financial holding companies**
 - Policy Issue 2: Article 214 para. 1 and **powers over holdings**
 - EIOPA = different interpretation of Art. 214 para. 1 causes **inconsistencies** in the application of group requirements to holding companies leading to **ineffective supervision** and **supervisory convergence issues**
 - EIOPA = amend Art. 214 para. 1 to **allow supervision** and **enforcement** of power over insurance **holding** companies and mixed financial holding companies **or** to request the holding to ensure a corporate structure and structural organisation that enables group supervision even at another level in the group
 - EIOPA = **group supervisor** should have appropriate and effective supervisory **powers** against such **holding** companies (e.g. suspending the exercise of voting rights, giving instructions or directions to legal entities, requiring to divest from or reduce holdings etc.)

§ 3 Consultation Paper on the Opinion on the 2020 review of Solvency II, BoS-19/465

2. Governance Requirements at group level - **Application of Art. 40 and *mutatis mutandis* under Art. 246**

- Policy Issue

- Art. 246 imposes the *mutatis mutandis* application of the requirements laid down in Articles 41 to 50 (which are applicable to solo entities). It doesn't explicitly refer to Art. 40 (i.e. the responsibility of the AMSB of insurance and reinsurance undertakings)
- There is **no clear** and defined system of **governance for groups**. The system of governance for groups relies on the application of *mutatis mutandis*. This regulatory gap creates an uncertainty and leads to an un-level playing field.
- EIOPA = rationale of why Art. 40 does not apply *mutatis mutandis* is not clear, although a simple referencing to Art. 40 would not be practical for groups (e.g. no holding companies included, continuing responsibility of the AMSB of the undertakings within the group)
- EIOPA = Amend the Solvency II Directive to **ensure** that **Art. 40** also **applies to insurance groups** (with relevant adaptations)

§ 3 Consultation Paper on the Opinion on the 2020 review of Solvency II, BoS-19/465

2. Governance Requirements at group level - **Application of Art. 40 and *mutatis mutandis* under Art. 246**

- EIOPA = the legal text should state clearly that the **AMS body** of the **parent (re)insurance** or Insurance Holding or Mixed Financial Holding Company at **top of the group** would be **responsible** for the compliance with all group requirements
- EIOPA = a **system of governance** should be defined. It seems necessary to modify Art. 246 to provide clarity on how to set up a compliant and efficient governance system at group level
- EIOPA = Art. 246 should clarify e.g.
 - ✓ the responsible undertaking for group governance requirements,
 - ✓ the persons who effectively run an insurance group are the persons who effectively run the responsible parent undertaking
 - ✓ The undertaking responsible for group governance should define policies

§ 4 Concluding remarks

- The policy options identified and selected above are comprehensive and show **three main trends**:
 1. Scope of group supervision should be **enlarged**
 - Group supervision should cover de facto groups
 - Group supervision should be extended to include subsidiaries and participations of supervised undertakings
 2. Group supervision in its current structure should be **deepened**
 - Supervised undertakings should be obliged to adapt the group structure and to establish an undertaking with influence under association law
 3. Group supervision is to be further **centralised and focused** on the top management of the group
 - Full group supervision should also take place at the level of holding companies
 - Art. 40 should be extended to group level
 - Art. 246 should clarify that the ultimate parent undertaking is responsible for group governance requirements

Thank you for your attention!

For questions after the Q&A
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