Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions

TITLE V

PRINCIPLES AND TECHNICAL INSTRUMENTS FOR PRUDENTIAL SUPERVISION

CHAPTER 1

PRINCIPLES OF PRUDENTIAL SUPERVISION

Article 26

Competence of control of the home Member State

1 The prudential supervision of a credit institution, including that of the activities it carries on accordance with Articles 18 and 19, shall be the responsibility of the competent authorities of the home Member State, without prejudice to those provisions of this Directive which give responsibility to the authorities of the host Member State.

2 Paragraph 1 shall not prevent supervision on a consolidated basis pursuant to this Directive.

Article 27

Competence of the host Member State

Host Member States shall retain responsibility in cooperation with the competent authorities of the home Member State for the supervision of the liquidity of the branches of credit institutions pending further coordination. Without prejudice to the measures necessary for the reinforcement of the European Monetary System, host Member States shall retain complete responsibility for the measures resulting from the implementation of their monetary policies. Such measures may not provide for discriminatory or restrictive treatment based on the fact that a credit institution is authorised in another Member State.

Article 28

Collaboration concerning supervision

The competent authorities of the Member States concerned shall collaborate closely in order to supervise the activities of credit institutions operating, in particular by having established branches there, in one or more Member States other than that in which their head offices are situated. They shall supply one another with all information concerning the management and ownership of such credit institutions that is likely to facilitate their supervision and the examination of the conditions for their authorisation, and all information likely to facilitate the monitoring of such institutions, in particular

with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms.

Article 29

On-the-spot verification of branches established in another Member State

1 Host Member States shall provide that, where a credit institution authorised in another Member State carries on its activities through a branch, the competent authorities of the home Member State may, after having first informed the competent authorities of the host Member State, carry out themselves or through the intermediary of persons they appoint for that purpose on-the-spot verification of the information referred to in Article 28.

2 The competent authorities of the home Member State may also, for purposes of the verification of branches, have recourse to one of the other procedures laid down in Article 56(7).

3 This Article shall not affect the right of the competent authorities of the host Member State to carry out, in the discharge of their responsibilities under this Directive, on-the-spot verifications of branches established within their territory.

Article 30

Exchange of information and professional secrecy

1 The Member States shall provide that all persons working or who have worked for the competent authorities, as well as auditors or experts acting on behalf of the competent authorities, shall be bound by the obligation of professional secrecy. This means that no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, except in summary or collective form, such that individual institutions cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where a credit institution has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that credit institution may be divulged in civil or commercial proceedings.

2 Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information in accordance with this Directive and with other Directives applicable to credit institutions. That information shall be subject to the conditions of professional secrecy indicated in paragraph 1.

3 Member States may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 5 and 6 only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be for the purpose of performing the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

4 Competent authorities receiving confidential information under paragraphs 1 or 2 may use it only in the course of their duties:

— to check that the conditions governing the taking-up of the business of credit institutions are met and to facilitate monitoring, on a non-consolidated or consolidated basis, of the conduct of such business, especially with regard to the monitoring of liquidity, solvency, large exposures, and administrative and accounting procedures and internal control mechanisms, or

— to impose sanctions, or

— in an administrative appeal against a decision of the competent authority, or

— in court proceedings initiated pursuant to Article 33 or to special provisions provided for in this in other Directives adopted in the field of credit institutions.

5 Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State, where there are two or more competent authorities in the same Member State, or between Member States, between competent authorities and:

— authorities entrusted with the public duty of supervising other financial organisations and insurance companies and the authorities responsible for the supervision of financial markets,

— bodies involved in the liquidation and bankruptcy of credit institutions and in other similar procedures,

— persons responsible for carrying out statutory audits of the accounts of credit institutions and other financial institutions,

in the discharge of their supervisory functions, and the disclosure to bodies which administer deposit-guarantee schemes of information necessary to the exercise of their functions. The information received shall be subject to the conditions of professional secrecy indicated in paragraph 1.

6 Notwithstanding paragraphs 1 to 4, Member States may authorise exchanges of information between, the competent authorities and:

— the authorities responsible for overseeing the bodies, involved in the liquidation and bankruptcy of credit institutions and other similar procedures, or

— the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the provisions of the first subparagraph shall require at least that the following conditions are met:

— the information shall be for the purpose of performing the supervisory task referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the name of the authorities which may receive information pursuant to this paragraph.

7 Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorise the exchange of information

between the competent authorities and the authorities or bodies responsible under law for the detection and investigation of breaches of company law.

Member States which have recourse to the provision in the first subparagraph shall require at least that the following conditions are met:

— the information shall be for the purpose of performing the task referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the third indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

Before 31 December 2000, the Commission shall draw up a report on the application of the provisions of this paragraph.

8 This Article shall not prevent a competent authority from transmitting:

— to central banks and other bodies with a similar function in their capacity as monetary authorities,

— where appropriate to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

9 In addition, notwithstanding the provisions referred to in paragraphs 1 and 4, the Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions financial institutions, investment services and insurance companies and to inspectors acting on behalf of those departments.

However, such disclosures may be made only where necessary for reasons of prudential control.

However, the Member States shall provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verification referred to in Article 29(1) and (2) may never be disclosed in the cases referred to in this paragraph except

with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which on-the-spot verification was carried out.

10 This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their Member States' markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1. The Member States shall, however, ensure that information received under paragraph 2 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

Article 31

Duty of persons responsible for the legal control of annual and consolidated accounts

1 Member States shall provide at least that:

a any person authorised within the meaning of Council Directive 84/253/EEC[(1)], performing in a credit institution the task described in Article 51 of Council Directive 78/660/EEC[(2)], or Article 37 of Council Directive 83/349/EEC, or Article 31 of Directive 85/611/EEC[(3)], or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that institution of which he has become aware while carrying out that task which is liable to:

— constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of credit institutions, or

— affect the continuous functioning of the credit institution, or

— lead to refusal to certify the accounts or to the expression of reservations;

b that person shall likewise have a duty to report any fact and decisions of which he becomes aware in the course of carrying out a task as described in (a) in an undertaking having close links resulting from a control relationship with the credit institution within which he is carrying out the abovementioned task.

2 The disclosure in good faith to the competent authorities, by persons authorised within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not involve such persons in liability of any kind.

Article 32

Power of sanction of the competent authorities

Without prejudice to the procedures for the withdrawal of authorisations and the provisions of criminal law, the Member States shall provide that their respective competent authorities may, as against credit institutions or those who effectively control the business of credit institutions which breach laws, regulations or administrative provisions concerning the supervision or pursuit of their activities, adopt or impose in respect of them penalties or measures aimed specifically at ending observed breaches or the causes of such breaches.

Article 33

Right to apply to the courts

Member States shall ensure that decisions taken in respect of a credit institution in pursuance of laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts. The same shall apply where no decision is taken within six months of its submission in respect of an application for authorisation which contains all the information required under the provisions in force.

[*F1 Article 33a*

Article 3 of Directive 2000/46/EC shall apply to credit institutions.**]**

Textual Amendments

F1 Inserted by Directive 2000/28/EC of the European Parliament and of the Council of 18 September 2000 amending Directive 2000/12/EC relating to the taking up and pursuit of the business of credit institutions.

CHAPTER 2

TECHNICAL INSTRUMENTS OF PRUDENTIAL SUPERVISION

Section 1

Own funds

Article 34

General principles

1 Wherever a Member State lays down by law, regulation or administrative action a provision in implementation of Community legislation concerning the prudential supervision of an operative credit institution which uses the term or refers to the concept of own funds, it shall bring this term or concept into line with the definition given in paragraphs 2, 3 and 4 and Articles 35 to 38.

2 Subject to the limits imposed in Article 38, the unconsolidated own funds of credit institutions shall consist of the following items:

(1) capital within the meaning of Article 22 of Directive 86/635/EEC, in so far as it has been paid up, plus share premium accounts but excluding cumulative preferential shares;

(2) reserves within the meaning of Article 23 of Directive 86/635/EEC and profits and losses brought forward as a result of the application of the final profit or loss. The Member States may permit inclusion of interim profits before a formal decision has been taken only if these profits have been verified by persons responsible for

the auditing of the accounts and if it is proved to the satisfaction of the competent authorities that the amount thereof has been evaluated in accordance with the principles set out in Directive 86/635/EEC and is net of any foreseeable charge or dividend;

(3) funds for general banking risks within the meaning of Article 38 of Directive 86/635/EEC;

(4) revaluation reserves within the meaning of Article 33 of Directive 78/660/EEC;

(5) value adjustments within the meaning of Article 37(2) of Directive 86/635/EEC;

(6) other items within the meaning of Article 35;

(7) the commitments of the members of credit institutions set up as cooperative societies and the joint and several commitments of the borrowers of certain institutions organised as funds, as referred to in Article 36(1);

(8) fixed-term cumulative preferential shares and subordinated loan capital as referred to in Article 36(3).

The following items shall be deducted in accordance with Article 38:

(9) own shares at book value held by a credit institution;

(10) intangible assets within the meaning of Article 4(9) (‘Assets’) of Directive 86/635/EEC;

(11) material losses of the current financial year;

(12) **[**[F2]holdings in other credit and financial institutions amounting to more than 10 % of their capital;

(13) subordinated claims and instruments referred to in Article 35 and Article 36(3) which a credit institution holds in respect of credit and financial institutions in which it has holdings exceeding 10 % of the capital in each case;

(14) holdings in other credit and financial institutions of up to 10 % of their capital, the subordinated claims and the instruments referred to in Article 35 and Article 36(3) which a credit institution holds in respect of credit and financial institutions other than those referred to in points 12 and 13 of this subparagraph in respect of the amount of the total of such holdings, subordinated claims and instruments which exceed 10 % of that credit institution's own funds calculated before the deduction of items in points 12 to 16 of this subparagraph;

(15) participations within the meaning of Article 1(9) which a credit institution holds in
- — insurance undertakings within the meaning of Article 6 of Directive 73/239/EEC, Article 6 of Directive 79/267/EEC or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council[(4)],
- — reinsurance undertakings within the meaning of Article 1(c) of Directive 98/78/EC,
- — insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC;

(16) each of the following items which the credit institution holds in respect of the entities defined in point (15) in which it holds a participation:
- — instruments referred to in Article 16(3) of Directive 73/239/EEC,

— instruments referred to in Article 18(3) of Directive 79/267/EEC.**]**

[[F2]Where shares in another credit institution, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to in points 12 to 16.

As an alternative to the deduction of the items referred to in points 15 and 16, Member States may allow their credit institutions to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to Directive 2002/87/EC. Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about 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 may provide that for the calculation of own funds on a stand-alone basis, credit institutions subject to supervision on a consolidated basis in accordance with Chapter 3 or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in points 12 to 16 which are held in credit institutions, financial institutions, insurance or reinsurance undertakings or insurance holding companies, which are included in the scope of consolidated or supplementary supervision.

This provision shall apply to all the prudential rules harmonised by Community acts.**]**

3 The concept of own funds as defined in points (1) to (8) of paragraph 2 embodies a maximum number of items and amounts. The use of those items and the fixing of lower ceilings, and the deduction of items other than those listed in points (9) to (13) of paragraph 2 shall be left to the discretion of the Member States. Member States shall nevertheless be obliged to consider increased convergence with a view to a common definition of own funds.

To that end, the Commission shall, by 1 January 1996 at the latest, submit a report to the European Parliament and to the Council on the application of this Article and Articles 35 to 39, accompanied, where appropriate, by such proposals for amendment as it shall deem necessary. Not later than 1 January 1998, the European Parliament and the Council shall, acting in accordance with the procedure laid down in Article 251 of the Treaty and after consultation of the Economic and Social Committee, examine the definition of own funds with a view to the uniform application of the common definition.

4 The items listed in points (1) to (5) of paragraph 2 must be available to a credit institution for unrestricted and immediate use to cover risks or losses as soon as these occur. The amount must be net of any foreseeable tax charge at the moment of its calculation or be suitably adjusted in so far as such tax charges reduce the amount up to which these items may be applied to cover risks or losses.

Textual Amendments

F2 Substituted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

Article 35

Other items

1 The concept of own funds used by a Member State may include other items provided that, whatever their legal or accounting designations might be, they have the following characteristics:

a they are freely available to the credit institution to cover normal banking risks where revenue or capital losses have not yet been identified;

b their existence is disclosed in internal accounting records;

c their amount is determined by the management of the credit institution, verified by independent auditors, made known to the competent authorities and placed under the supervision of the latter.

2 Securities of indeterminate duration and other instruments that fulfil the following conditions may also be accepted as other items:

a they may not be reimbursed on the bearer's initiative or without the prior agreement of the competent authority;

b the debt agreement must provide for the credit institution to have the option of deferring the payment of interest on the debt;

c the lender's claims on the credit institution must be wholly subordinated to those of all non-subordinated creditors;

d the documents governing the issue of the securities must provide for debt and unpaid interest to be such as to absorb losses, whilst leaving the credit institution in a position to continue trading;

e only fully paid-up amounts shall be taken into account.

To these may be added cumulative preferential shares other than those referred to in point 8 of Article 34(2).

Article 36

Other provisions concerning own funds

1 The commitments of the members of credit institutions set up as cooperative societies referred to in point 7 of Article 34(2), shall comprise those societies' uncalled capital; together with the legal commitments of the members of those cooperative societies to make additional non-refundable payments should the credit institution incur a loss, in which case it must be possible to demand those payments without delay.

The joint and several commitments of borrowers in the case of credit institutions organised as funds shall be treated in the same way as the preceding items.

All such items may be included in own funds in so far as they are counted as the own funds of institutions of this category under national law.

2 Member States shall not include in the own funds of public credit institutions guarantees which they or their local authorities extend to such entities.

3 Member States or the competent authorities may include fixed-term cumulative preferential shares referred to in point (8) of Article 34(2) and subordinated loan capital referred

to in that provision in own funds, if binding agreements exist under which, in the event of the bankruptcy or liquidation of the credit institution, they rank after the claims of all other creditors and are not to be repaid until all other debts outstanding at the time have been settled.

Subordinated loan capital must also fulfil the following criteria:

a only fully paid-up funds may be taken into account;

b the loans involved must have an original maturity of at least five years, after which they may be repaid; if the maturity of the debt is not fixed, they shall be repayable only subject to five years' notice unless the loans are no longer considered as own funds or unless the prior consent of the competent authorities is specifically required for early repayment. The competent authorities may grant permission for the early repayment of such loans provided the request is made at the initiative of the issuer and the solvency of the credit institution in question is not affected;

c the extent to which they may rank as own funds must be gradually reduced during at least the last five years before the repayment date;

d the loan agreement must not include any clause providing that in specified circumstances, other than the winding-up of the credit institution, the debt will become repayable before the agreed repayment date.

Article 37

Calculation of own funds on a consolidated basis

1 Where the calculation is to be made on a consolidated basis, the consolidated amounts relating to the items listed under Article 34(2) shall be used in accordance with the rules laid down in Articles 52 to 56. Moreover, the following may, when they are credit ('negative') items, be regarded as consolidated reserves for the calculation of own funds:

— any minority interests within the meaning of Article 21 of Directive 83/349/EEC, where the global integration method is used,

— the first consolidation difference within the meaning of Articles 19, 30 and 31 of Directive 83/349/EEC,

— the translation differences included in consolidated reserves in accordance with Article 39(6) of Directive 86/635/EEC,

— any difference resulting from the inclusion of certain participating interests in accordance with the method prescribed in Article 33 of Directive 83/349/EEC.

2 Where the above are debit ('positive') items, they must be deducted in the calculation of consolidated own funds.

Article 38

Deductions and limits

1 The items referred to in points (4) to (8) of Article 34(2), shall be subject to the following limits:

a the total of the items in points (4) to (8) may not exceed a maximum of 100 % of the items in points (1) plus (2) and (3) minus (9), (10) and (11);

b the total of the items in points (7) and (8) may not exceed a maximum of 50 % of the items in points (1) plus (2) and (3) minus (9), (10) and (11);

c the total of the items in points (12) and (13) shall be deducted from the total of the items.

2 The competent authorities may authorise credit institutions to exceed the limit laid down in paragraph 1 in temporary and exceptional circumstances.

Article 39

Provision of proof to the competent authorities

Compliance with the conditions laid down in Article 34(2), (3) and (4) and Articles 35 to 38 must be proved to the satisfaction of the competent authorities.

Section 2

Solvency ratio

Article 40

General principles

1 The solvency ratio expresses own funds, as defined in Article 41, as a proportion of total assets and off-balance-sheet items, risk-adjusted in accordance with Article 42.

2 The solvency ratios of credit institutions which are neither parent undertakings as defined in Article 1 of Directive 83/349/EEC, nor subsidiaries of such undertakings shall be calculated on an individual basis.

3 The solvency ratios of credit institutions which are parent undertakings shall be calculated on a consolidated basis in accordance with the methods laid down in this Directive and in Directive 86/635/EEC.

4 The competent authorities responsible for authorising and supervising a parent undertaking which is a credit institution may also require the calculation of a subconsolidated or unconsolidated ratio in respect of that parent undertaking and of any of its subsidiaries which are subject to authorisation and supervision by them. Where such monitoring of the satisfactory allocation of capital within a banking group is not carried out, other measures must be taken to attain that end.

5 Without prejudice to credit institutions' compliance with the requirements of paragraphs 2, 3 and 4, and of Article 52(8) and (9), the competent authorities shall ensure that ratios are calculated not less than twice each year, either by credit institutions themselves, which shall communicate the results and any component data required to the competent authorities, or by the competent authorities, using data supplied by the credit institutions.

6 The valuation of assets and off-balance-sheet items shall be effected in accordance with Directive 86/635/EEC.

Article 41

The numerator: own funds

Own funds as defined in this Directive shall form the numerator of the solvency ratio.

Article 42

The denominator: risk-adjusted assets and off-balance-sheet items

1 Degrees of credit risk, expressed as percentage weightings, shall be assigned to asset items in accordance with Articles 43 and 44, and exceptionally Articles 45, 62 and 63. The balance-sheet value of each asset shall then be multiplied by the relevant weighting to produce a risk-adjusted value.

2 In the case of the off-balance-sheet items listed in Annex II, a two-stage calculation as prescribed in Article 43(2) shall be used.

3 In the case of the off-balance-sheet items referred to in Article 43(3), the potential costs of replacing contracts in the event of counterparty default shall be calculated by means of one of the two methods set out in Annex III. Those costs shall be multiplied by the relevant counterparty weightings in Article 43(1), except the 100 % weightings as provided for there shall be replaced by 50 % weightings to produce risk-adjusted values.

4 The total of the risk-adjusted values of the assets and off-balance-sheet items mentioned in paragraphs 2 and 3 shall be the denominator of the solvency ratio.

Article 43

Risk weightings

1 The following weightings shall be applied to the various categories of asset items, although the competent authorities may fix higher weightings as they see fit:

a Zero weighting

(1) cash in hand and equivalent items;

(2) asset items constituting claims on Zone A central governments and central banks;

(3) asset items constituting claims on the European Communities;

(4) asset items constituting claims carrying the explicit guarantees of Zone A central governments and central banks or of the European Communities;

(5) asset items constituting claims on Zone B central governments and central banks denominated and funded in the national currencies of the borrowers;

(6) asset items constituting claims carrying the explicit guarantees of Zone B central governments and central banks denominated and funded in the national currency common to the guarantor and the borrower;

(7) asset items secured to the satisfaction of the competent authorities, by collateral in the form of Zone A central government or central bank securities or securities issued by the European Communities or by cash deposits placed with the lending institution or by certificates of deposit or similar instruments issued by and lodged with the latter;

b 20 % weighting

(1) asset items constituting claims on the EIB;

(2) asset items constituting claims on multilateral development banks;

(3) asset items constituting claims carrying the explicit guarantee of the EIB;

(4) asset items constituting claims carrying the explicit guarantees of multilateral development banks;

(5) asset items constituting claims on Zone A regional governments or local authorities, subject to Article 44;

(6) asset items constituting claims carrying the explicit guarantees of Zone A regional governments or local authorities, subject to Article 44;

(7) asset items constituting claims on Zone A credit institutions but not constituting such institutions' own funds;

(8) asset items constituting claims with a maturity of one year or less, on Zone B credit institutions, other than securities issued by such institutions which are recognised as components of their own funds;

(9) asset items carrying the explicit guarantees of Zone A credit institutions;

(10) asset items constituting claims with a maturity of one year or less carrying the explicit guarantees of Zone B credit institutions;

(11) asset items secured, to the satisfaction of the competent authorities, by collateral in the form of securities issued by the EIB or by multilateral development banks;

(12) cash items in the process of collection;

c 50 % weighting

(1) loans fully and completely secured, to the satisfaction of the competent authorities, by mortgages on residential property which is or will be occupied or let by the borrower, and loans fully and completely secured, to the satisfaction of the competent authorities, by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, in respect of residential property which is or will be occupied or let by the borrower;

‘mortgage-backed securities’ which may be treated as loans referred to in the first subparagraph or in Article 62(1), if the competent authorities consider, having regard to the legal framework in force in each Member State, that they are equivalent in the light of the credit risk. Without prejudice to the types of securities which may be included in and are capable of fulfilling the conditions in this point 1, ‘mortgage-backed securities’ may include instruments within the meaning of Section B(1)(a) and (b) of the Annex to Council Directive 93/22/EEC[5]. The competent authorities must in particular be satisfied that:

(i) such securities are fully and directly backed by a pool of mortgages which are of the same nature as those defined in the first subparagraph or in Article 62(1) and are fully performing when the mortgage-backed securities are created;

(ii) an acceptable high-priority charge on the underlying mortgage-asset items is held either directly by investors in mortgage-backed

securities or on their behalf by a trustee or mandated representative in the same proportion to the securities which they hold;

(2) prepayments and accrued income: these assets shall be subject to the weighting corresponding to the counterparty where a credit institution is able to determine it in accordance with Directive 86/635/EEC. Otherwise, where it is unable to determine the counterparty, it shall apply a flat-rate weighting of 50 %;

d 100 % weighting

(1) asset items constituting claims on Zone B central governments and central banks except where denominated and funded in the national currency of the borrower;

(2) asset items constituting claims on Zone B regional governments or local authorities;

(3) asset items constituting claims with a maturity of more than one year on Zone B credit institutions;

(4) asset items constituting claims on the Zone A and Zone B non-bank sectors;

(5) tangible 'Assets' within the meaning of Article 4(10) of Directive 86/635/EEC;

(6) holdings of shares, participation and other components of the own funds of other credit institutions which are not deducted from the own funds of the lending institutions;

(7) all other assets except where deducted from own funds.

2 The following treatment shall apply to off-balance-sheet items other than those covered in paragraph 3. They shall first be grouped according to the risk groupings set out in Annex II. The full value of the full-risk items shall be taken into account, 50 % of the value of the medium-risk items and 20 % of the medium/low-risk items, while the value of low-risk items shall be set at zero. The second stage shall be to multiply the off-balance-sheet values, adjusted as described above, by the weightings attributable to the relevant counterparties in accordance with the treatment of asset items prescribed in paragraph 1 and Article 44. In the case of asset sale and repurchase agreements and outright forward purchases, the weightings shall be those attaching to the assets in question and not to the counterparties to the transactions. The portion of unpaid capital subscribed to the European Investment Fund may be weighted at 20 %.

3 The methods set out in Annex III shall be applied to the off-balance-sheet items listed in Annex IV except for:

— contracts traded on recognised exchanges,

— foreign-exchange contracts (except contracts concerning gold) with an original maturity of 14 calendar days or less.

Until 31 December 2006, the competent authorities of Member States may exempt from the application of the methods set out in Annex III over-the-counter (OTC) contracts cleared by a clearing house where the latter acts as the legal counterparty and all participants fully collateralise on a daily basis the exposure they present to the clearing house, thereby providing a protection covering both the current exposure and the potential future exposure. The competent authorities must be satisfied that the posted collateral gives the same level of protection as collateral which complies with paragraph 1(a)(7) and that the risk of a build-up of the clearing house's exposures beyond

the market value of posted collateral is eliminated. Member States shall inform the Commission of the use they make of this option.

4 Where off-balance-sheet items carry explicit guarantees, they shall be weighted as if they had been incurred on behalf of the guarantor rather than the counterparty. Where the potential exposure arising from off-balance-sheet transactions is fully and completely secured, to the satisfaction of the competent authorities, by any of the asset items recognised as collateral in paragraph 1(a)(7) and (b)(11), weightings of 0 % or 20 % shall apply depending on the collateral in question.

The Member States may apply a 50 % weighting to off-balance-sheet items which are sureties or guarantees having the character of credit substitutes and which are fully guaranteed, to the satisfaction of the competent authorities, by mortgages meeting the conditions set out in paragraph 1(c)(1), subject to the guarantor having a direct right to such collateral.

5 Where asset and off-balance-sheet items are given a lower weighting because of the existence of explicit guarantees or collateral acceptable to the competent authorities, the lower weighting shall apply only to that part which is guaranteed or which is fully covered by the collateral.

Article 44

Weighting of claims for regional governments or local authorities of the Member States

1 Notwithstanding the requirements of Article 43(1)(b), the Member States may fix a weighting of 0 % for their own regional governments and local authorities if there is no difference in risk between claims on the latter and claims on their central governments because of the revenue-raising powers of the regional governments and local authorities and the existence of specific institutional arrangements the effect of which is to reduce the chances of default by the latter. A zero-weighting fixed in accordance with these criteria shall apply to claims on and off-balance-sheet items incurred on behalf of the regional governments and local authorities in question and claims on others and off-balance-sheet items incurred on behalf of others and guaranteed by those regional governments and local authorities or secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by those regional governments or local authorities.

2 The Member States shall notify the Commission if they believe a zero-weighting to be justified according to the criteria laid down in paragraph 1. The Commission shall circulate that information. Other Member States may offer the credit institutions under the supervision of their competent authorities the possibility of applying a zero-weighting where they undertake business with the regional governments or local authorities in question or where they hold claims guaranteed by the latter, including collateral in the form of securities.

Article 45

Other weighting

1 Without prejudice to Article 44(1) the Member States may apply a weighting of 20 % to asset items which are secured, to the satisfaction of the competent authorities concerned, by collateral in the form of securities issued by Zone A regional governments or local authorities, by deposits placed with Zone A credit institutions other than the lending institution, or by certificates of deposit or similar instruments issued by such credit institutions.

2 The Member States may apply a weighting of 10 % to claims on institutions specialising in the inter-bank and public-debt markets in their home Member States and subject to close supervision by the competent authorities where those asset items are fully and completely secured, to the satisfaction of the competent authorities of the home Member States, by a combination of asset items mentioned in Article 43(1)(a) and (b) recognised by the latter as constituting adequate collateral.

3 The Member States shall notify the Commission of any provisions adopted pursuant to paragraphs 1 and 2 and of the grounds for such provisions. The Commission shall forward that information to the Member States. The Commission shall periodically examine the implications of those provisions in order to ensure that they do not result in any distortions of competition.

Article 46

Administrative bodies and non-commercial undertakings

For the purposes of Article 43 (1)(b), the competent authorities may include within the concept of regional governments and local authorities non-commercial administrative bodies responsible to regional governments or local authorities or authorities which, in the view of the competent authorities, exercise the same responsibilities as regional and local authorities.

The competent authorities may also include within the concept of regional governments and local authorities, churches and religious communities constituted in the form of a legal person under public law, in so far as they raise taxes in accordance with legislation conferring on them the right to do so. However, in this case the option set out in Article 44 shall not apply.

Article 47

Solvency ratio level

1 Credit institutions shall be required permanently to maintain the ratio defined in Article 40 at a level of at least 8 %.

2 Notwithstanding paragraph 1, the competent authorities may prescribe higher minimum ratios as they consider appropriate.

3 If the ratio falls below 8 % the competent authorities shall ensure that the credit institution in question takes appropriate measures to restore the ratio to the agreed minimum as quickly as possible.

Section 3

Large exposures

Article 48

Reporting of large exposures

1 A credit institution's exposure to a client or group of connected clients shall be considered a large exposure where its value is equal to or exceeds 10 % of its own funds.

2 A credit institution shall report every large exposure within the meaning of paragraph 1 to the competent authorities. Member States shall provide that reporting is to be carried out, at their discretion, in accordance with one of the following two methods:

— reporting of all large exposures at least once a year, combined with reporting during the year of all new large exposures and any increases in existing large exposures of at least 20 % with respect to the previous communication,

— reporting of all large exposures at least four times a year.

3 Exposures exempted under Article 49(7)(a), (b), (c), (d), (f), (g) and (h) need not, however, be reported as laid down in paragraph 2. The reporting frequency laid down in the second indent to paragraph 2 may be reduced to twice a year for the exposures referred to in Article 49(7)(e) and (i), and also in paragraphs 8, 9 and 10.

4 The competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms for the purpose of identifying and recording all large exposures and subsequent changes to them, as defined and required by this Directive, and for that of monitoring those exposures in the light of each credit institution's own exposure policies.

Where a credit institution invokes paragraph 3, it shall keep a record of the grounds advanced for at least one year after the event giving rise to the dispensation, so that the competent authorities may establish whether it is justified.

Article 49

Limits on large exposures

1 A credit institution may not incur an exposure to a client or group of connected clients the value of which exceed 25 % of its own funds.

2 Where that client or group of connected clients is the parent undertaking or subsidiary of the credit institution and/or one or more subsidiaries of that parent undertaking, the percentage laid down in paragraph 1 shall be reduced to 20 %. Member States may, however, exempt the exposures incurred to such clients from the 20 % limit if they provide for specific monitoring of such exposures by other measures or procedures. They shall inform the Commission and the Banking Advisory Committee of the content of such measures or procedures.

3 A credit institution may not incur large exposures which in total exceed 800 % of its own funds.

4 Member States may impose limits more stringent than those laid down in paragraphs 1, 2 and 3.

5 A credit institution shall at all times comply with the limits laid down in paragraphs 1, 2 and 3 in respect of its exposures. If in an exceptional case exposures exceed those limits, that fact must be reported without delay to the competent authorities which may, where the circumstances warrant it, allow the credit institution a limited period of time in which to comply with the limits.

6 Member States may fully or partially exempt from the application of paragraphs 1, 2 and 3 exposures incurred by a credit institution to its parent undertaking, to other subsidiaries of that parent undertaking or to its own subsidiaries, in so far as those undertakings are covered by the supervision on a consolidated basis to which the credit institution itself is subject, in accordance with this Directive or with equivalent standards in force in a third country.

7 Member States may fully or partially exempt the following exposures from the application of paragraphs 1, 2 and 3:

a asset items constituting claims on Zone A central governments or central banks;

b asset items constituting claims on the European Communities;

c asset items constituting claims carrying the explicit guarantees of Zone A central governments or central banks or of the European Communities;

d other exposures attributable to, or guaranteed by, Zone A central governments or central banks or the European Communities;

e asset items constituting claims on and other exposures to Zone B central governments or central banks which are denominated and, where applicable, funded in the national currencies of the borrowers;

f asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of Zone A central government or central bank securities, or securities issued by the European Communities or by Member State regional or local authorities for which Article 44 lays down a zero weighting for solvency purposes;

g asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of cash deposits placed with the lending institution or with a credit institution which is the parent undertaking or a subsidiary of the lending institution;

h asset items and other exposures secured, to the satisfaction of the competent authorities, by collateral in the form of certificates of deposit issued by the lending institution or by a credit institution which is the parent undertaking or a subsidiary of the lending institution and lodged with either of them;

i asset items constituting claims on and other exposures to credit institutions, with a maturity of one year or less, but not constituting such institutions' own funds;

j asset items constituting claims on and other exposures to those institutions which are not credit institutions but which fulfil the conditions referred to in Article 45(2), with a maturity of one year or less, and secured in accordance with the same paragraph;

k bills of trade and other similar bills, with a maturity of one year or less, bearing the signatures of other credit institutions;

l debt securities as defined in Article 22(4) of Directive 85/611/EEC;

m pending subsequent coordination, holdings in the insurance companies referred to in Article 51(3) up to 40 % of the own funds of the credit institution acquiring such a holding;

n asset items constituting claims on regional or central credit institutions with which the lending institution is associated in a network in accordance with legal or statutory provisions and which are responsible, under those provisions, for cash-clearing operations within the network;

o exposures secured, to the satisfaction of the competent authorities, by collateral in the form of securities other than those referred to in (f) provided that those securities are not issued by the credit institution itself, its parent company or one of their subsidiaries, or by the client or group of connected clients in question. The securities used as collateral must be valued at market price, have a value that exceeds the exposures guaranteed and be either traded on a stock exchange or effectively negotiable and regularly quoted on a market operated under the auspices of recognised professional operators and allowing, to the satisfaction of the competent authorities of the Member State of origin of the credit institution, for the establishment of an objective price such that the excess value of the securities may be verified at any time. The excess value required shall be 100 % it shall, however, be 150 % in the case of shares and 50 % in the case of debt securities issued by credit institutions, Member State regional or local authorities other than those referred

to in Article 44, and in the case of debt securities issued by the EIB and multilateral development banks. Securities used as collateral may not constitute credit institutions' own funds;

p loans secured, to the satisfaction of the competent authorities, by mortgages on residential property or by shares in Finnish residential housing companies, operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation and leasing transactions under which the lessor retains full ownership of the residential property leased for as long as the lessee has not exercised his option to purchase, in all cases up to 50 % of the value of the residential property concerned. The value of the property shall be calculated, to the satisfaction of the competent authorities, on the basis of strict valuation standards laid down by law, regulation or administrative provisions. Valuation shall be carried out at least once a year. For the purposes of this point residential property shall mean a residence to be occupied or let by the borrower;

q 50 % of the medium/low-risk off-balance-sheet items referred to in Annex II;

r subject to the competent authorities' agreement, guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of credit institutions, subject to a weighting of 20 % of their amount.

Member States shall inform the Commission of the use they make of this option in order to ensure that it does not result in distortions of competition;

s the low-risk off-balance-sheet items referred to in Annex II, to the extent that an agreement has been concluded with the client or group of connected clients under which the exposure may be incurred only if it has been ascertained that it will not cause the limits applicable under paragraphs 1, 2 and 3 to be exceeded.

8 For the purposes of paragraphs 1, 2 and 3, Member States may apply a weighting of 20 % to asset items constituting claims on Member State regional and local authorities and to other exposures to or guaranteed by such authorities; subject to the conditions laid down in Article 44, however, Member States may reduce that rate to 0 %.

9 For the purposes of paragraphs 1, 2 and 3, Member States may apply a weighting of 20 % to asset items constituting claims on and other exposures to credit institutions with a maturity of more than one but not more than three years and a weighting of 50 % to asset items constituting claims on credit institutions with a maturity of more than three years, provided that the latter are represented by debt instruments that were issued by a credit institution and that those debt instruments are, in the opinion of the competent authorities, effectively negotiable on a market made up of professional operators and are subject to daily quotation on that market, or the issue of which was authorised by the competent authorities of the Member State of origin of the issuing credit institutions. In no case may any of these items constitute own funds.

10 By way of derogation from paragraphs 7(i) and 9, Member States may apply a weighting of 20 % to asset items constituting claims on and other exposures to credit institutions, regardless of their maturity.

11 Where an exposure to a client is guaranteed by a third party, or by collateral in the form of securities issued by a third party under the conditions laid down in paragraph 7(o), Member States may:

— treat the exposure as having been incurred to the third party rather than to the client, if the exposure is directly and unconditionally guaranteed by that third party, to the satisfaction of the competent authorities,

— treat the exposure as having been incurred to the third party rather than to the client, if the exposure defined in paragraph 7(o) is guaranteed by collateral under the conditions there laid down.

12 By 1 January 1999 at the latest, the Council shall, on the basis of a report from the Commission, examine the treatment of interbank exposures provided for in paragraphs 7(i), 9 and 10. The Council shall decide on any changes to be made on a proposal from the Commission.

Article 50

Supervision on a consolidated or unconsolidated basis of large exposures

1 If the credit institution is neither a parent undertaking nor a subsidiary, compliance with the obligations imposed in Articles 48 and 49 or in any other Community provision applicable to this area shall be monitored on an unconsolidated basis.

2 In the other cases, compliance with the obligations imposed in Articles 48 and 49 or in any other Community provision applicable to this area shall be monitored on a consolidated basis in accordance with Articles 52 to 56.

3 Member States may waive monitoring on an individual or subconsolidated basis of compliance with the obligations imposed in Articles 48 and 49 or in any other Community provision applicable to this area by a credit institution which, as a parent undertaking, is subject to monitoring on a consolidated basis and by any subsidiary of such a credit institution which is subject to their authoritisation and supervision and is covered by monitoring on a consolidated basis.

Member States also waive such monitoring where the parent undertaking is a financial holding company established in the same Member State as the credit institution, provided that company is subject to the same monitoring as credit institutions.

In the cases referred to in the first and second subparagraphs measures must be taken to ensure the satisfactory allocation of risks within the group.

Section 4

Qualifying holdings outside the financial sector

Article 51

Limits to non-financial qualifying holdings

1 No credit institution may have a qualifying holding the amount of which exceeds 15 % of its own funds in an undertaking which is neither a credit institution, nor a financial institution, nor an undertaking carrying on an activity referred to in the second subparagraph of Article 43(2)(f) of Directive 86/635/EEC.

2 The total amount of a credit institution's qualifying holdings in undertakings other than credit institutions, financial institutions or undertakings carrying on activities referred to in the second subparagraph of Article 43(2)(f) of Directive 86/635/EEC may not exceed 60 % of its own funds.

[[F2]3 The Member States need not apply the limits laid down in paragraphs 1 and 2 to holdings in insurance companies as defined in Directive 73/239/EEC and Directive 79/267/EEC, or in reinsurance companies as defined in Directive 98/78/EC.**]**

4 Shares held temporarily during a financial reconstruction or rescue operation or during the normal course of underwriting or in an institution's own name on behalf of others shall not be counted as qualifying holdings for the purpose of calculating the limits laid down in paragraphs 1 and 2. Shares which are not financial fixed assets as defined in Article 35(2) of Directive 86/635/EEC shall not be included.

5 The limits laid down in paragraphs 1 and 2 may be exceeded only in exceptional circumstances. In such cases, however, the competent authorities shall require a credit institution either to increase its own funds or to take other equivalent measures.

6 The Member States may provide that the competent authorities shall not apply the limits laid down in paragraphs 1 and 2 if they provide that 100 % of the amounts by which a credit institution's qualifying holdings exceed those limits must be covered by own funds and that the latter shall not be included in the calculation of the solvency ratio. If both the limits laid down in paragraphs 1 and 2 are exceeded, the amount to be covered by own funds shall be the greater of the excess amounts.

Textual Amendments

F2 Substituted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

CHAPTER 3

SUPERVISION ON A CONSOLIDATED BASIS

Article 52

Supervision on a consolidated basis of credit institutions

1 Every credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such institutions shall be subject, to the extent and in the manner prescribed in Article 54, to supervision on the basis of its consolidated financial situation. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6.

2 Every credit institution the parent undertaking of which is a financial holding company shall be subject, to the extent and in the manner prescribed in Article 54, to supervision on the basis of the consolidated financial situation of that financial holding company. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6. **[**[F2]Without prejudice to Article 54a, the consolidation of the financial situation of the financial holding company shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the financial holding company on a stand-alone basis.**]**

3 The Member States or the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 53 may decide in the cases listed below that a credit institution, financial institution or auxiliary banking services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:

— if the undertaking that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information,

— if, in the opinion of the competent authorities, the undertaking that should be included is of negligible interest only with respect to the objectives of monitoring credit institutions and in all cases if the balance-sheet total of the undertaking that should be included is less than the smaller of the following two amounts: EUR 10 million or 1 % of the balance-sheet total of the parent undertaking or the undertaking that holds the participation. If several undertakings meet the above criteria, they must nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the aforementioned objectives, or

— if, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking that should be included would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.

4 When the competent authorities of a Member State do not include a credit institution subsidiary in supervision on a consolidated basis under one of the cases provided for in the second and third indents of paragraph 3, the competent authorities of the Member State in which that credit institution subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that credit institution.

5 Supervision of solvency, and of the adequacy of own funds to cover market risks and control of large exposures shall be exercised on a consolidated basis in accordance with this Article and Articles 53 to 56. Member States shall adopt any measures necessary, where appropriate, to include financial holding companies in consolidated supervision, in accordance with paragraph 2.

Compliance with the limits set in Article 51(1) and (2) shall be supervised and controlled on the basis of the consolidated or subconsolidated financial situation of the credit institution.

6 The competent authorities shall ensure that, in all the undertakings included in the scope of the supervision on a consolidated basis that is exercised over a credit institution in implementation of paragraphs 1 and 2, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supervision on a consolidated basis.

7 Without prejudice to specific provisions contained in other directives, Member States may waive application, on an individual or subconsolidated basis, of the rules laid down in paragraph 5 to a credit institution that, as a parent undertaking, is subject to supervision on a consolidated basis, and to any subsidiary of such a credit institution which is subject to their authorisation and supervision and is included in the supervision on a consolidated basis of the credit institution which is the parent company. The same exemption option shall be allowed where the parent undertaking is a financial holding company which has its head office in the same Member State as the credit institution, provided that it is subject to the same supervision as that exercised over credit institutions, and in particular the standards laid down in paragraph 5.

In both cases set out in the first subparagraph, steps must be taken to ensure that capital is distributed adequately within the banking group.

If the competent authorities apply those rules individually to such credit institutions, they may, for the purpose of calculating own funds, make use of the provision in the last subparagraph of Article 3(2).

8 Where a credit institution the parent of which is a credit institution has been authorised and is situated in another Member State, the competent authorities which granted that authorisation shall apply the rules laid down in paragraph 5 to that institution on an individual or, when appropriate, a subconsolidated basis.

9 Notwithstanding the requirements of paragraph 8, the competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. The Commission must be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the Banking Advisory Committee.

10 Member States shall provide that their competent authorities responsible for exercising supervision on a consolidated basis may ask the subsidiaries of a credit institution or a financial holding company which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 55. In such a case, the procedures for transmitting and verifying the information laid down in that Article shall apply.

Textual Amendments

F2 Substituted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

Article 53

Competent authorities responsible for exercising supervision on a consolidated basis

1 Where a parent undertaking is a credit institution, supervision on a consolidated basis shall be exercised by the competent authorities that authorised it under Article 4.

2 Where the parent of a credit institution is a financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities which authorised that credit institution under Article 4.

However, where credit institutions authorised in two or more Member States have as their parent the same financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities of the credit institution authorised in the Member State in which the financial holding company was set up.

If no credit institution subsidiary has been authorised in the Member State in which the financial holding company was set up, the competent authorities of the Member States concerned (including those of the Member State in which the financial holding company was set up) shall seek to reach agreement as to who amongst them will exercise supervision on a consolidated basis. In the absence of such agreement, supervision on

a consolidated basis shall be exercised by the competent authorities that authorised the credit institution with the greatest balance-sheet total; if that figure is the same, supervision on a consolidated basis shall be exercised by the competent authorities which first gave the authorisation referred to in Article 4.

3 The competent authorities concerned may by common agreement waive the rules laid down in the first and second subparagraph of paragraph 2.

4 The agreements referred to in the third subparagraph of paragraph 2 and in paragraph 3 shall provide for procedures for cooperation and for the transmission of information such that the objectives of supervision on a consolidated basis can be attained.

5 Where Member States have more than one competent authority for the prudential supervision of credit institutions and financial institutions, Member States shall take the requisite measures to organise coordination between such authorities.

Article 54

Form and extent of consolidation

1 The competent authorities responsible for exercising supervision on a consolidated basis must, for the purposes of supervision, require full consolidation of all the credit institutions and financial institutions which are subsidiaries of a parent undertaking.

However, proportional consolidation may be prescribed where, in the opinion of the competent authorities, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital because of the liability of the other shareholders or members whose solvency is satisfactory. The liability of the other shareholders and members must be clearly established, if necessary by means of formal signed commitments.

[[F3]In the case where undertakings are linked by a relationship within the meaning of Article 12 (1) of Directive 83/349/EEC, the competent authorities shall determine how consolidation is to be carried out.**]**

2 The competent authorities responsible for carrying out supervision on a consolidated basis must, in order to do so, require the proportional consolidation of participations in credit institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where those undertakings' liability is limited to the share of the capital they hold.

3 In the case of participations or capital ties other than those referred to in paragraphs 1 and 2, the competent authorities shall determine whether and how consolidation is to be carried out. In particular, they may permit or require use of the equity method. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

4 Without prejudice to paragraphs 1, 2 and 3, the competent authorities shall determine whether and how consolidation is to be carried out in the following cases:

— where, in the opinion of the competent authorities, a credit institution exercises a significant influence over one or more credit institutions or financial institutions, but without holding a participation or other capital ties in these institutions,

— where two or more credit institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memoranda or articles of association**[**[F2].**]**

— **[**F4. . . . .**]**

In particular, the competent authorities may permit, or require use of, the method provided for in Article 12 of Directive 83/349/EEC. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.

5 Where consolidated supervision is required pursuant to Article 52(1) and (2), ancillary banking services undertakings shall be included in consolidations in the cases, and in accordance with the methods laid down in paragraphs 1 to 4 of this Article.

Textual Amendments

F2 Substituted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

F3 Inserted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

F4 Deleted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

*[*F3*Article 54a*

Management body of financial holding companies

The Member States shall require that persons who effectively direct the business of a financial holding company are of sufficiently good repute and have sufficient experience to perform those duties.**]**

Textual Amendments

F3 Inserted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

Article 55

Information to be supplied by mixed-activity holding companies and their subsidiaries

1 Pending further coordination of consolidation methods, Member States shall provide that, where the parent undertaking of one or more credit institutions is a mixed-activity holding company, the competent authorities responsible for the authorisation and supervision of those

credit institutions shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via credit institution subsidiaries, require them to supply any information which would be relevant for the purpose of supervising the credit institution subsidiaries.

2 Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify information received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking, the procedure laid down in Article 56(4) may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which the credit institution subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in Article 56(7).

[F3 Article 55a

Intra-group transactions with mixed-activity holding companies

Without prejudice to the provisions of Title V, Chapter 2, Section 3, of this Directive, Member States shall provide that, where the parent undertaking of one or more credit institutions is a mixed-activity holding company, the competent authorities responsible for the supervision of these credit institutions shall exercise general supervision over transactions between the credit institution and the mixed-activity holding company and its subsidiaries.

Competent authorities shall require credit institutions to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions with their parent mixed-activity holding company and its subsidiaries appropriately. Competent authorities shall require the reporting by the credit institution of any significant transaction with these entities other than the one referred to in Article 48. These procedures and significant transactions shall be subject to overview by the competent authorities.

Where these intra-group transactions are a threat to a credit institution's financial position, the competent authority responsible for the supervision of the institution shall take appropriate measures.**]**

Textual Amendments

F3 Inserted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

Article 56

Measures to facilitate supervision on a consolidated basis

1 Member States shall take the necessary steps to ensure that there are no legal impediments preventing the undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries of

the kind covered in Article 52(10), from exchanging amongst themselves any information which would be relevant for the purposes of supervision in accordance with Articles 52 to 55 and this Article.

2 Where a parent undertaking and any of its subsidiaries that are credit institutions are situated in different Member States, the competent authorities of each Member State shall communicate to each other all relevant information which may allow or aid the exercise of supervision on a consolidated basis.

Where the competent authorities of the Member State in which a parent undertaking is situated do not themselves exercise supervision on a consolidated basis pursuant to Article 53, they may be invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any information which would be relevant for the purposes of supervision on a consolidated basis and to transmit it to these authorities.

3 Member States shall authorise the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, financial institutions or ancillary banking services undertakings, the collection or possession of information shall not in any way imply that the competent authorities are required to play a supervisory role in relation to those institutions or undertakings standing alone.

Similarly, Member States shall authorise their competent authorities to exchange the information referred to in Article 55 on the understanding that the collection or possession of information does not in any way imply that the competent authorities play a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries of the kind covered in Article 52(10).

4 Where a credit institution, financial holding company or a mixed-activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.

5 Information received, in the framework of supervision on a consolidated basis, and in particular any exchange of information between competent authorities which is provided for in this Directive, shall be subject to the obligation of professional secrecy defined in Article 30.

6 The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies referred to in Article 52(2). Those lists shall be communicated to the competent authorities of the other Member States and to the Commission.

7 Where, in applying this Directive, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary banking services undertaking, a mixed-activity holding company, a subsidiary of the kind covered in Article 55 or a subsidiary of the kind covered in Article 52(10), situated in another Member State, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request must, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out.**[**[F3]The competent authority which

made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself.**]**

8 Without prejudice to their provisions of criminal law, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on financial holding companies and mixed-activity holding companies, or their effective managers, that infringe laws, regulation or administrative provisions enacted to implement Articles 52 to 55 and this Article. In certain cases, such measures may require the intervention of the courts. The competent authorities shall cooperate closely to ensure that the abovementioned penalties or measures produce the desired results, especially when the central administration or main establishment of a financial holding company or of a mixed-activity holding company is not located at its head office.

Textual Amendments

F3 Inserted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

[F3 Article 56a

Third-country parent undertakings

Where a credit institution, the parent undertaking of which is a credit institution or a financial holding company, the head office of which is outside the Community, is not subject to consolidated supervision under Article 52, the competent authorities shall verify whether the credit institution is subject to consolidated supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in Article 52. The verification shall be carried out by the competent authority which would be responsible for consolidated supervision if the fourth subparagraph were to apply, at the request of the parent undertaking or of any of the regulated entities authorised in the Community or on its own initiative. That competent authority shall consult the other competent authorities involved.

The Banking Advisory Committee may give general guidance as to whether the consolidated supervision arrangements of competent authorities in third countries are likely to achieve the objectives of consolidated supervision as defined in this Chapter, in relation to credit institutions, the parent undertaking of which has its head office outside the Community. The Committee shall keep any such guidance under review and take into account any changes to the consolidated supervision arrangements applied by such competent authorities.

The competent authority carrying out the verification specified in the second subparagraph shall take into account any such guidance. For this purpose the competent authority shall consult the Committee before taking a decision.

In the absence of such equivalent supervision, Member States shall apply the provisions of Article 52 to the credit institution by analogy.

As an alternative, Member States shall allow their competent authorities to apply other appropriate supervisory techniques which achieve the objectives of the supervision on

a consolidated basis of credit institutions. Those methods must be agreed upon by the competent authority which would be responsible for consolidated supervision, after consultation with the other competent authorities involved. Competent authorities may in particular require the establishment of a financial holding company which has its head office in the Community, and apply the provisions on consolidated supervision to the consolidated position of that financial holding company. The methods must achieve the objectives of consolidated supervision as defined in this Chapter and must be notified to the other competent authorities involved and the Commission.**]**

Textual Amendments

F3 Inserted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

(**1**) Eighth Council Directive (84/253/EEC) of 10 April 1984 based on Article 44(2)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents (OJ L 126, 12.5.1984, p. 20).

(**2**) Fourth Council Directive (78/660/EEC) of 25 July 1978 based on Article 44(2)(g) of the Treaty on the annual accounts of certain types of companies (OJ L 222, 14.8.1978, p. 11). Directive as last amended by Directive 1999/60/EC (OJ L 62, 26.6.1999, p. 65).

(**3**) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 375, 31.12.1985, p. 3). Directive as last amended by Directive 95/26/EC (OJ L 168, 18.7.1995, p. 7).

(**4**) **[**[F2]OJ L 330, 5.12.1998, p. 1.**]**

(**5**) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L 141, 11.6.1993, p. 27). Directive as last amended by Directive 97/9/EC (OJ L 84, 26.3.1997, p. 22).

Textual Amendments

F2 Substituted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.