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

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission[(1)],

Having regard to the opinion of the Economic and Social Committee[(2)],

After consulting the Committee of the Regions,

Having regard to the opinion of the European Central Bank[(3)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(4)],

Whereas:

(1) The current Community legislation provides for a comprehensive set of rules on the prudential supervision of credit institutions, insurance undertakings and investment firms on a stand alone basis and credit institutions, insurance undertakings and investment firms which are part of respectively a banking/investment firm group or an insurance group, i.e. groups with homogeneous financial activities.

(2) New developments in financial markets have led to the creation of financial groups which provide services and products in different sectors of the financial markets, called financial conglomerates. Until now, there has been no form of prudential supervision on a group-wide basis of credit institutions, insurance undertakings and investment firms which are part of such a conglomerate, in particular as regards the solvency position and risk concentration at the level of the conglomerate, the intra-group transactions, the internal risk management processes at conglomerate level, and the fit and proper character of the management. Some of these conglomerates are among the biggest financial groups which are active in the financial markets and provide services on a global basis. If such conglomerates, and in particular credit institutions, insurance undertakings and investment firms which are part of such a conglomerate, were to face

financial difficulties, these could seriously destabilise the financial system and affect individual depositors, insurance policy holders and investors.

(3) The Commission Action Plan for Financial Services identifies a series of actions which are needed to complete the Single Market in Financial Services, and announces the development of supplementary prudential legislation for financial conglomerates which will address loopholes in the present sectoral legislation and additional prudential risks to ensure sound supervisory arrangements with regard to financial groups with cross-sectoral financial activities. Such an ambitious objective can only be attained in stages. The establishment of the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate is one such stage.

(4) Other international forums have also identified the need for the development of appropriate supervisory concepts with regard to financial conglomerates.

(5) In order to be effective, the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate should be applied to all such conglomerates, the cross-sectoral financial activities of which are significant, which is the case when certain thresholds are reached, no matter how they are structured. Supplementary supervision should cover all financial activities identified by the sectoral financial legislation and all entities principally engaged in such activities should be included in the scope of the supplementary supervision, including asset management companies.

(6) Decisions not to include a particular entity in the scope of supplementary supervision should be taken, bearing in mind *inter alia* whether or not such entity is included in the group-wide supervision under sectoral rules.

(7) The competent authorities should be able to assess at a group-wide level the financial situation of credit institutions, insurance undertakings and investment firms which are part of a financial conglomerate, in particular as regards solvency (including the elimination of multiple gearing of own funds instruments), risk concentration and intra-group transactions.

(8) Financial conglomerates are often managed on a business-line basis which does not fully coincide with the conglomerate's legal structures. In order to take account of this trend, the requirements for management should be further extended, in particular as regards the management of the mixed financial holding company.

(9) All financial conglomerates subject to supplementary supervision should have a coordinator appointed from among the competent authorities involved.

(10) The tasks of the coordinator should not affect the tasks and responsibilities of the competent authorities as provided for by the sectoral rules.

(11) The competent authorities involved, and especially the coordinator, should have the means of obtaining from the entities within a financial conglomerate, or from other competent authorities, the information necessary for the performance of their supplementary supervision.

(12) There is a pressing need for increased collaboration between authorities responsible for the supervision of credit institutions, insurance undertakings and investment firms, including the development of ad hoc cooperation arrangements between the authorities involved in the supervision of entities belonging to the same financial conglomerate.

(13) Credit institutions, insurance undertakings and investment firms which have their head office in the Community can be part of a financial conglomerate, the head of which is outside the Community. These regulated entities should also be subject to equivalent and appropriate supplementary supervisory arrangements which achieve objectives and results similar to those pursued by the provisions of this Directive. To this end, transparency of rules and exchange of information with third-country authorities on all relevant circumstances are of great importance.

(14) Equivalent and appropriate supplementary supervisory arrangements can only be assumed to exist if the third-country supervisory authorities have agreed to cooperate with the competent authorities concerned on the means and objectives of exercising supplementary supervision of the regulated entities of a financial conglomerate.

(15) This Directive does not require the disclosure by competent authorities to a financial conglomerates committee of information which is subject to an obligation of confidentiality under this Directive or other sectoral directives.

(16) Since the objective of the proposed action, namely the establishment of rules on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective. Since this Directive defines minimum standards, Member States may lay down stricter rules.

(17) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(18) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(5)].

(19) Technical guidance and implementing measures for the rules laid down in this Directive may from time to time be necessary to take account of new developments on financial markets. The Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive.

(20) The existing sectoral rules for credit institutions, insurance undertakings and investment firms should be supplemented to a minimum level, in particular to avoid regulatory arbitrage between the sectoral rules and those for financial conglomerates. Therefore, First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the

business of direct insurance other than life assurance[6], First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance[7], Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance (third non-life insurance Directive)[8], Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance (third life insurance Directive)[9], Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investments firms and credit institutions[10] and Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field[11], as well as Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group[12] and 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[13] should be amended accordingly. The objective of further harmonisation can, however, only be achieved by stages and needs to be based on careful analysis.

(21) In order to assess the need for and prepare any possible future harmonisation of the treatment of asset management companies under sectoral rules, the Commission should report on Member States' practices in this field,

HAVE ADOPTED THIS DIRECTIVE:

(**1**) OJ C 213 E, 31.7.2001, p. 227.

(**2**) OJ C 36, 8.2.2002, p. 1.

(**3**) OJ C 271, 26.9.2001, p. 10.

(**4**) Opinion of the European Parliament of 14 March 2002 (not yet published in the Official Journal), Council Common Position of 12 September 2002 (OJ C 253 E, 22.10.2002, p. 1) and Decision of the European Parliament of 20 November 2002 (not yet published in the Official Journal).

(**5**) OJ L 184, 17.7.1999, p. 23.

(**6**) OJ L 228, 16.8.1973, p. 3. Directive as last amended by Directive 2002/13/EC of the European Parliament and of the Council (OJ L 77, 20.3.2002, p. 17).

(**7**) OJ L 63, 13.3.1979, p. 1. Directive as last amended by Directive 2002/12/EC of the European Parliament and of the Council (OJ L 77, 20.3.2002, p. 11).

(**8**) OJ L 228, 11.8.1992, p. 1. Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council (OJ L 290, 17.11.2000, p. 27).

(**9**) OJ L 360, 9.12.1992, p. 1. Directive as last amended by Directive 2000/64/EC.

(**10**) OJ L 141, 11.6.1993, p. 1. Directive as last amended by Directive 98/33/EC of the European Parliament and of the Council (OJ L 204, 21.7.1998, p. 29).

(**11**) OJ L 141, 11.6.1993, p. 27. Directive as last amended by Directive 2000/64/EC.

(**12**) OJ L 330, 5.12.1998, p. 1.

(**13**) OJ L 126, 26.5.2000, p. 1. Directive as amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).