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

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 I

DEFINITIONS AND SCOPE

Article 1

Definitions

For the purpose of this Directive:

1. **[**[F1]‘credit institution’ shall mean:

   (a) an undertaking whose business is to receive deposits or other repayable funds from the public and to grant credits for its own account; or

   (b) an electronic money institution within the meaning of Directive 2000/46/EC of the European Parliament and of the Council of 18 September 2000 on the taking up, pursuit and prudential supervision of the business of electronic money institutions[(1)].**]**

   For the purposes of applying the supervision on a consolidated basis, shall be considered as a credit institution, a credit institution according to the first paragraph and any private or public undertaking which corresponds to the definition in the first paragraph and which has been authorised in a third country.

   For the purposes of applying the supervision and control of large exposures, shall be considered as a credit institution, a credit institution according to the first paragraph, including branches of a credit institution in third countries and any private or public undertaking, including its branches, which corresponds to the definition in the first paragraph and which has been authorised in a third country;

2. ‘authorisation’ shall mean an instrument issued in any form by the authorities by which the right to carry on the business of a credit institution is granted;

3. ‘branch’ shall mean a place of business which forms a legally dependent part of a credit institution and which carries out directly all or some of the transactions inherent in the business of credit institutions; any number of places of business set up in the same Member State by a credit

		institution with headquarters in another Member State shall be regarded as a single branch;
4.	'competent authorities'	shall mean the national authorities which are empowered by law or regulation to supervise credit institutions;
5.	'financial institution'	shall mean an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of Annex I;
6.	'home Member State'	shall mean the Member State in which a credit institution has been authorised in accordance with Articles 4 to 11;
7.	'host Member State'	shall mean the Member State in which a credit institution has a branch or in which it provides services;
8.	'control'	shall mean the relationship between a parent undertaking and a subsidiary, as defined in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;
9.	'**[**[F2]participation for the purposes of supervision on a consolidated basis and for the purposes of points 15 and 16 of Article 34(2)'	shall mean participation within the meaning of the first sentence of Article 17 of Directive 78/660/EEC, or the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;**]**
10.	'qualifiying holding'	shall mean a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which a holding subsists.
11.	'initial capital'	shall mean capital as defined in Article 34(2)(1) and (2);
12.	'parent undertaking'	shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC.

It shall, for the purposes of supervision on a consolidated basis and control of large exposures, mean a parent undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;

13. ‘subsidiary’ shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC.

It shall, for the purposes of supervision on a consolidated basis and control of large exposures, mean a subsidiary undertaking within the meaning of Article 1(1) of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence.

All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent;

14. ‘Zone A’ shall comprise all the Member States and all other countries which are full members of the Organisation for Economic Cooperation and Development (OECD) and those countries which have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the Fund's general arrangements to borrow (GAB). Any country which reschedules its external sovereign debt is, however, precluded from Zone A for a period of five years;

15. ‘Zone B’ shall comprise all countries not in Zone A;

16. ‘Zone A credit institutions’ shall mean all credit institutions authorised in the Member States, in accordance with Article 4, including their branches in third countries, and all private and public undertakings covered by the definitions in point 1, first subparagraph and authorised in other Zone A countries, including their branches;

17. ‘Zone B credit institutions’ shall mean all private and public undertakings authorised outside Zone A covered by the definition in point 1, first subparagraph, including their branches within the Community;

18. ‘non-bank sector’ shall mean all borrowers other than credit institutions as defined in points 16 and 17, central governments and central banks, regional governments and local authorities, the European Communities, the European Investment Bank (EIB) and multilateral development banks as defined in point 19;

19. ‘[F3multilateral development banks’ shall mean the International Bank for Reconstruction and Development, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the Council of Europe Resettlement Fund, the Nordic Investment Bank, the Caribbean Development Bank, the European Bank

		for Reconstruction and Development, the European Investment Fund, the Inter-American Investment Corporation and the Multilateral Investment Guarantee Agency;**]**
20.	'"full-risk", "medium-risk", "medium/low-risk" and "low-risk" off-balance-sheet items'	shall mean the items described in Article 43(2) and listed in Annex II;
21.	'**[**F2financial holding company'	shall mean a financial institution, the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, at least one of such subsidiaries being a credit institution, and which is not a mixed financial holding company within the meaning of 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(2);
22.	'mixed-activity holding company'	shall mean a parent undertaking, other than a financial holding company or a credit institution or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one credit institution;**]**
23.	'ancillary banking services undertaking'	shall mean an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institutions;
24.	'exposures' for the purpose of applying Articles 48, 49 and 50	shall mean the assets and off-balance-sheet items referred to in Article 43 and in Annexes II and IV thereto, without application of the weightings or degrees of risk there provided for; the risks referred to in Annex IV must be calculated in accordance with one of the methods set out in Annex III, without application of the weightings for counterparty risk; all elements entirely covered by own funds may, with the agreement of the competent authorities, be excluded from the definition of exposures provided that such own funds are not included in the calculation of the solvency

		ratio or of other monitoring ratios provided for in this Directive and in other Community acts; exposures shall not include: — in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the 48 hours following payment, or — in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the five working days following payment or delivery of the securities, whichever is the earlier;
25.	‘group of connected clients’	shall mean: — two or more natural or legal persons who, unless it is shown otherwise, constitute a single risk because one of them, directly or indirectly, has control over the other or others or — two or more natural or legal persons between whom there is no relationship of control as defined in the first indent but who are to be regarded as constituting a single risk because they are so interconnected that, if one of them were to experience financial problems, the other or all of the others would be likely to encounter repayment difficulties;
26.	‘close links’	shall mean a situation in which two or more natural or legal persons are linked by: (a) participation, which shall mean the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking, or (b) control, which shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

27. ‘recognised exchanges’ shall mean exchanges recognised by the competent authorities which:

(i) function regularly,

(ii) have rules, issued or approved by the appropriate authorities of the home country of the exchange, which define the conditions for the operation of the exchange, the conditions of access to the exchange as well as the conditions that must be satisfied by a contract before it can effectively be dealt on the exchange,

(iii) have a clearing mechanism that provides for contracts listed in Annex IV to be subject to daily margin requirements providing an appropriate protection in the opinion of the competent authorities.

Textual Amendments

F1 Substituted 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.

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 Substituted by Commission Directive 2004/69/EC of 27 April 2004 amending Directive 2000/12/EC of the European Parliament and of the Council as regards the definition of ‘multilateral development banks’ (Text with EEA relevance).

Article 2

Scope

1 This Directive concerns the taking up and pursuit of the business of credit institutions. This Directive shall apply to all credit institutions.

2 Articles 25 and 52 to 56 shall also apply to financial holding companies and mixed-activity holding companies which have their head offices in the Community.

The institutions permanently excluded by paragraph 3, with the exception, however, of the Member States' central banks, shall be treated as financial institutions for the purposes of Articles 25 and 52 to 56.

3 This Directive shall not apply to:

— the central banks of Member States,

— post office giro institutions,

— in Belgium, the ‘Institut de Réescompte et de Garantie/Herdiscontering- en Waarborginstituut’,

— in Denmark, the ‘Dansk Eksportfinansieringsfond’, the ‘Danmarks Skibskreditfond’, and ‘Dansk Landbrugs Realkreditfond’,

— in Germany, the ‘Kreditanstalt für Wiederaufbau’, undertakings which are recognised under the ‘Wohnungsgemeinnützigkeitsgesetz’ as bodies of State housing policy and are not mainly engaged in banking transactions, and undertakings recognised under that law as non-profit housing undertakings,

— in Greece, the ‘Ελληνική Τράπεζα Βιομηχανικής Αναπτύξεως,’, (Elliniki Trapeza Viomichanikis Anaptyxeos), the ‘Ταμείο Παρακαταθηκών και Δανείων’ (Tamio Parakatathikon kai Danion), and the ‘Ταχυδρομικό Ταμιευτήριο’ (Tachidromiko Tamieftirio),

— in Spain, the ‘Instituto de Crédito Oficial’,

— in France, the ‘Caisse des dépôts et consignations’,

— in Ireland, credit unions and the friendly societies,

— in Italy, the ‘Cassa depositi e prestiti’,

— in the Netherlands, the ‘Netherlandse Investeringsbank voor Ontwikkelingslanden NV’, the ‘NV Noordelijke Ontwikkelingsmaatschappij’, the ‘NV Industriebank Limburgs Instituut voor Ontwikkeling en Financiering’ and the ‘Overijsselse Ontwikkelingsmaatschappij NV’,

— in Austria, undertakings recognised as housing associations in the public interest and the ‘Österreichische Kontrollbank AG’,

— in Portugal, ‘Caixas Económicas’ existing on 1 January 1986 with the exception of those incorporated as limited companies and of the ‘Caixa Económica Montepio Geral’,

— in Finland, the ‘Teollisen yhteistyön rahasto Oy/Fonden för industriellt samarbete AB’, and the ‘Kera Oy/Kera Ab’,

— in Sweden, the ‘Svenska Skeppshypotekskassan’,

— in the United Kingdom, the National Savings Bank, the Commonwealth Development Finance Company Ltd, the Agricultural Mortgage Corporation Ltd, the Scottish Agricultural Securities Corporation Ltd, the Crown Agents for overseas governments and administrations, credit unions and municipal banks**[**[F4]**,]**

— **[**[F5]in Latvia, the ‘krājaizdevu sabiedrības’, undertakings that are recognised under the ‘krājaizdevu sabiedrību likums’ as cooperative undertakings rendering financial services solely to their members,

— in Lithuania, the ‘kredito unijos’ other than the ‘Centrinė kredito unija’,

— in Hungary, the ‘Magyar Fejlesztési Bank Rt.’ and the ‘Magyar Export-Import Bank Rt.’,

— in Poland, the ‘Spółdzielcze Kasy Oszczędnościowo - Kreditowe’ and the ‘Bank Gospodarstwa Krajowego’.**]**

4 The Council, acting on a proposal from the Commission, which, for this purpose, shall consult the Committee referred to in Article 57 (hereinafter referred to as the ‘Banking Advisory Committee’) shall decide on any amendments to the list in paragraph 3.

5 Credit institutions situated in the same Member State and permanently affiliated, on 15 December 1977, to a central body which supervises them and which is established in that same Member State, may be exempted from the requirements of Articles 6(1), 8 and 59 if, no later than 15 December 1979, national law provides that:

— the commitments of the central body and affiliated institutions are joint and several liabilities or the commitments of its affiliated institutions are entirely guaranteed by the central body,

— the solvency and liquidity of the central body and of all the affiliated institutions are monitored as a whole on the basis of consolidated accounts,

— the management of the central body is empowered to issue instructions to the management of the affiliated institutions.

Credit institutions operating locally which are affiliated, subsequent to 15 December 1977, to a central body within the meaning of the first subparagraph, may benefit from the conditions laid down therein if they constitute normal additions to the network belonging to that central body.

In the case of credit institutions other than those which are set up in areas newly reclaimed from the sea or have resulted from scission or mergers of existing institutions dependent or answerable to the central body, the Council, acting on a proposal from the Commission, which shall for this purpose, consult the Banking Advisory Committee, may lay down additional rules for the application of the second subparagraph including the repeal of exemptions provided for in the first subparagraph, where it is of the opinion that the affiliation of new institutions benefiting from the arrangements laid down in the second subparagraph might have an adverse effect on competition. The Council shall decide by a qualified majority.

6 A credit institution which, as defined in the first subparagraph of paragraph 5, is affiliated to a central body in the same Member State may also be exempted from the provisions of Article 5, and also Articles 40 to 51, and 65 provided that, without prejudice to the application of those provisions to the central body, the whole as constituted by the central body together with its affiliated institutions is subject to the abovementioned provisions a consolidated basis.

In case of exemption, Articles 13, 18, 19, 20(1) to (6), 21 and 22 shall apply to the whole as constituted by the central body together with its affiliated institutions.

Textual Amendments

F4 Substituted by Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.

F5 Inserted by Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded.

Article 3

Prohibition for undertakings other than credit institutions from carrying on the business of taking deposits or other repayable funds from the public

The Member States shall prohibit persons or undertakings that are not credit institutions from carrying on the business of taking deposits or other repayable funds from the public. This prohibition shall not apply to the taking of deposits or other funds repayable by a Member State or by a Member State's regional or local authorities or by public international bodies of which one or more Member States are members or to cases expressly covered by national or Community legislation, provided that those activities are subject to regulations and controls intended to protect depositors and investors and applicable to those cases.

TITLE II

REQUIREMENTS FOR ACCESS TO THE TAKING UP AND PURSUIT OF THE BUSINESS OF CREDIT INSTITUTIONS

Article 4

Authorisation

Member States shall require credit institutions to obtain authorisation before commencing their activities. They shall lay down the requirements for such authorisation subject to Articles 5 to 9, and notify them to both the Commission and the Banking Advisory Committee.

Article 5

Initial capital

1 Without prejudice to other general conditions laid down by national law, the competent authorities shall not grant authorisation when the credit institution does not possess separate own funds or in cases where initial capital is less than EUR 5 million.

Member States may decide that credit institutions which do not fulfil the requirement of separate own funds and which were in existence on 15 December 1979 may continue to carry on their business. They may exempt such credit institutions from complying with the requirement contained in the first subparagraph of Article 6(1).

2 The Member States shall, however, have the option of granting authorisation to particular categories of credit institutions the initial capital of which is less than that prescribed in paragraph 1. In such cases:

- a the initial capital shall not be less than EUR 1 million,
- b the Member States concerned must notify the Commission of their reasons for making use of the option provided for in this paragraph,
- c when the list referred to in Article 11 is published, the name of each credit institution that does not have the minimum capital prescribed in paragraph 1 shall be annotated to that effect.

3 A credit institution's own funds may not fall below the amount of initial capital required by paragraphs 1 and 2 at the time of its authorisation.

4 The Member States may decide that credit institutions already in existence on 1 January 1993, the own funds of which do not attain the levels prescribed for initial capital in paragraphs 1 and 2, may continue to carry on their activities. In that event, their own funds may not fall below the highest level reached with effect from 22 December 1989.

5 If control of a credit institution falling within the category referred to in paragraph 4 is taken by a natural or legal person other than the person who controlled the institution previously, the own funds of that institution must attain at least the level prescribed for initial capital in paragraphs 1 and 2.

6 In certain specific circumstances and with the consent of the competent authorities, where there is a merger of two or more credit institutions falling within the category referred to in paragraph 4, the own funds of the institution resulting from the merger may not fall below the

total own funds of the merged institutions at the time of the merger, as long as the appropriate levels pursuant to paragraphs 1 and 2 have not been attained.

7 If, in the cases referred to in paragraphs 3, 4 and 6, the own funds should be reduced, the competent authorities may, where the circumstances justify it, allow an institution a limited period in which to rectify its situation or cease its activities.

Article 6

Management body and place of the head office of credit institutions

1 The competent authorities shall grant an authorisation to the credit institution only when there are at least two persons who effectively direct the business of the credit institution.

Moreover, the authorities concerned shall not grant authorisation if these persons are not of sufficiently good repute or lack sufficient experience to perform such duties.

2 Each Member State shall require that:

— any credit institution which is a legal person and which, under its national law, has a registered office have its head office in the same Member State as its registered office,

— any other credit institution have its head office in the Member State which issued its authorisation and in which it actually carries on its business.

Article 7

Shareholders and members

1 The competent authorities shall not grant authorisation for the taking-up of the business of credit institutions before they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings, and of the amounts of those holdings.

For the purpose of the definition of qualifying holding in the context of this Article, the voting rights referred to in Article 7 of Council Directive 88/627/EEC[(3)] shall be taken into consideration.

2 The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a credit institution, they are not satisfied as to the suitability of the abovementioned shareholders or members.

3 Where close links exist between the credit institution and other natural or legal persons, the competent authorities shall grant authorisation only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the credit institution has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require credit institutions to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

Article 8

Programme of operations and structural organisation

Member States shall require applications for authorisation to be accompanied by a programme of operations setting out, *inter alia*, the types of business envisaged and the structural organisation of the institution.

Article 9

Economic needs

Member States may not require the application for authorisation to be examined in terms of the economic needs of the market.

Article 10

Authorisation refusal

Reasons shall be given whenever an authorisation is refused and the applicant shall be notified thereof within six months of receipt of the application or, should the latter be incomplete, within six months of the applicant's sending the information required for the decision. A decision shall, in any case, be taken within 12 months of the receipt of the application.

Article 11

Notification of the authorisation to the Commission

Every authorisation shall be notified to the Commission. Each credit institution shall be entered in a list which the Commission shall publish in the *Official Journal of the European Communities* and shall keep up to date.

Article 12

Prior consultation with the competent authorities of other Member States

There must be prior consultation with the competent authorities of the other Member State involved on the authorisation of a credit institution which is:

— a subsidiary of a credit institution authorised in another Member State, or

— a subsidiary of the parent undertaking of a credit institution authorised in another Member State, or

— controlled by the same persons, whether natural or legal, as control a credit institution authorised in another Member State.

[[F6]The competent authority of a Member State involved, responsible for the supervision of insurance undertakings or investment firms, shall be consulted prior to the granting of an authorisation to a credit institution which is:

(a) a subsidiary of an insurance undertaking or investment firm authorised in the Community; or

(b) a subsidiary of the parent undertaking of an insurance undertaking or investment firm authorised in the Community; or

(c) controlled by the same person, whether natural or legal, who controls an insurance undertaking or investment firm authorised in the Community.

The relevant competent authorities referred to in the first and second paragraphs shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall inform each other of any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.**]**

Textual Amendments

F6 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 13

Branches of credit institutions authorised in another Member State

Host Member States may not require authorisation or endowment capital for branches of credit institutions authorised in other Member States. The establishment and supervision of such branches shall be effected as prescribed in Articles 17, 20(l) to (6) and Articles 22 and 26.

Article 14

Withdrawal of authorisation

1 The competent authorities may withdraw the authorisation issued to a credit institution only where such an institution:

a does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased to engage in business for more than six months, if the Member State concerned has made no provision for the authorisation to lapse in such cases;

b has obtained the authorisation through false statements or any other irregular means;

c no longer fulfils the conditions under which authorisation was granted;

d no longer possesses sufficient own funds or can no longer be relied on to fulfil its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it;

e falls within one of the other cases where national law provides for withdrawal of authorisation.

2 Reasons must be given for any withdrawal of authorisation and those concerned informed thereof; such withdrawal shall be notified to the Commission.

Article 15

Name

For the purpose of exercising their activities, credit institutions may, notwithstanding any provisions concerning the use of the words ‘bank’, ‘savings bank’ or other banking names which may exist in the host Member State, use throughout the territory of the Community the same name as they use in the Member State in which their head office is situated. In the event of there being any danger of confusion, the host Member State may, for the purposes of clarification, require that the name be accompanied by certain explanatory particulars.

Article 16

Qualifiying holding in a credit institution

1 The Member States shall require any natural or legal person who proposes to hold, directly or indirectly a qualifying holding in a credit institution first to inform the competent authorities, telling them of the size of the intended holding. Such a person must likewise inform the competent authorities if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital held by him would reach or exceed 20 %, 33 % or 50 % or so that the credit institution would become his subsidiary.

Without prejudice to the provisions of paragraph 2, the competent authorities shall have a maximum of three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the credit institution, they are not satisfied as to the suitability of the person referred to in the first subparagraph. If they do not oppose the plan referred to in the first subparagraph, they may fix a maximum period for its implementation.

[[F2]2 If the acquirer of the holdings referred to in paragraph 1 is a credit institution, insurance undertaking or investment firm authorised in another Member State or the parent undertaking of a credit institution, insurance undertaking or investment firm authorised in another Member State or a natural or legal person controlling a credit institution, insurance undertaking or investment firm authorised in another Member State, and if, as a result of that acquisition, the institution in which the acquirer proposes to hold a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be subject to the prior consultation referred to in Article 12.**]**

3 The Member States shall require any natural or legal person who proposes to dispose, directly or indirectly, of a qualifying holding in a credit institution first to inform the competent authorities, telling them of the size of his intended holding. Such a person must likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20 %, 33 % or 50 % or so that the credit institution would cease to be his subsidiary.

4 On becoming aware of them, credit institutions shall inform the competent authorities of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in paragraphs 1 and 3.

They shall also, at least once a year, inform them of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at the annual general meetings of shareholders and members or as a result of compliance with the regulations relating to companies listed on stock exchanges.

5 The Member States shall require that, where the influence exercised by the persons referred to in paragraph 1 is likely to operate to the detriment of the prudent and sound management of the institution, the competent authorities shall take appropriate measures to put an end to that situation. Such measures may consist for example in injunctions, sanctions against directors and managers, or the suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to natural or legal persons failing to comply with the obligation to provide prior information, as laid down in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, or for the nullity of votes cast or for the possibility of their annulment.

6 For the purposes of the definition of qualifying holding and other levels of holding set out in this Article, the voting rights referred to in Article 7 of Directive 88/627/EEC shall be taken into consideration.

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 17

Procedures and internal control mechanisms

Home Member State competent authorities shall require that every credit institution have sound administrative and accounting procedures and adequate internal control mechanisms.

TITLE III

PROVISIONS CONCERNING THE FREEDOM OF ESTABLISHMENT AND THE FREEDOM TO PROVIDE SERVICES

Article 18

Credit institutions

The Member States shall provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 20(1) to (6), 21(1) and (2), and

22, either by the establishment of a branch or by way of the provision of services, by any credit institution authorised and supervised by the competent authorities of another Member State, provided that such activities are covered by the authorisation.

Article 19

Financial institutions

The Member States shall also provide that the activities listed in Annex I may be carried on within their territories, in accordance with Articles 20(1) to (6), 21(1) and (2), and 22, either by the establishment of a branch or by way of the provision of services, by any financial institution from another Member State, whether a subsidiary of a credit institution or the jointly-owned subsidiary of two or more credit institutions, the memorandum and articles of association of which permit the carrying on of those activities and which fulfils each of the following conditions:

— the parent undertaking or undertakings must be authorised as credit institutions in the Member State by the law of which the subsidiary is governed,

— the activities in question must actually be carried on within the territory of the same Member State,

— the parent undertaking or undertakings must hold 90 % or more of the voting rights attaching to shares in the capital of the subsidiary.

— the parent undertaking or undertakings must satisfy the competent authorities regarding the prudent management of the subsidiary and must have declared, with the consent of the relevant home Member State competent authorities, that they jointly and severally guarantee the commitments entered into by the subsidiary,

— the subsidiary must be effectively included, for the activities in question in particular, in the consolidated supervision of the parent undertaking, or of each of the parent undertakings, in accordance with Articles 52 to 56, in particular for the calculation of the solvency ratio, for the control of large exposures and for purposes of the limitation of holdings provided for in Article 51.

Compliance with these conditions must be verified by the competent authorities of the home Member State and the latter must supply the subsidiary with a certificate of compliance which must form part of the notification referred to in Articles 20(1) to (6), and 21(1) and (2).

The competent authorities of the home Member State shall ensure the supervision of the subsidiary in accordance with Articles 5(3), 16, 17, 26, 28, 29, 30, and 32.

The provisions mentioned in this Article shall apply *mutatis mutandis* to subsidiaries, subject to the necessary modifications. In particular, the words ‘credit institution’ should be read as ‘financial institution fulfilling the conditions laid down in Article 19’ and the word ‘authorisation’ as ‘memorandum and articles of association’.

The second subparagraph of Article 20(3) shall read:

The home Member State competent authorities shall also communicate the amount of own funds of the subsidiary financial institution and the consolidated solvency ratio of the credit institution which is its parent undertaking.

If a financial institution eligible under this Article should cease to fulfil any of the conditions imposed, the home Member State shall notify the competent authorities of

the host Member State and the activities carried on by that institution in the host Member State become subject to the legislation of the host Member State.

Article 20

Exercise of the right of establishment

1 A credit institution wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its Member State.

2 The Member State shall require every credit institution wishing to establish a branch in another Member State to provide the following information when effecting the notification referred to in paragraph 1:

a the Member State within the territory of which it plans to establish a branch;

b a programme of operations setting out, *inter alia*, the types of business envisaged and the structural organisation of the branch;

c the address in the host Member State from which documents may be obtained;

d the names of those responsible for the management of the branch.

3 Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of the credit institution, taking into account the activities envisaged, they shall within three months of receipt of the information referred to in paragraph 2 communicate that information to the competent authorities of the host Member State and shall inform the institution accordingly.

The home Member State competent authorities shall also communicate the amount of own funds and the solvency ratio of the credit institution.

Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the institution concerned within three months of receipt of all the information. That refusal or failure to reply shall be subject to a right to apply to the courts in the home Member State.

4 Before the branch of a credit institution commences its activities the competent authorities of the host Member State shall, within two months of receiving the information mentioned in paragraph 3, prepare for the supervision of the credit institution in accordance with Article 22 and if necessary indicate the conditions under which, in the interest of the general good, those activities must be carried on in the host Member State.

5 On receipt of a communication from the competent authorities of the host Member State, or in the event of the expiry of the period provided for in paragraph 4 without receipt of any communication from the latter, the branch may be established and commence its activities.

6 In the event of a change in any of the particulars communicated pursuant to paragraph 2(b), (c) or (d), a credit institution shall give written notice of the change in question to the competent authorities of the home and host Member States at least one month before making the change so as to enable the competent authorities of the home Member State to take a decision pursuant to paragraph 3 and the competent authorities of the host Member State to take a decision on the change pursuant to paragraph 4.

7 Branches which have commenced their activities, in accordance with the provisions in force in their host Member States, before 1 January 1993, shall be presumed to have been

subject to the procedure laid down in paragraphs 1 to 5. They shall be governed, from the abovementioned date, by paragraph 6, and by Articles 18, 19, 22 and 29.

Article 21

Exercise of the freedom to provide services

1 Any credit institution wishing to exercise the freedom to provide services by carrying on its activities within the territory of another Member State for the first time shall notify the competent authorities of the home Member State, of the activities on the list in Annex I which it intends to carry on.

2 The competent authorities of the home Member State shall, within one month of receipt of the notification mentioned in paragraph 1, send that notification to the competent authorities of the host Member State.

3 This Article shall not affect rights acquired by credit institutions providing services before 1 January 1993.

Article 22

Power of the competent authorities of the host Member State

1 Host Member States may, for statistical purposes, require that all credit institutions having branches within their territories shall report periodically on their activities in those host Member States to the competent authorities of those host Member States.

In discharging the responsibilities imposed on them in Article 27, host Member States may require that branches of credit institutions from other Member States provide the same information as they require from national credit institutions for that purpose.

2 Where the competent authorities of a host Member State ascertain than an institution having a branch or providing services within its territory is not complying with the legal provisions adopted in that State pursuant to the provisions of this Directive involving powers of the host Member State's competent authorities, those authorities shall require the institution concerned to put an end to that irregular situation.

3 If the institution concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The competent authorities of the home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the institution concerned puts an end to that irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

4 If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the Member State in question, the institution persists in violating the legal rules referred to in paragraph 2 in force in the host Member State, the latter State may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to punish further irregularities and, in so far as is necessary, to prevent that institution from initiating further transactions within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for these measures on credit institutions.

5 The provisions of paragraph 1 to 4 shall not affect the power of host Member States to take appropriate measures to prevent or to punish irregularities committed within their territories which are contrary to the legal rules they have adopted in the interest of the general good. This shall include the possibility of preventing offending institutions from initiating any further transactions within their territories.

6 Any measure adopted pursuant to paragraph 3, 4 and 5 involving penalties or restrictions on the exercise of the freedom to provide services must be properly justified and communicated to the institution concerned. Every such measure shall be subject to a right of appeal to the courts in the Member State the authorities of which adopted it.

7 Before following the procedure provided for in paragraph 2, 3 and 4, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity.

The Commission may, after consulting the competent authorities of the Member States concerned, decide that the Member State in question must amend or abolish those measures.

8 Host Member States may exercise the powers conferred on them under this Directive by taking appropriate measures to prevent or to punish irregularities committed within their territories. This shall include the possibility of preventing institutions from initiating further transactions within their territories.

9 In the event of the withdrawal of authorisation the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the institution concerned from initiating further transactions within its territory and to safeguard the interests of depositors. Every two years the Commission shall submit a report on such cases to the Banking Advisory Committee.

10 The Member States shall inform the Commission of the number and type of cases in which there has been a refusal pursuant to Article 20(1) to (6) or in which measures have been taken in accordance with paragraph 4 of this Article. Every two years the Commission shall submit a report on such cases to the Banking Advisory Committee.

11 Nothing in this Article shall prevent credit institutions with head offices in other Member States from advertising their services through all available means of communication in the host Member State, subject to any rules governing the form and the content of such advertising adopted in the interest of the general good.

TITLE IV

RELATIONS WITH THIRD COUNTRIES

Article 23

Notification of the subsidiaries of third countries' undertakings and conditions of access to the markets of these countries

1 The competent authorities of the Member States shall inform the Commission:

a of any authorisation of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of a third country. The Commission shall inform the Banking Advisory Committee accordingly;

b whenever such a parent undertaking acquires a holding in a Community credit institution such that the latter would become its subsidiary. The Commission shall inform the Banking Advisory Committee accordingly.

When authorisation is granted to the direct or indirect subsidiary of one or more parent undertakings governed by the law of third countries, the structure of the group shall be specified in the notification which the competent authorities shall address to the Commission in accordance with Article 11.

2 The Member States shall inform the Commission of any general difficulties encountered by their credit institutions in establishing themselves or carrying on banking activities in a third country.

3 The Commission shall periodically draw up a report examining the treatment accorded to Community credit institutions in third countries, in the terms referred to in paragraphs 4 and 5, as regards establishment and the carrying-on of banking activities, and the acquisition of holdings in third-country credit institutions. The Commission shall submit those reports to the Council, together with any appropriate proposals.

4 Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 3 or on the basis of other information, that a third country is not granting Community credit institutions effective market access comparable to that granted by the Community to credit institutions from that third country, the Commission may submit proposals to the Council for the appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community credit institutions. The Council shall decide by a qualified majority.

5 Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 3 or on the basis of other information that Community credit institutions in a third country do not receive national treatment offering the same competitive opportunities as are available to domestic credit institutions and the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph, it may also be decided at any time, and in addition to initiating negotiations, in accordance with the procedure laid down in Article 60(2), that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending at the moment of the decision or future requests for authorisations and the acquisition of holdings by direct or indirect parent undertakings governed by the laws of the third country in question. The duration of the measures referred to may not exceed three months.

Before the end of that three-month period, and in the light of the results of the negotiations, the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.

Such limitations or suspension may not apply to the setting up of subsidiaries by credit institutions or their subsidiaries duly authorised in the Community, or to the acquisition of holdings in Community credit institutions by such institutions or subsidiaries.

6 Whenever it appears to the Commission that one of the situations described in paragraphs 4 and 5 obtains, the Member States shall inform it at its request:

a of any request for the authorisation of a direct or indirect subsidiary one or more parent undertakings of which are governed by the laws of the third country in question;

b whenever they are informed in accordance with Article 16 that such an undertaking proposes to acquire a holding in a Community credit institution such that the latter would become its subsidiary.

This obligation to provide information shall lapse whenever an agreement is reached with the third country referred to in paragraph 4 or 5 or when the measures referred to in the second and third subparagraphs of paragraph 5 cease to apply.

7 Measures taken pursuant to this Article comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking-up and pursuit of the business of credit institutions.

Article 24

Branches of credit institutions having their head offices outside the Community

1 Member States shall not apply to branches of credit institutions having their head office outside the Community, when commencing or carrying on their business, provisions which result in more favourable treatment than that accorded to branches of credit institutions having their head office in the Community.

2 The competent authorities shall notify the Commission and the Banking Advisory Committee of all authorisations for branches granted to credit institutions having their head office outside the Community.

3 Without prejudice to paragraph 1, the Community may, through agreements concluded in accordance with the Treaty with one or more third countries, agree to apply provisions which, on the basis of the principle of reciprocity, accord to branches of a credit institution having its head office outside the Community identical treatment throughout the territory of the Community.

Article 25

Cooperation with third countries' competent authorities regarding supervision on a consolidated basis

1 The Commission may submit proposals to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or more third countries regarding the means of exercising supervision on a consolidated basis over:

— credit institutions the parent undertakings of which have their head offices situated in a third country, and

— credit institutions situated in third countries the parent undertakings of which, whether credit institutions or financial holding companies, have their head offices in the Community.

2 The agreements referred to in paragraph 1 shall in particular seek to ensure both:

— that the competent authorities of the Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of credit institutions or financial holding companies situated in the Community and which have as subsidiaries credit institutions or financial institutions situated outside the Community, or holding participation in such institutions,

— that the competent authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries credit institutions or financial institutions situated in one or more Member States or holding participation in such institutions.

3 The Commission and the Banking Advisory Committee shall examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.

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[(4)], performing in a credit institution the task described in Article 51 of Council Directive 78/660/EEC[(5)], or Article 37 of Council Directive 83/349/EEC, or Article 31 of Directive 85/611/EEC[(6)], 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.

[*F7 Article 33a*

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

Textual Amendments

F7 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[(7)],

— 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[8]. 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.

[[F6]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].**]**

— [F8. . . . .]

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.

F6 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.

F8 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.

[F6Article 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

F6 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).

[F6 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

F6 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.**[**[F6]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

F6 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.

[F6 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

F6 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.

TITLE VI

BANKING ADVISORY COMMITTEE

Article 57

Composition and tasks of the Banking Advisory Committee

1 A Banking Advisory Committee of the competent authorities of the Member States shall be set up alongside the Commission.

2 The tasks of the Banking Advisory Committee shall be to assist the Commission in ensuring the proper implementation of this Directive. Further it shall carry out the other tasks prescribed by this Directive and shall assist the Commission in the preparation of new proposals to the Council concerning further coordination in the sphere of credit institutions.

3 The Banking Advisory Committee shall not concern itself with concrete problems relating to individual credit institutions.

4 The Banking Advisory Committee shall be composed of not more than three representatives from each Member State and from the Commission. These representatives may be accompanied by advisers from time to time and subject to the prior agreement of the Committee. The Committee may also invite qualified persons and experts to participate in its meetings. The secretariat shall be provided by the Commission.

5 The Banking Advisory Committee shall adopt its rules of procedure and elect a chairman from among the representatives of Member States. It shall meet at regular intervals and whenever the situation demands. The Commission may ask the Committee to hold an emergency meeting if it considers that the situation so requires.

6 The Banking Advisory Committee's discussions and the outcome thereof shall be confidential except when the Committee decides otherwise.

Article 58

Examination of the requirements for authorisation

The Banking Advisory Committee shall examine the content given by the competent authorities to requirements listed in Articles 5(1) and 6(1), any other requirements which the Member States apply and the information which must be included in the programme of operations, and shall, where appropriate, make suggestions to the Commission with a view to a more detailed coordination.

Article 59

Observation ratios

1 Pending subsequent coordination, the competent authorities shall, for the purposes of observation and, if necessary, in addition to such coefficients as may be applied by them, establish ratios between the various assets and/or liabilities of credit institutions with a view to monitoring their solvency and liquidity and the other measures which may serve to ensure that savings are protected.

To this end, the Banking Advisory Committee shall decide on the content of the various factors of the observation ratios referred to in the first subparagraph and lay down the method to be applied in calculating them.

Where appropriate, the Banking Advisory Committee shall be guided by technical consultations between the supervisory authorities of the categories of institutions concerned.

2 The observation ratios established in pursuance of paragraph 1 shall be calculated at least every six months.

3 The Banking Advisory Committee shall examine the results of analyses carried out by the supervisory authorities referred to in the third subparagraph of paragraph 1 on the basis of the calculations referred to in paragraph 2.

4 The Banking Advisory Committee may make suggestions to the Commission with a view to coordinating the coefficients applicable in the Member States.

TITLE VII

POWERS OF EXECUTION

Article 60

Technical adaptations

1 Without prejudice, regarding own funds, to the report referred to in the second subparagraph of Article 34(3), the technical adaptations in the following areas shall be adopted in accordance with the procedure laid down in paragraph 2:

— clarification of the definitions in order to take account in the application of this Directive of developments on financial markets,

— clarification of the definitions to ensure uniform application of this Directive in the Community,
— the alignment of terminology on and the framing of definitions in accordance with subsequent acts on credit institutions and related matters,
— the definition of 'Zone A' in Article 1(14),
— the definition of 'multilateral development banks' in Article 1(19),
— alteration of the amount of initial capital prescribed in Article 5 to take account of developments in the economic and monetary field,
— expansion of the content of the list referred to in Articles 18 and 19 and set out in Annex I or adaptation of the terminology used in that list to take account of developments on financial markets,
— the areas in which the competent authorities must exchange information as listed in Article 28,
— amendment of the definitions of the assets listed in Article 43 in order to take account of developments on financial markets,
— the list and classification of off-balance-sheet items in Annexes II and IV and their treatment in the calculation of the ratio as described in Articles 42, 43 and 44 and Annex III,
— a temporary reduction in the minimum ratio prescribed in Article 47 or the weighting prescribed in Article 43 in order to take account of specific circumstances,
— clarification of exemptions provided for in Article 49(5) to (10).

2 The Commission shall be assisted by a committee.

Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

The Committee shall adopt its rules of procedure.

TITLE VIII

TRANSITIONAL AND FINAL PROVISIONS

CHAPTER 1

TRANSITIONAL PROVISIONS

Article 61

Transitional provisions regarding Article 36

Denmark may allow its mortgage credit institutions organised as cooperative societies or funds before 1 January 1990 and converted into public limited liability companies to continue to include joint and several commitments of members, or of borrowers as referred to in Article 36(1) claims on whom are treated in the same way as such joint and several commitments, in their own funds, subject to the following limits:

(a) the basis for calculation of the part of joint and several commitments of borrowers shall be the total of the items referred to in Article 34(2)(1) and (2), minus those referred to in Article 34(2)(9), (10) and (11);

(b) the basis for calculation on 1 January 1991 or, if converted at a later date, on the date on conversion, shall be the maximum basis for calculation. The basis for calculation may never exceed the maximum basis for calculation;

(c) the maximum basis for calculation shall, from 1 January 1997, be reduced by half of the proceeds from any issue of new capital, as defined in Article 34(2)(1), made after that date; and

(d) the maximum amount of joint and several commitments of borrowers to be included as own funds must never exceed:

50 % in 1991 and 1992,
45 % in 1993 and 1994,
40 % in 1995 and 1996,
35 % in 1997,
30 % in 1998,
20 % in 1999,
10 % in 2000, and
0 % after 1 January 2001, of the basis for calculation.

Article 62

Transitional provisions regarding Article 43

1 Until 31 December 2006, the competent authorities of the Member States may authorise their credit institutions to apply a 50 % risk weighting to loans fully and completely secured to their satisfaction by mortgages on offices or on multi-purpose commercial premises situated within the territory of those Member States that allow the 50 % risk weighting, subject to the following conditions:

(i) the 50 % risk weighting applies to the part of the loan that does not exceed a limit calculated according to either (a) or (b):

(a) 50 % of the market value of the property in question.

The market value of the property must be calculated by two independent valuers making independent assessments at the time the loan is made. The loan must be based on the lower of the two valuations.

The property shall be revalued at least once a year by one valuer. For loans not exceeding EUR 1 million and 5 % of the own funds of the credit institution, the property shall be revalued at least every three years by one valuer;

(b) 50 % of the market value of the property or 60 % of the mortgage lending value, whichever is lower, in those Member States that have laid down rigorous criteria for the assessment of the mortgage lending value in statutory or regulatory provisions.

The mortgage lending value shall means the value of the property as determined by a valuer making a prudent assessment of the future

marketability of the property by taking into account long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property. Speculative elements shall not be taken into account in the assessment of the mortgage lending value. The mortgage lending value shall be documented n a transparent and clear manner.

At least every three years or if the market falls by more than 10 % the mortgage lending value and in particular the underlying assumptions concerning the development of the relevant market, shall be reassessed.

In both (a) and (b) 'market value' shall mean the price at which the property could be sold under private contract between a willing seller and an arm's-length buyer on the date of valuation, it being assumed that the property is publicly exposed to the market, that market conditions permit orderly disposal and that a normal period, having regard to the nature of the property, is available for the negotiation of the sale;

(ii) the 100 % risk weighting applies to the part of the loan that exceeds the limits set out in (i);

(iii) the property must be either used or let by the owner.

The first subparagraph shall not prevent the competent authorities of a Member State, which applies a higher risk weighting in its territory, from allowing, under the conditions defined above, the 50 % risk weighting to apply for this type of lending in the territories of those Member States that allow the 50 % risk weighting.

The competent authorities of the Member States may allow their credit institutions to apply a 50 % risk weighting to the loans outstanding on 21 July 2000 provided that the conditions listed in this paragraph are fulfilled. In this case the property shall be valued according to the assessment criteria laid down above not later than 21 July 2003.

For loans granted before 31 December 2006, the 50 % risk weighting remains applicable until their maturity, if the credit institution is bound to observe the contractual terms.

Until 31 December 2006, the competent authorities of the Member State may also authorise their credit institutions to apply a 50 % risk weighting to the part of the loans fully and completely secured to their satisfaction by shares in Finnish housing companies operating in accordance with the Finnish Housing Company Act of 1991 or subsequent equivalent legislation, provided that the conditions laid down in this paragraph are fulfilled.

Member States shall inform the Commission of the use they make of this paragraph.

2 Member States may apply a 50 % risk weighting to property leasing transactions concluded before 31 December 2006 and concerning assets for business use situated in the country of the head office and governed by statutory provisions whereby the lessor retains full ownership of the rented asset until the tenant exercises his option to purchase. Member States shall inform the Commission of the use they make of this paragraph.

3 Article 43(3) shall not affect the competent authorities' recognition of bilateral contracts for novation concluded concerning:

— Belgium, before 23 April 1996,

— Denmark, before 1 June 1996,

— Germany, before 30 October 1996,

— Greece, before 27 March 1997,

— Spain, before 7 January 1997,
— France, before 30 May 1996,
— Ireland, before 27 June 1996,
— Italy, before 30 July 1996,
— Luxembourg, before 29 May 1996,
— the Netherlands, before 1 July 1996,
— Austria, before 30 December 1996,
— Portugal, before 15 January 1997,
— Finland, before 21 August 1996,
— Sweden, before 1 June 1996, and
— United Kingdom, before 30 April 1996.

Article 63

Transitional provisions regarding Article 47

1 A credit institution, the minimum ratio of which has not reached the 8 % prescribed in Article 47(1), by 1 January 1991, must gradually approach that level by successive stages. It may not allow the ratio to fall below the level reached before that objective has been attained. Any fluctuation should be temporary and the competent authorities should be apprised of the reasons for it.

2 For not more than five years after 1 January 1993, the Member States may fix a weighting of 10 % for the bonds defined in Article 22(4) of Directive 85/611/EEC and maintain if for credit institutions when and if they consider it necessary, to avoid grave disturbances in the operation of their markets. Such exceptions shall be reported to the Commission.

3 For not more than seven years after 1 January 1993, Article 47(1) shall not apply to the Agricultural Bank of Greece. However, the latter must approach the level prescribed in Article 47(1) by successive stages according to the method described in paragraph 1 of this Article.

Article 64

Transitional provisions regarding Article 49

1 If, on 5 February 1993, a credit institution had already incurred an exposure or exposures exceeding either the large exposure limit or the aggregate large exposure limit laid down in Article 49, the competent authorities shall require the credit institution concerned to take steps to have that exposure or those exposures brought within the limits laid down in Article 49.

2 The process of having such an exposure or exposures brought within authorised limits shall be devised, adopted, implemented and completed within the period which the competent authorities consider consistent with the principle of sound administration and fair competition. The competent authorities shall inform the Commission and the Banking Advisory Committee of the schedule for the general process adopted.

3 A credit institution may not take any measure which would cause the exposures referred to in paragraph 1 to exceed their level on 5 February 1993

4 The period applicable under paragraph 2 shall expire no later than 31 December 2001. Exposures with a longer maturity, for which the lending institution is bound to observe the contractual terms, may be continued until their maturity.

5 Until 31 December 1998, Member States may increase the limit laid down in Article 49(1) to 40 % and the limit laid down in Article 49(2) to 30 %. In such cases and subject to paragraphs 1 to 4, the time limit for bringing the exposures existing at the end of this period within the limit laid down in Article 49 shall expire on 31 December 2001.

6 In the case of credit institutions the own funds of which do not exceed EUR 7 million and only in the case of such institutions, Member States may extend the time limits laid down in paragraph 5 by five years. Member States that avail themselves of the option provided for in this paragraph shall take steps to prevent distortions of competition and shall inform the Commission and the Banking Advisory Committee thereof.

7 In the cases referred to in paragraphs 5 and 6, an exposure may be considered a large exposure if its value is equal to or exceeds 15 % of own funds.

8 Until 31 December 2001 Member States may substitute a frequency of at least twice a year for the frequency of notification of large exposures referred to in the second indent of Article 48(2).

9 Member States may fully or partially exempt from the application of Article 49(1), (2) and (3) exposures incurred by a credit institution consisting of mortgage loans as defined in Article 62(1) concluded before 1 January 2002 as well as property leasing transactions as defined in Article 62(2) concluded before 1 January 2002, in both cases up to 50 % of the value of the property concerned.

The same treatment applies to loans 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 which are similar to the mortgage loans referred to in the first subparagraph.

Article 65

Transitional provisions regarding Article 51

Credit institutions which, on 1 January 1993, exceeded the limits laid down in Articles 51(1) and (2) shall have until 1 January 2003 to comply with them.

CHAPTER 2

FINAL PROVISIONS

Article 66

Commission information

Member States shall communicate to the Commission the texts of the main laws, regulations and administrative provisions which they adopt in the field covered by this Directive.

Article 67

Repealed Directives

1 Directives 73/183/EEC, 77/780/EEC, 89/299/EEC, 89/646/EEC, 89/647/EEC, 92/30/EEC and 92/121/EEC, as amended by the Directives set out in Annex V, Part A, are hereby repealed without prejudice to the obligations of the Member States concerning the deadlines for transposition of the said Directives listed in Annex V, Part B.

2 References to the repealed Directives shall be construed as references to this Directive and should be read in accordance with the correlation table in Annex VI.

Article 68

Implementation

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

Article 69

Addressees

This Directive is addressed to the Member States.

ANNEX I

LIST OF ACTIVITIES SUBJECT TO MUTUAL RECOGNITION

1. Acceptance of deposits and other repayable funds
2. Lending[9]
3. Financial leasing
4. Money transmission services
5. Issuing and administering means of payment (e.g. credit cards, travellers' cheques and bankers' drafts)
6. Guarantees and commitments
7. Trading for own account or for account of customers in:

(a) money market instruments (cheques, bills, certificates of deposit, etc.)

(b) foreign exchange;

(c) financial futures and options;

(d) exchange and interest-rate instruments;

(e) transferable securities

8. Participation in securities issues and the provision of services related to such issues
9. Advice to undertakings on capital structure, industrial strategy and related questions and advice as well as services relating to mergers and the purchase of undertakings
10. Money broking
11. Portfolio management and advice
12. Safekeeping and administration of securities
13. Credit reference services
14. Safe custody services

[[F9]The services and activities provided for in Section A and B of Annex I of **[**[X1]Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments**]**[10] when referring to the financial instruments provided for in Section C of Annex I of that Directive are subject to mutual recognition according to this Directive.**]**

Editorial Information

X1 Substituted by Corrigendum to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (Official Journal of the European Union L 145 of 30 April 2004).

Textual Amendments

F9 Inserted by Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.

ANNEX II

CLASSIFICATION OF OFF-BALANCE-SHEET ITEMS

Full risk

— Guarantees having the character of credit substitutes,
— Acceptances,
— Endorsements on bills not bearing the name of another credit institution,
— Transactions with recourse,
— Irrevocable standby letters of credit having the character of credit substitutes,
— Assets purchased under outright forward purchase agreements,
— Forward forward deposits,
— The unpaid portion of partly-paid shares and securities,
— Other items also carrying full risk.

Medium risk

— Documentary credits issued and confirmed (see also medium/low risk),
— Warranties and indemnities (including tender, performance, customs and tax bonds) and guarantees not having the character of credit substitutes,
— Asset sale and repurchase agreements as defined in Article 12(3) and (5) of Directive 86/635/EEC,
— Irrevocable standby letters of credit not having the character of credit substitutes,
— Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of more than one year,
— Note issuance facilities (NIFs) and revolving underwriting facilities (RUFs),
— Other items also carrying medium risk.

Medium/low risk

— Documentary credits in which underlying shipment acts as collateral and other self-liquidating transactions,
— Other items also carrying medium/low risk.

Low risk

— Undrawn credit facilities (agreements to lend, purchase securities, provide guarantees or acceptance facilities) with an original maturity of up to and including one year or which may be cancelled unconditionally at any time without notice,
— Other items also carrying low risk.

The Member States undertake to inform the Commission as soon as they have agreed to include a new off-balance-sheet item in any of the last indents under each category of risk. Such items will be definitively classified at Community level once the procedure laid down in Article 60 has been completed.

ANNEX III

THE TREATMENT OF OFF-BALANCE-SHEET ITEMS

1. CHOICE OF THE METHOD

To measure the credit risks associated with the contracts listed in points 1 and 2 of Annex IV, credit institutions may choose, subject to the consent of the competent authorities, one of the methods set out below. Credit institutions which have to comply with Article 6(1) of Directive 93/6/EEC[(11)] must use method 1 set out below. To measure the credit risks associated with the contracts listed in point 3 of Annex IV all credit institutions must use method 1 set out below.

2. METHODS

Method 1: the 'mark to market' approach

by attaching current market values to contracts (mark to market), the current replacement cost of all contracts with positive values is obtained.

to obtain a figure for potential future credit exposure[(12)], the notional principal amounts or underlying values are multiplied by the following percentages:

TABLE 1[00]

Residual maturity[c]	**Interest-rate contracts**	**Contracts concerning foreign-exchange rates and gold**	**Contracts concerning equities**	**Contracts concerning precious metals except gold**	**Contracts concerning commodities other than precious metals**
One year or less	0 %	1 %	6 %	7 %	10 %
Over one year, less than five years	0,5 %	5 %	8 %	7 %	12 %
Over five years	1,5 %	7,5 %	10 %	8 %	15 %

a Contracts which do not fall within one of the five categories indicated in this table shall be treated as contracts concerning commodities other than precious metals.

b For contracts with multiple exchanges of principal, the percentages have to be multiplied by the number of remaining payments still to be made according to the contract.

c For contracts that are structured to settle outstanding exposure following specified payment dates and where the terms are reset such that the market value of the contract is zero on these specified dates, the residual maturity would be equal to the time until the next reset date. In the case of interest-rate contracts that meet these criteria and have a remaining maturity of over one year, the percentage shall be no lower than 0,5 %.

For the purpose of calculating the potential future exposure in accordance with step (b) the competent authorities may allow credit institutions until 31 December 2006 to apply the following percentages instead of those prescribed in Table 1 provided that the institutions make use of the option set out in Article 11a of Directive 93/6/EEC for contracts within the meaning of paragraph 3(b) and (c) of Annex IV:

TABLE 1A

Residual maturity	Precious metals (except gold)	Base metals	Agricultural products (softs)	Other, including energy products
One year or less	2 %	2,5 %	3 %	4 %
Over one year, less than five years	5 %	4 %	5 %	6 %
Over five years	7,5 %	8 %	9 %	10 %

the sum of current replacement cost and potential future credit exposure is multiplied by the risk weightings allocated to the relevant counterparties in Article 43.

Method 2: the ‘original exposure’ approach

the notional principal amount of each instrument is multipliedby the percentages given below:

TABLE 2

Original maturity[a]	Interest-rate contracts	Contracts concerning foreign-exchange rates and gold
One year or less	0,5 %	2 %
More than one year but not exceeding two years	1 %	5 %
Additional allowance for each additional year	1 %	3 %

a In the case of interest-rate contracts, credit institutions may, subject to the consent of their competent authorities, choose either original or residual maturity.

the original exposure thus obtained is multiplied by the risk weightings allocated to the relevant counterparties in Article 43.

For methods 1 and 2 the competent authorities must ensure that the notional amount to be taken into account is an appropriate yardstick for the risk inherent in the contract. Where, for instance, the contract provides for a multiplication of cash flows, the notional amount must be adjusted in order to take into account the effects of the multiplication on the risk structure of that contract.

3. CONTRACTUAL NETTING (CONTRACTS FOR NOVATION AND OTHER NETTING AGREEMENTS)

(a) Types of netting that competent authorities may recognise

For the purpose of this point 3 ‘counterparty’ means any entity (including natural persons) that has the power to conclude a contractual netting agreement.

The competent authorities may recognise as risk-reducing the following types of contractual netting:

(i) bilateral contracts for novation between a credit institution and its counterparty under which mutual claims and obligations are automatically amalgamated in such a way that this novation fixes one single net amount each time novation applies and thus creates a legally binding, single new contract extinguishing former contracts;

(ii) other bilateral agreements between a credit institution and its counterparty.

(b) Conditions for recognition

The competent authorities may recognise contractual netting as risk-reducing only under the following conditions:

(i) a credit institution must have a contractual netting agreement with its counterparty which creates a single legal obligation, covering all included transactions, such that, in the event of a counterparty's failure to perform owing to default, bankruptcy, liquidation or any other similar circumstance, the credit institution would have a claim to receive or an obligation to pay only the net sum of the positive and negative mark-to-market values of included individual transactions;

(ii) a credit institution must have made available to the competent authorities written and reasoned legal opinions to the effect that, in the event of a legal challenge, the relevant courts and administrative authorities would, in the cases described under (i), find that the credit institution's claims and obligations would be limited to the net sum, as described in (i), under:

— the law of the jurisdiction in which the counterparty is incorporated and, if a foreign branch of an undertaking is involved, also under the law of the jurisdiction in which the branch is located,

— the law that governs the individual transactions included, and

— the law that governs any contract or agreement necessary to effect the contractual netting;

(iii) a credit institution must have procedures in place to ensure that the legal validity of its contractual netting is kept under review in the light of possible changes in the relevant laws.

The competent authorities must be satisfied, if necessary after consulting the other competent authorities concerned, that the contractual netting is legally valid under the law of each of the relevant jurisdictions. If any of the competent authorities are not satisfied in that respect, the contractual netting agreement will not be recognised as risk-reducing for either of the counterparties.

The competent authorities may accept reasoned legal opinions drawn up by types of contractual netting.

No contract containing a provision which permits a non-defaulting counterparty to make limited payments only, or no payments at all, to the estate of the defaulter, even if the defaulter is a net creditor (a ‘walkaway’ clause), may be recognised as risk-reducing.

The competent authorities may recognise as risk-reducing contractual-netting agreements covering foreign-exchange contracts with an original maturity of 14 calendar days or less written options or similar off-balance-sheet items to which this Annex does not apply because they bear only a negligible or no credit risk. If, depending on the positive or negative market value of these contracts, their inclusion in another netting agreement can result in an increase or decrease of the capital requirements, competent authorities must oblige their credit institution to use a consistent treatment.

(c) Effects of recognition

(i) Contracts for novation

The single net amounts fixed by contracts for novation, rather than the gross amounts involved, may be weighted. Thus, in the application of method 1, in

— step (a): the current replacement cost, and in

— step (b): the notional principal amounts or underlying values

may be obtained taking account of the contract for novation. In the application of method 2, in step (a) the notional principal amount may be calculated taking account of the contract for novation; the percentages of Table 2 must apply.

(ii) Other netting agreements

In application of method 1:

— in step (a) the current replacement cost for the contracts included in a netting agreement may be obtained by taking account of the actual hypothetical net replacement cost which results from the agreement; in the case where netting leads to a net obligation for the credit institution calculating the net replacement cost, the current replacement cost is calculated as '0',

— in step (b) the figure for potential future credit exposure for all contracts included in a netting agreement may be reduced according to the following equation:

$$PCE_{red} = 0{,}4 * PCE_{gross} + 0{,}6 * NGR * PCE_{gross}$$

where:

— PCE_{red} = the reduced figure for potential future credit exposure for all contracts with a given counterparty included in a legally valid bilateral netting agreement,

— PCE_{gross} = the sum of the figures for potential future credit exposure for all contracts with a given counterparty which are included in a legally valid bilateral netting agreement and are calculated by multiplying their notional principal amounts by the percentages set out in Table 1,

— NGR = 'net-to-gross ratio': at the discretion of the competent authorities either:

(i) separate calculation: the quotient of the net replacement cost for all contracts included in a legally valid bilateral netting agreement with a given counterparty (numerator) and the gross replacement cost for all contracts included in a legally valid bilateral netting agreement with that counterparty (denominator), or

(ii) aggregate calculation: the quotient of the sum of the net replacement cost calculated on a bilateral basis for all counterparties taking into account the contracts included in legally valid netting agreements (numerator) and the gross replacement cost for all contracts

included in legally valid netting agreements (denominator).

If Member States permit credit institutions a choice of methods, the method chosen is to be used consistently.

For the calculation of the potential future credit exposure according to the above formula perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts. Perfectly matching contracts are forward foreign-exchange contracts or similar contracts in which a notional principal is equivalent to cash flows if the cash flows fall due on the same value date and fully or partly in the same currency.

In the application of method 2, in step (a)

— perfectly matching contracts included in the netting agreement may be taken into account as a single contract with a notional principal equivalent to the net receipts, the notional principal amounts are multiplied by the percentages given in Table 2,

— for all other contracts included in a netting agreement, the percentages applicable may be reduced as indicated in Table 3:

TABLE 3

Original maturity[a]	**Interest-rate contracts**	**Foreign-exchange contracts**
One year or less	0,35 %	1,5 %
More than one year but not more than two years	0,75 %	3,75 %
Additional allowance for each additional year	0,75 %	2,25 %

a In the case of interest-rate contracts, credit institutions may, subject to the consent of their competent authorities, choose either original or residual maturity.

ANNEX IV

TYPES OF OFF-BALANCE-SHEET ITEMS

1. **Interest-rate contracts:**

(a) single-currency interest rate swaps;

(b) basis-swaps;

(c) forward rate agreements;

(d) interest-rate futures;

(e) interest-rate options purchased;

(f) other contracts of similar nature.

2. **Foreign-exchange contracts and contracts concerning gold:**

(a) cross-currency interest-rate swaps;

(b) forward foreign-exchange contracts;

(c) currency futures;

(d) currency options purchased;

(e) other contracts of a similar nature;

(f) contracts concerning gold of a nature similar to (a) to (e).

3. **Contracts of a nature similar to those in points 1(a) to (e) and 2(a) to (d) concerning other reference items or indices concerning:**

(a) equities;

(b) precious metals except gold;

(c) commodities other than precious metals;

(d) other contracts of a similar nature.

ANNEX V

PART A

REPEALED DIRECTIVES TOGETHER WITH THEIR SUCCESSIVE AMENDMENTS

(referred to in Article 67)

Council Directive 73/183/EEC
Council Directive 77/780/EEC
- Council Directive 85/345/EEC
- Council Directive 86/137/EEC
- Council Directive 86/524/EEC
- Council Directive 89/646/EEC
- Directive 95/26/EC of the European Parliament and of the Council,
  - only Article 1, first indent, Article 2(1), first indent and (2), first indent, Article 3(2), Article 4(2), (3) and (4), as regards references to Directive 77/780/EEC, and (6), and Article 5, first indent
- Council Directive 96/13/EC
- Directive 98/33/EC of the European Parliament and of the Council

Council Directive 89/299/EEC
- Council Directive 91/633/EEC
- Council Directive 92/16/EEC
- Council Directive 92/30/EEC

Council Directive 89/646/EEC
- Council Directive 92/30/EEC
- Directive 95/26/EC of the European Parliament and of the Council
  - only Article 1, first indent

Council Directive 89/647/EEC
- Commission Directive 91/31/EEC

Council Directive 92/30/EEC
Commission Directive 94/7/EC
Commission Directive 95/15/EC
Commission Directive 95/67/EC
Directive 96/10/EC of the European Parliament and of the Council
Directive 98/32/EC of the European Parliament and of the Council
Directive 98/33/EC of the European Parliament and of the Council (Article 2)

Council Directive 92/30/EEC
Council Directive 92/121/EEC

PART B

DEADLINES FOR IMPLEMENTATION

(referred to in Article 67)

Directive		Deadline for implementation
73/183/EEC (OJ L 194, 16.7.1973, p. 1)		2.1.1975[a]
77/780/EEC (OJ L 322, 17.12.1977, p. 30)		15.12.1979
85/345/EEC (OJ L 183, 16.7.1985, p. 19)		15.7.1985
86/137/EEC (OJ L 106, 23.4.1986, p. 35)		—
86/524/EEC (OJ L 309, 4.11.1986, p. 15)		31.12.1986
89/299/EEC (OJ L 124, 5.5.1989, p. 16)		1.1.1993
89/646/EEC (OJ L 386, 30.12.1989, p. 1)	Article 6(2),	1.1.1990
	other provisions	1.1.1993
89/647/EEC (OJ L 386, 30.12.1989, p. 14)		1.1.1991
91/31/EEC (OJ L 17, 23.1.1991, p. 20)		31.3.1991
91/633/EEC (OJ L 339, 11.12.1991, p. 16)		31.12.1992
92/16/EEC (OJ L 75, 31.3.1992, p. 48)		31.12.1992

a However, as regards the abolition of the restriction referred to in Article 3(2)(g), the Netherlands was allowed to defer implementation until 2 July 1977. (See: Article 8, second subparagraph of Directive 73/183/EEC).

92/30/EEC (OJ L 110, 28.4.1992, p. 52)		31.12.1992
92/121/EEC (OJ L 29, 5.2.1993, p. 1)		31.12.1993
94/7/EC (OJ L 89, 6.4.1994, p. 17)		25.11.1994
95/15/EC (OJ L 125, 8.6.1995, p. 23)		30.9.1995
95/26/EC (OJ L 168, 18.7.1995, p. 7)		18.7.1996
95/67/EC (OJ L 314, 28.12.1995, p. 72)		1.7.1996
96/10/EC (OJ L 85, 3.4.1996, p. 17)		30.6.1996
96/13/EC (OJ L 66, 16.3.1996, p. 15)		15.4.1996
98/32/EC (OJ L 204, 21.7.1998, p. 26)		21.7.2000
98/33/EC (OJ L 204, 21.7.1998, p. 29)		21.7.2000

a However, as regards the abolition of the restriction referred to in Article 3(2)(g), the Netherlands was allowed to defer implementation until 2 July 1977. (See: Article 8, second subparagraph of Directive 73/183/EEC).

ANNEX VI

CORRELATION TABLE

This Directive	**Directive 77/780/ EEC**	**Directive 89/299/ EEC**	**Directive 89/646/ EEC**	**Directive 89/647/ EEC**	**Directive 92/30/ EEC**	**Directive 92/121/ EEC**	**Directive 96/10/ EC**
Article 1(1)	Article 1, first indent				Article 1, first indent	Article 1(a)	
Article 1(2)	Article 1, second indent						
Article 1(3)			Article 1(3)				
Article 1(4) to (8)			Article 1(5) to (9)				
Article 1(9)					Article 1, sixth indent		

Article 1(10) and (11)			Article 1(10) and (11)				
Article 1(12)			Article 1(12)		Article 1, seventh indent	Article 1(c)	
Article 1(13)			Article 1(13)		Article 1, eighth indent	Article 1(d)	
Article 1(14) to (17)				Article 2(1), second to fifth indents			
Article 1(18) to (20)				Article 2(1), sixth to eighth indents			
Article 1(21) to (23)					Article 1, third to fifth indents		
Article 1(24)						Article 1(h)	
Article 1(25)						Article 1(m)	
Article 1(26)	Article 1, fifth indent						
Article 1(27)				Article 2(1), ninth indent			
Article 2(1)	Article 2(1)		Article 2(1)	Article 1(1)			
Article 2(2)					Article 2		
Article 2(3)	Article 2(2)						
Article 2(4)	Article 2(3)						
Article 2(5), first, second	Article 2(4)(a), (b) and (c)						

and third subparagraph							
Article 2(6)			Article 2(3)	Article 1(3)		Article 2(2)(b)	
Article 3			Article 3				
Article 4	Article 3(1)						
Article 5(1), first subparagraph	Article 3(2), first subparagraph		Article 4(1)				
Article 5(1), second subparagraph	Article 10(1), third subparagraph						
Article 5(2)			Article 4(2), introductory sentence, (a), (b) and (c)				
Article 5(3) to (7)			Article 10(1) to (5)				
Article 6(1)	Article 3(2), first subparagraph, third indent and second subparagraph						
Article 6(2)	Article 3(2)a						
Article 7(1) and (2)			Article 1(10), second subparagraph and Article 5(1) and (2)				
Article 7(3)	Article 3(2) third, fourth and fifth subparagraphs						

Article 8	Article 3(4)						
Article 9	Article 3(3)(a)						
Article 10	Article 3(6)						
Article 11	Article 3(7)						
Article 12			Article 7				
Article 13			Article 6(1)				
Article 14(1)	Article 8(1)						
Article 14(2)	Article 8(5)						
Article 15	Article 5						
Article 16(1) to (5)			Article 11(1) to (5)				
Article 16(6)			Article 1(10), second subparagraph				
Article 17			Article 13(2)				
Article 18			Article 18(1)				
Article 19			Article 18(2)				
Article 20(1) to (6)			Article 19				
Article 20(7)			Article 23(1)				
Article 21(1) and (2)			Article 20				
Article 21(3)			Article 23(2)				
Article 22			Article 21				
Article 23(1)			Article 8				

Article 23(2) to (7)			Article 9				
Article 24	Article 9						
Article 25					Article 8		
Article 26			Article 13(1) and (3)				
Article 27			Article 14(2)				
Article 28	Article 7(1)						
Article 29			Article 15				
Article 30(1) to (5)	Article 12(1) to (5)						
Article 30(6)	Article 12(5a)						
Article 30(7)	Article 12(5b)						
Article 30(8)	Article 12(6)						
Article 30(9)	Article 12(7)						
Article 30(10)	Article 12(8)						
Article 31	Article 12a						
Article 32			Article 17				
Article 33	Article 13						
Article 34(1)		Article 1(1)					
Article 34(2) to (4)		Article 2(1) to (3)					
Article 35		Article 3					
Article 36		Article 4					
Article 37		Article 5					
Article 38		Article 6(1) and (4)					

Article 39		Article 7					
Article 40				Article 3(1) to (4), (7) and (8)			
Article 41				Article 4			
Article 42				Article 5			
Article 43				Article 6			
Article 44				Article 7			
Article 45				Article 8			
Article 46				Article 2(2)			
Article 47				Article 10			
Article 48						Article 3	
Article 49						Article 4(1) to (7)(r), second subparagraph, first sentence, and (7)(s) to (12)	
Article 50						Article 5(1) to (3)	
Article 51(1) to (5)			Article 12(1) to (5)				
Article 51(6)			Article 12(8)				
Article 52(1) to (7)					Article 3(1) to (7)		
Article 52(8) and (9)				Article 3(5) and (6)	Article 3(8) and (9)	Article 5(4) and (5)	
Article 52(10)					Article 3(10)		
Article 53					Article 4		
Article 54					Article 5		
Article 55					Article 6		

Article 56					Article 7		
Article 57	Article 11						
Article 58	Article 3(5)						
Article 59	Article 6						
Article 60		Article 8	Article 22	Article 9		Article 7	
Article 61		Article 4a					
Article 62(1) and (2)				Article 11(4) and (5)			
Article 62(3)							Article 2
Article 63				Article 11(1) to (3)			
Article 64						Article 6(1) to (9)	
Article 65			Article 12(7)				
Article 66	Article 14(2)	Article 9(2)	Article 24(3)	Article 12(2)			
Article 67	—	—	—	—	—	—	—
Article 68	—	—	—	—	—	—	—
Article 69	—	—	—	—	—	—	—
Annex I			Annex				
Annex II				Annex I			
Annex III				Annex II			
Annex IV				Annex III			
Annex V	—	—	—	—	—	—	—
Annex VI	—	—	—	—	—	—	—

(1) **[**[F1]OJ L 275, 27.10.2000, p. 39.**]**

(2) **[**[F2]OJ L 35, 11.2.2003.**]**

(3) Council Directive 88/627/EEC of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of (OJ L 348, 17.12.1988, p. 62).

(4) 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).

(5) 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).

(6) 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).

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

(8) 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).

(9) Including, *inter alia:*

- consumer credit,
- mortgage credit,
- factoring, with or without recourse,
- financing of commercial transactions (including forfeiting).

(10) **[**[F9]**[**[X1]OJ L 145, 30.4.2004, p. 1.**]]**

(11) Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment firms and credit institutions (OJ L 141, 11.6.1993, p. 1). Directive amended by Directive 98/33/EC (OJ L 204, 21.7.1998, p. 29).

(12) Except in the case of single-currency 'floating/floating' interest rate swaps in which only the current replacement cost will be calculated.

Editorial Information

X1 Substituted by Corrigendum to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (Official Journal of the European Union L 145 of 30 April 2004).

Textual Amendments

F1 Substituted 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.

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.

F9 Inserted by Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.