

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

TITLE V

**PRINCIPLES AND TECHNICAL INSTRUMENTS  
FOR PRUDENTIAL SUPERVISION**

CHAPTER 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. <sup>[F1]</sup>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.

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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**

- F1** 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.

[<sup>F2</sup>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[<sup>F1</sup>.]
- [<sup>F3</sup> . . . . .]

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

- F1** 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](#)

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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.

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

**F3** 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.

### *F<sup>2</sup>* Article 54a

#### **Management body of financial holding companies**

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

#### **Textual Amendments**

**F2** 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).

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## *F<sup>2</sup> 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**

- F2** 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.<sup>[F2]</sup>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.

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### *f<sup>F2</sup>* 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.]



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