

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

DIRECTIVE 2002/87/EC OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

of 16 December 2002

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission<sup>(1)</sup>,

Having regard to the opinion of the Economic and Social Committee<sup>(2)</sup>,

After consulting the Committee of the Regions,

Having regard to the opinion of the European Central Bank<sup>(3)</sup>,

Acting in accordance with the procedure laid down in Article 251 of the Treaty<sup>(4)</sup>,

Whereas:

- (1) The current Community legislation provides for a comprehensive set of rules on the prudential supervision of credit institutions, insurance undertakings and investment firms on a stand alone basis and credit institutions, insurance undertakings and investment firms which are part of respectively a banking/investment firm group or an insurance group, i.e. groups with homogeneous financial activities.
- (2) New developments in financial markets have led to the creation of financial groups which provide services and products in different sectors of the financial markets, called financial conglomerates. Until now, there has been no form of prudential supervision on a group-wide basis of credit institutions, insurance undertakings and investment firms which are part of such a conglomerate, in particular as regards the solvency position and risk concentration at the level of the conglomerate, the intra-group transactions, the internal risk management processes at conglomerate level, and the fit and proper character of the management. Some of these conglomerates are among the biggest financial groups which are active in the financial markets and provide services on a global basis. If such conglomerates, and in particular credit institutions, insurance undertakings and investment firms which are part of such a conglomerate, were to face

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

- (3) The Commission Action Plan for Financial Services identifies a series of actions which are needed to complete the Single Market in Financial Services, and announces the development of supplementary prudential legislation for financial conglomerates which will address loopholes in the present sectoral legislation and additional prudential risks to ensure sound supervisory arrangements with regard to financial groups with cross-sectoral financial activities. Such an ambitious objective can only be attained in stages. The establishment of the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate is one such stage.
- (4) Other international forums have also identified the need for the development of appropriate supervisory concepts with regard to financial conglomerates.
- (5) In order to be effective, the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate should be applied to all such conglomerates, the cross-sectoral financial activities of which are significant, which is the case when certain thresholds are reached, no matter how they are structured. Supplementary supervision should cover all financial activities identified by the sectoral financial legislation and all entities principally engaged in such activities should be included in the scope of the supplementary supervision, including asset management companies.
- (6) Decisions not to include a particular entity in the scope of supplementary supervision should be taken, bearing in mind *inter alia* whether or not such entity is included in the group-wide supervision under sectoral rules.
- (7) The competent authorities should be able to assess at a group-wide level the financial situation of credit institutions, insurance undertakings and investment firms which are part of a financial conglomerate, in particular as regards solvency (including the elimination of multiple gearing of own funds instruments), risk concentration and intra-group transactions.
- (8) Financial conglomerates are often managed on a business-line basis which does not fully coincide with the conglomerate's legal structures. In order to take account of this trend, the requirements for management should be further extended, in particular as regards the management of the mixed financial holding company.
- (9) All financial conglomerates subject to supplementary supervision should have a coordinator appointed from among the competent authorities involved.
- (10) The tasks of the coordinator should not affect the tasks and responsibilities of the competent authorities as provided for by the sectoral rules.
- (11) The competent authorities involved, and especially the coordinator, should have the means of obtaining from the entities within a financial conglomerate, or from other competent authorities, the information necessary for the performance of their supplementary supervision.

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- (12) There is a pressing need for increased collaboration between authorities responsible for the supervision of credit institutions, insurance undertakings and investment firms, including the development of ad hoc cooperation arrangements between the authorities involved in the supervision of entities belonging to the same financial conglomerate.
- (13) Credit institutions, insurance undertakings and investment firms which have their head office in the Community can be part of a financial conglomerate, the head of which is outside the Community. These regulated entities should also be subject to equivalent and appropriate supplementary supervisory arrangements which achieve objectives and results similar to those pursued by the provisions of this Directive. To this end, transparency of rules and exchange of information with third-country authorities on all relevant circumstances are of great importance.
- (14) Equivalent and appropriate supplementary supervisory arrangements can only be assumed to exist if the third-country supervisory authorities have agreed to cooperate with the competent authorities concerned on the means and objectives of exercising supplementary supervision of the regulated entities of a financial conglomerate.
- (15) This Directive does not require the disclosure by competent authorities to a financial conglomerates committee of information which is subject to an obligation of confidentiality under this Directive or other sectoral directives.
- (16) Since the objective of the proposed action, namely the establishment of rules on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and the effects of the action, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective. Since this Directive defines minimum standards, Member States may lay down stricter rules.
- (17) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (18) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>(5)</sup>.
- (19) Technical guidance and implementing measures for the rules laid down in this Directive may from time to time be necessary to take account of new developments on financial markets. The Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive.
- (20) The existing sectoral rules for credit institutions, insurance undertakings and investment firms should be supplemented to a minimum level, in particular to avoid regulatory arbitrage between the sectoral rules and those for financial conglomerates. Therefore, First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the

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business of direct insurance other than life assurance<sup>(6)</sup>, First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance<sup>(7)</sup>, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance (third non-life insurance Directive)<sup>(8)</sup>, Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance (third life insurance Directive)<sup>(9)</sup>, Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investments firms and credit institutions<sup>(10)</sup> and Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field<sup>(11)</sup>, as well as Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group<sup>(12)</sup> and Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions<sup>(13)</sup> should be amended accordingly. The objective of further harmonisation can, however, only be achieved by stages and needs to be based on careful analysis.

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

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### OBJECTIVE AND DEFINITIONS

#### *Article 1*

#### **Objective**

This Directive lays down rules for supplementary supervision of regulated entities which have obtained an authorisation pursuant to Article 6 of Directive 73/239/EEC, Article 6 of Directive 79/267/EEC, Article 3(1) of Directive 93/22/EEC or Article 4 of Directive 2000/12/EC, and which are part of a financial conglomerate. It also amends the relevant sectoral rules which apply to entities regulated by the Directives referred to above.

#### *Article 2*

#### **Definitions**

For the purposes of this Directive:

1. 'credit institution' shall mean a credit institution within the meaning of the second subparagraph of Article 1(1) of Directive 2000/12/EC;

2. 'insurance undertaking' shall mean an insurance undertaking 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;
3. 'investment firm' shall mean an investment firm within the meaning of Article 1(2) of Directive 93/22/EEC, including the undertakings referred to in Article 2(4) of Directive 93/6/EEC;
4. 'regulated entity' shall mean a credit institution, an insurance undertaking or an investment firm;
5. 'asset management company' shall mean a management company within the meaning of Article 1a(2) of 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)<sup>(14)</sup>, as well as an undertaking the registered office of which is outside the Community and which would require authorisation in accordance with Article 5(1) of that Directive if it had its registered office within the Community;
6. 'reinsurance undertaking' shall mean a reinsurance undertaking within the meaning of Article 1(c) of Directive 98/78/EC;
7. 'sectoral rules' shall mean the Community legislation relating to the prudential supervision of regulated entities, in particular laid down in Directives 73/239/EEC, 79/267/EEC, 98/78/EC, 93/6/EEC, 93/22/EEC and 2000/12/EC;
8. 'financial sector' shall mean a sector composed of one or more of the following entities:
  - (a) a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 1(5) and (23) of Directive 2000/12/EC (the banking sector);
  - (b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 1(i) of Directive 98/78/EC (the insurance sector);
  - (c) an investment firm or a financial institution within the meaning of Article 2(7) of Directive 93/6/EEC (the investment services sector);
  - (d) a mixed financial holding company;
9. 'parent undertaking' shall mean a parent undertaking within the meaning of Article 1 of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts<sup>(15)</sup> and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;
10. 'subsidiary undertaking' shall mean a subsidiary undertaking within the meaning of Article 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 subsidiary undertakings of subsidiary undertakings shall also be considered as subsidiary undertakings of the parent undertaking;
11. 'participation' shall mean a participation within the meaning of the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies<sup>(16)</sup>, or the direct or indirect ownership of 20 % or more of the voting rights or capital of an undertaking;

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12. 'group' shall mean a group of undertakings, which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
13. '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;

14. 'financial conglomerate' shall mean a group which meets, subject to Article 3, the following conditions:
- (a) a regulated entity within the meaning of Article 1 is at the head of the group or at least one of the subsidiaries in the group is a regulated entity within the meaning of Article 1;
  - (b) where there is a regulated entity within the meaning of Article 1 at the head of the group, it is either a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
  - (c) where there is no regulated entity within the meaning of Article 1 at the head of the group, the group's activities mainly occur in the financial sector within the meaning of Article 3(1);
  - (d) at least one of the entities in the group is within the insurance sector and at least one is within the banking or investment services sector;
  - (e) the consolidated and/or aggregated activities of the entities in the group within the insurance sector and the consolidated and/or aggregated activities of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3).

Any subgroup of a group within the meaning of point 12 which meets the criteria in this point shall be considered as a financial conglomerate;

15. 'mixed financial holding company' shall mean a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity which has its head office in the Community, and other entities, constitutes a financial conglomerate;

16. ‘competent authorities’ shall mean the national authorities of the Member States which are empowered by law or regulation to supervise credit institutions, and/or insurance undertakings and/or investment firms whether on an individual or a group-wide basis;
17. ‘relevant competent authorities’ shall mean:
- (a) Member States' competent authorities responsible for the sectoral group-wide supervision of any of the regulated entities in a financial conglomerate;
  - (b) the coordinator appointed in accordance with Article 10 if different from the authorities referred to in (a);
  - (c) other competent authorities concerned, where relevant, in the opinion of the authorities referred to in (a) and (b); this opinion shall especially take into account the market share of the regulated entities of the conglomerate in other Member States, in particular if it exceeds 5 %, and the importance in the conglomerate of any regulated entity established in another Member State;
18. ‘intra-group transactions’ shall mean all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other undertakings within the same group or upon any natural or legal person linked to the undertakings within that group by ‘close links’, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;
19. ‘risk concentration’ shall mean all exposures with a loss potential borne by entities within a financial conglomerate, which are large enough to threaten the solvency or the financial position in general of the regulated entities in the financial conglomerate; such exposures may be caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.

### *Article 3*

#### **Thresholds for identifying a financial conglomerate**

1 For the purposes of determining whether the activities of a group mainly occur in the financial sector, within the meaning of Article 2(14)(c), the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole should exceed 40 %.

2 For the purposes of determining whether activities in different financial sectors are significant within the meaning of Article 2(14)(e), for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group should exceed 10 %.

For the purposes of this Directive, the smallest financial sector in a financial conglomerate is the sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average. For the purposes of calculating the average and for the measurement of the smallest and the most important financial sectors, the banking sector and the investment services sector shall be considered together.

3 Cross-sectoral activities shall also be presumed to be significant within the meaning of Article 2(14)(e) if the balance sheet total of the smallest financial sector in the group exceeds

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EUR 6 billion. If the group does not reach the threshold referred to in paragraph 2, the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate, or not to apply the provisions of Articles 7, 8 or 9, if they are of the opinion that the inclusion of the group in the scope of this Directive or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision, taking into account, for instance, the fact that:

- a the relative size of its smallest financial sector does not exceed 5 %, measured either in terms of the average referred to in paragraph 2 or in terms of the balance sheet total or the solvency requirements of such financial sector; or
- b the market share does not exceed 5 % in any Member State, measured in terms of the balance sheet total in the banking or investment services sectors and in terms of gross premiums written in the insurance sector.

Decisions taken in accordance with this paragraph shall be notified to the other competent authorities concerned.

4 For the application of paragraphs 1, 2 and 3, the relevant competent authorities may by common agreement:

- a exclude an entity when calculating the ratios, in the cases referred to in Article 6(5);
- b take into account compliance with the thresholds envisaged in paragraphs 1 and 2 for three consecutive years so as to avoid sudden regime shifts, and disregard such compliance if there are significant changes in the group's structure.

Where a financial conglomerate has been identified according to paragraphs 1, 2 and 3, the decisions referred to in the first subparagraph of this paragraph shall be taken on the basis of a proposal made by the coordinator of that financial conglomerate.

5 For the application of paragraphs 1 and 2, the relevant competent authorities may, in exceptional cases and by common agreement, replace the criterion based on balance sheet total with one or both of the following parameters or add one or both of these parameters, if they are of the opinion that these parameters are of particular relevance for the purposes of supplementary supervision under this Directive: income structure, off-balance-sheet activities.

6 For the application of paragraphs 1 and 2, if the ratios referred to in those paragraphs fall below 40 % and 10 % respectively for conglomerates already subject to supplementary supervision, a lower ratio of 35 % and 8 % respectively shall apply for the following three years to avoid sudden regime shifts.

Similarly, for the application of paragraph 3, if the balance sheet total of the smallest financial sector in the group falls below EUR 6 billion for conglomerates already subject to supplementary supervision, a lower figure of EUR 5 billion shall apply for the following three years to avoid sudden regime shifts.

During the period referred to in this paragraph, the coordinator may, with the agreement of the other relevant competent authorities, decide that the lower ratios or the lower amount referred to in this paragraph shall cease to apply.

7 The calculations referred to in this Article regarding the balance sheet shall be made on the basis of the aggregated balance sheet total of the entities of the group, according to their annual accounts. For the purposes of this calculation, undertakings in which a participation is held shall be taken into account as regards the amount of their balance sheet total corresponding to the aggregated proportional share held by the group. However, where consolidated accounts are available, they shall be used instead of aggregated accounts.



The solvency requirements referred to in paragraphs 2 and 3 shall be calculated in accordance with the provisions of the relevant sectoral rules.

#### *Article 4*

### **Identifying a financial conglomerate**

1 Competent authorities which have authorised regulated entities shall, on the basis of Articles 2, 3 and 5, identify any group that falls under the scope of this Directive.

For this purpose:

- competent authorities which have authorised regulated entities in the group shall, where necessary, cooperate closely,
- if a competent authority is of the opinion that a regulated entity authorised by that competent authority is a member of a group which may be a financial conglomerate, which has not already been identified according to this Directive, the competent authority shall communicate its view to the other competent authorities concerned.

2 The coordinator appointed in accordance with Article 10 shall inform the parent undertaking at the head of a group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of the appointment of the coordinator. The coordinator shall also inform the competent authorities which have authorised regulated entities in the group and the competent authorities of the Member State in which the mixed financial holding company has its head office, as well as the Commission.

## CHAPTER II

### SUPPLEMENTARY SUPERVISION

#### SECTION 1

#### SCOPE

#### *Article 5*

### **Scope of supplementary supervision of regulated entities referred to in Article 1**

1 Without prejudice to the provisions on supervision contained in the sectoral rules, Member States shall provide for the supplementary supervision of the regulated entities referred to in Article 1, to the extent and in the manner prescribed in this Directive.

2 The following regulated entities shall be subject to supplementary supervision at the level of the financial conglomerate in accordance with Articles 6 to 17:

- a every regulated entity which is at the head of a financial conglomerate;
- b every regulated entity, the parent undertaking of which is a mixed financial holding company which has its head office in the Community;
- c every regulated entity linked with another financial sector entity by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC.

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Where a financial conglomerate is a subgroup of another financial conglomerate which meets the requirements of the first subparagraph, Member States may apply Articles 6 to 17 to the regulated entities within the latter group only and any reference in the Directive to the terms group and financial conglomerate will then be understood as referring to that latter group.

3 Every regulated entity which is not subject to supplementary supervision in accordance with paragraph 2, the parent undertaking of which is a regulated entity or a mixed financial holding company, having its head office outside the Community, shall be subject to supplementary supervision at the level of the financial conglomerate to the extent and in the manner prescribed in Article 18.

4 Where persons hold participations or capital ties in one or more regulated entities or exercise significant influence over such entities without holding a participation or capital ties, other than the cases referred to in paragraphs 2 and 3, the relevant competent authorities shall, by common agreement and in conformity with national law, determine whether and to what extent supplementary supervision of the regulated entities is to be carried out, as if they constitute a financial conglomerate.

In order to apply such supplementary supervision, at least one of the entities must be a regulated entity as referred to in Article 1 and the conditions set out in Article 2(14) (d) and (e) must be met. The relevant competent authorities shall take their decision, taking into account the objectives of the supplementary supervision as provided for by this Directive.

For the purposes of applying the first subparagraph to ‘cooperative groups’, the competent authorities must take into account the public financial commitment of these groups with respect to other financial entities.

5 Without prejudice to Article 13, the exercise of supplementary supervision at the level of the financial conglomerate shall in no way imply that the competent authorities are required to play a supervisory role in relation to mixed financial holding companies, third-country regulated entities in a financial conglomerate or unregulated entities in a financial conglomerate, on a stand-alone basis.

## SECTION 2

### FINANCIAL POSITION

#### *Article 6*

#### **Capital adequacy**

1 Without prejudice to the sectoral rules, supplementary supervision of the capital adequacy of the regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in Article 9(2) to (5), in Section 3 of this Chapter, and in Annex I.

2 The Member States shall require regulated entities in a financial conglomerate to ensure that own funds are available at the level of the financial conglomerate which are always at least equal to the capital adequacy requirements as calculated in accordance with Annex I.

The Member States shall also require regulated entities to have in place adequate capital adequacy policies at the level of the financial conglomerate.

The requirements referred to in the first and second subparagraphs shall be subject to supervisory overview by the coordinator in accordance with Section 3.

The coordinator shall ensure that the calculation referred to in the first subparagraph is carried out at least once a year, either by the regulated entities or by the mixed financial holding company.

The results of the calculation and the relevant data for the calculation shall be submitted to the coordinator by the regulated entity within the meaning of Article 1 which is at the head of the financial conglomerate, or, where the financial conglomerate is not headed by a regulated entity within the meaning of Article 1, by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.

3 For the purposes of calculating the capital adequacy requirements referred to in the first subparagraph of paragraph 2, the following entities shall be included in the scope of supplementary supervision in the manner and to the extent defined in Annex I:

- a a credit institution, a financial institution or an ancillary banking services undertaking within the meaning of Article 1(5) and (23) of Directive 2000/12/EC;
- b an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 1(i) of Directive 98/78/EC;
- c an investment firm or a financial institution within the meaning of Article 2(7) of Directive 93/6/EEC;
- d mixed financial holding companies.

4 When calculating the supplementary capital adequacy requirements with regard to a financial conglomerate by applying method 1 (Accounting consolidation) referred to in Annex I, the own funds and the solvency requirements of the entities in the group shall be calculated by applying the corresponding sectoral rules on the form and extent of consolidation as laid down in particular in Article 54 of Directive 2000/12/EC and Annex I.1.B. of Directive 98/78/EC.

When applying methods 2 or 3 (Deduction and aggregation, Book value/Requirement deduction) referred to in Annex I, the calculation shall take account of the proportional share held by the parent undertaking or undertaking which holds a participation in another entity of the group. 'Proportional share' means the proportion of the subscribed capital which is held, directly or indirectly, by that undertaking.

5 The coordinator may decide not to include a particular entity in the scope when calculating the supplementary capital adequacy requirements in the following cases:

- a if the entity is situated in a third country where there are legal impediments to the transfer of the necessary information, without prejudice to the sectoral rules regarding the obligation of competent authorities to refuse authorisation where the effective exercise of their supervisory functions is prevented;
- b if the entity is of negligible interest with respect to the objectives of the supplementary supervision of regulated entities in a financial conglomerate;
- c if the inclusion of the entity would be inappropriate or misleading with respect to the objectives of supplementary supervision.

However, if several entities are to be excluded pursuant to (b) of the first subparagraph, they must nevertheless be included when collectively they are of non-negligible interest.

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In the case mentioned in (c) of the first subparagraph the coordinator shall, except in cases of urgency, consult the other relevant competent authorities before taking a decision.

When the coordinator does not include a regulated entity in the scope under one of the cases provided for in (b) and (c) of the first subparagraph, the competent authorities of the Member State in which that entity is situated may ask the entity which is at the head of the financial conglomerate for information which may facilitate their supervision of the regulated entity.

#### *Article 7*

### **Risk concentration**

1 Without prejudice to the sectoral rules, supplementary supervision of the risk concentration of regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in Article 9(2) to (4), in Section 3 of this Chapter and in Annex II.

2 The Member States shall require regulated entities or mixed financial holding companies to report on a regular basis and at least annually to the coordinator any significant risk concentration at the level of the financial conglomerate, in accordance with the rules laid down in this Article and in Annex II. The necessary information shall be submitted to the coordinator by the regulated entity within the meaning of Article 1 which is at the head of the financial conglomerate or, where the financial conglomerate is not headed by a regulated entity within the meaning of Article 1, by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.

These risk concentrations shall be subject to supervisory overview by the coordinator in accordance with Section 3.

3 Pending further coordination of Community legislation, Member States may set quantitative limits or allow their competent authorities to set quantitative limits, or take other supervisory measures which would achieve the objectives of supplementary supervision, with regard to any risk concentration at the level of a financial conglomerate.

4 Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding risk concentration of the most important financial sector in the financial conglomerate, if any, shall apply to that sector as a whole, including the mixed financial holding company.

#### *Article 8*

### **Intra-group transactions**

1 Without prejudice to the sectoral rules, supplementary supervision of intra-group transactions of regulated entities in a financial conglomerate shall be exercised in accordance with the rules laid down in Article 9(2) to (4), in Section 3 of this Chapter, and in Annex II.

2 The Member States shall require regulated entities or mixed financial holding companies to report, on a regular basis and at least annually, to the coordinator all significant intra-group transactions of regulated entities within a financial conglomerate, in accordance with the rules laid down in this Article and in Annex II. Insofar as no definition of the thresholds referred to in the last sentence of the first paragraph of Annex II has been drawn up, an intra-

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group transaction shall be presumed to be significant if its amount exceeds at least 5 % of the total amount of capital adequacy requirements at the level of a financial conglomerate.

The necessary information shall be submitted to the coordinator by the regulated entity within the meaning of Article 1 which is at the head of the financial conglomerate or, where the financial conglomerate is not headed by a regulated entity within the meaning of Article 1, by the mixed financial holding company or by the regulated entity in the financial conglomerate identified by the coordinator after consultation with the other relevant competent authorities and with the financial conglomerate.

These intra-group transactions shall be subject to supervisory overview by the coordinator.

3 Pending further coordination of Community legislation, Member States may set quantitative limits and qualitative requirements or allow their competent authorities to set quantitative limits and qualitative requirements, or take other supervisory measures that would achieve the objectives of supplementary supervision, with regard to intra-group transactions of regulated entities within a financial conglomerate.

4 Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding intra-group transactions of the most important financial sector in the financial conglomerate shall apply to that sector as a whole, including the mixed financial holding company.

#### *Article 9*

#### **Internal control mechanisms and risk management processes**

1 The Member States shall require regulated entities to have, in place at the level of the financial conglomerate, adequate risk management processes and internal control mechanisms, including sound administrative and accounting procedures.

2 The risk management processes shall include:

- a sound governance and management with the approval and periodical review of the strategies and policies by the appropriate governing bodies at the level of the financial conglomerate with respect to all the risks they assume;
- b adequate capital adequacy policies in order to anticipate the impact of their business strategy on risk profile and capital requirements as determined in accordance with Article 6 and Annex I;
- c adequate procedures to ensure that their risk monitoring systems are well integrated into their organisation and that all measures are taken to ensure that the systems implemented in all the undertakings included in the scope of supplementary supervision are consistent so that the risks can be measured, monitored and controlled at the level of the financial conglomerate.

3 The internal control mechanisms shall include:

- a adequate mechanisms as regards capital adequacy to identify and measure all material risks incurred and to appropriately relate own funds to risks;
- b sound reporting and accounting procedures to identify, measure, monitor and control the intra-group transactions and the risk concentration.

4 The Member States shall ensure that, in all undertakings included in the scope of supplementary supervision pursuant to Article 5, there are adequate internal control mechanisms

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for the production of any data and information which would be relevant for the purposes of the supplementary supervision.

5 The processes and mechanisms referred to in paragraphs 1 to 4 shall be subject to supervisory overview by the coordinator.

### SECTION 3

## MEASURES TO FACILITATE SUPPLEMENTARY SUPERVISION

### *Article 10*

#### **Competent authority responsible for exercising supplementary supervision (the coordinator)**

1 In order to ensure proper supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator, responsible for coordination and exercise of supplementary supervision, shall be appointed from among the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office.

2 The appointment shall be based on the following criteria:

- a where a financial conglomerate is headed by a regulated entity, the task of coordinator shall be exercised by the competent authority which has authorised that regulated entity pursuant to the relevant sectoral rules;
- b where a financial conglomerate is not headed by a regulated entity, the task of coordinator shall be exercised by the competent authority identified in accordance with the following principles:
  - (i) where the parent of a regulated entity is a mixed financial holding company, the task of coordinator shall be exercised by the competent authority which has authorised that regulated entity pursuant to the relevant sectoral rules;
  - (ii) where more than one regulated entity with a head office in the Community have as their parent the same mixed financial holding company, and one of these entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity authorised in that Member State.

Where more than one regulated entity, being active in different financial sectors, have been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity active in the most important financial sector.

Where the financial conglomerate is headed by more than one mixed financial holding company with a head office in different Member States and there is a regulated entity in each of these States, the task of coordinator shall be exercised by the competent authority of the regulated entity with the largest balance sheet total if these entities are in the same financial sector, or by the competent authority of the regulated entity in the most important financial sector;

- (iii) where more than one regulated entity with a head office in the Community have as their parent the same mixed financial holding company and none of these entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector;
- (iv) where the financial conglomerate is a group without a parent undertaking at the top, or in any other case, the task of coordinator shall be exercised by the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector.

3 In particular cases, the relevant competent authorities may by common agreement waive the criteria referred to in paragraph 2 if their application would be inappropriate, taking into account the structure of the conglomerate and the relative importance of its activities in different countries, and appoint a different competent authority as coordinator. In these cases, before taking their decision, the competent authorities shall give the conglomerate an opportunity to state its opinion on that decision.

#### *Article 11*

#### **Tasks of the coordinator**

1 The tasks to be carried out by the coordinator with regard to supplementary supervision shall include:

- a coordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations, including the dissemination of information which is of importance for a competent authority's supervisory task under sectoral rules;
- b supervisory overview and assessment of the financial situation of a financial conglomerate;
- c assessment of compliance with the rules on capital adequacy and of risk concentration and intra-group transactions as set out in Articles 6, 7 and 8;
- d assessment of the financial conglomerate's structure, organisation and internal control system as set out in Article 9;
- e planning and coordination of supervisory activities in going concern as well as in emergency situations, in cooperation with the relevant competent authorities involved;
- f other tasks, measures and decisions assigned to the coordinator by this Directive or deriving from the application of this Directive.

In order to facilitate and establish supplementary supervision on a broad legal basis, the coordinator and the other relevant competent authorities, and where necessary other competent authorities concerned, shall have coordination arrangements in place. The coordination arrangements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process among the relevant competent authorities as referred to in Articles 3, 4, 5(4), 6, 12(2), 16 and 18, and for cooperation with other competent authorities.

2 The coordinator should, when it needs information which has already been given to another competent authority in accordance with the sectoral rules, contact this authority whenever possible in order to prevent duplication of reporting to the various authorities involved in supervision.

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3 Without prejudice to the possibility of delegating specific supervisory competences and responsibilities as provided for by Community legislation, the presence of a coordinator entrusted with specific tasks concerning the supplementary supervision of regulated entities in a financial conglomerate shall not affect the tasks and responsibilities of the competent authorities as provided for by the sectoral rules.

### *Article 12*

#### **Cooperation and exchange of information between competent authorities**

1 The competent authorities responsible for the supervision of regulated entities in a financial conglomerate and the competent authority appointed as the coordinator for that financial conglomerate shall cooperate closely with each other. Without prejudice to their respective responsibilities as defined under sectoral rules, these authorities, whether or not established in the same Member State, shall provide one another with any information which is essential or relevant for the exercise of the other authorities' supervisory tasks under the sectoral rules and this Directive. In this regard, the competent authorities and the coordinator shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

This cooperation shall at least provide for the gathering and the exchange of information with regard to the following items:

- a identification of the group structure of all major entities belonging to the financial conglomerate, as well as of the competent authorities of the regulated entities in the group;
- b the financial conglomerate's strategic policies;
- c the financial situation of the financial conglomerate, in particular on capital adequacy, intra-group transactions, risk concentration and profitability;
- d the financial conglomerate's major shareholders and management;
- e the organisation, risk management and internal control systems at financial conglomerate level;
- f procedures for the collection of information from the entities in a financial conglomerate, and the verification of that information;
- g adverse developments in regulated entities or in other entities of the financial conglomerate which could seriously affect the regulated entities;
- h major sanctions and exceptional measures taken by competent authorities in accordance with sectoral rules or this Directive.

The competent authorities may also exchange with the following authorities such information as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: central banks, the European System of Central Banks and the European Central Bank.

2 Without prejudice to their respective responsibilities as defined under sectoral rules, the competent authorities concerned shall, prior to their decision, consult each other with regard to the following items, where these decisions are of importance for other competent authorities' supervisory tasks:

- a changes in the shareholder, organisational or management structure of regulated entities in a financial conglomerate, which require the approval or authorisation of competent authorities;
- b major sanctions or exceptional measures taken by competent authorities.



A competent authority may decide not to consult in cases of urgency or where such consultation may jeopardise the effectiveness of the decisions. In this case, the competent authority shall, without delay, inform the other competent authorities.

3 The coordinator may invite the competent authorities of the Member State in which a parent undertaking has its head office, and which do not themselves exercise the supplementary supervision pursuant to Article 10, to ask the parent undertaking for any information which would be relevant for the exercise of its coordination tasks as laid down in Article 11, and to transmit that information to the coordinator.

Where the information referred to in Article 14(2) has already been given to a competent authority in accordance with sectoral rules, the competent authorities responsible for exercising supplementary supervision may apply to the first-mentioned authority to obtain the information.

4 Member States shall authorise the exchange of the information between their competent authorities and between their competent authorities and other authorities, as referred to in paragraphs 1, 2 and 3. The collection or possession of information with regard to an entity within a financial conglomerate which is not a regulated entity shall not in any way imply that the competent authorities are required to play a supervisory role in relation to these entities on a stand-alone basis.

Information received in the framework of supplementary supervision, and in particular any exchange of information between competent authorities and between competent authorities and other authorities which is provided for in this Directive, shall be subject to the provisions on professional secrecy and communication of confidential information laid down in the sectoral rules.

### *Article 13*

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

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

### *Article 14*

#### **Access to information**

1 Member States shall ensure that there are no legal impediments within their jurisdiction preventing the natural and legal persons included within the scope of supplementary supervision, whether or not a regulated entity, from exchanging amongst themselves any information which would be relevant for the purposes of supplementary supervision.

2 Member States shall provide that, when approaching the entities in a financial conglomerate, whether or not a regulated entity, either directly or indirectly, their competent authorities responsible for exercising supplementary supervision shall have access to any information which would be relevant for the purposes of supplementary supervision.

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### Article 15

#### Verification

Where, in applying this Directive, competent authorities wish in specific cases to verify the information concerning an entity, whether or not regulated, which is part of a financial conglomerate and is situated in another Member State, they shall ask the competent authorities of that other Member State to have the verification carried out.

The authorities which receive such a request shall, within the framework of their competences, act upon it either by carrying out the verification themselves, by allowing an auditor or expert to carry it out, or by allowing the authority which made the request to carry it out itself.

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.

### Article 16

#### Enforcement measures

If the regulated entities in a financial conglomerate do not comply with the requirements referred to in Articles 6 to 9 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the regulated entities' financial position, the necessary measures shall be required in order to rectify the situation as soon as possible:

- by the coordinator with respect to the mixed financial holding company,
- by the competent authorities with respect to the regulated entities; to that end, the coordinator shall inform those competent authorities of its findings.

Without prejudice to Article 17(2), Member States may determine what measures may be taken by their competent authorities with respect to mixed financial holding companies.

The competent authorities involved, including the coordinator, shall where appropriate coordinate their supervisory actions.

### Article 17

#### Additional powers of the competent authorities

1 Pending further harmonisation between sectoral rules, the Member States shall provide that their competent authorities shall have the power to take any supervisory measure deemed necessary in order to avoid or to deal with the circumvention of sectoral rules by regulated entities in a financial conglomerate.

2 Without prejudice to their criminal law provisions, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on mixed financial holding companies, or their effective managers, which infringe laws, regulations or administrative provisions enacted to implement this Directive. In certain cases, such measures may require the intervention of the courts. The competent authorities shall cooperate closely to ensure that such penalties or measures produce the desired results.

## SECTION 4

### THIRD COUNTRIES

#### *Article 18*

#### **Parent undertakings outside the Community**

1 Without prejudice to the sectoral rules, in the case referred to in Article 5(3), competent authorities shall verify whether the regulated entities, the parent undertaking of which has its head office outside the Community, are subject to supervision by a third-country competent authority, which is equivalent to that provided for by the provisions of this Directive on the supplementary supervision of regulated entities referred to in Article 5(2). The verification shall be carried out by the competent authority which would be the coordinator if the criteria set out in Article 10(2) were to apply, on 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 relevant competent authorities, and shall take into account any applicable guidance prepared by the Financial Conglomerates Committee in accordance with Article 21(5). For this purpose the competent authority shall consult the Committee before taking a decision.

2 In the absence of equivalent supervision referred to in paragraph 1, Member States shall apply to the regulated entities, by analogy, the provisions concerning the supplementary supervision of regulated entities referred to in Article 5(2). As an alternative, competent authorities may apply one of the methods set out in paragraph 3.

3 Member States shall allow their competent authorities to apply other methods which ensure appropriate supplementary supervision of the regulated entities in a financial conglomerate. These methods must be agreed by the coordinator, after consultation with the other relevant competent authorities. The competent authorities may in particular require the establishment of a mixed financial holding company which has its head office in the Community, and apply this Directive to the regulated entities in the financial conglomerate headed by that holding company. The methods must achieve the objectives of the supplementary supervision as defined in this Directive and must be notified to the other competent authorities involved and the Commission.

#### *Article 19*

#### **Cooperation with third-country competent authorities**

1 Article 25(1) and (2) of Directive 2000/12/EC and Article 10a of Directive 98/78/EC shall apply *mutatis mutandis* to the negotiation of agreements with one or more third countries regarding the means of exercising supplementary supervision of regulated entities in a financial conglomerate.

[<sup>F12</sup> Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Banking Committee, the European Insurance and Occupational Pensions Committee and the Financial Conglomerates Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.]

#### **Textual Amendments**

- F1** Substituted by [Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and](#)

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Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees (Text with EEA relevance).

## CHAPTER III

### POWERS CONFERRED ON THE COMMISSION AND COMMITTEE PROCEDURE

#### *Article 20*

##### **Powers conferred on the Commission**

1 The Commission shall adopt, in accordance with the procedure referred to in Article 21(2), the technical adaptations to be made to this Directive in the following areas:

- a a more precise formulation of the definitions referred to in Article 2 in order to take account of developments in financial markets in the application of this Directive;
- b a more precise formulation of the definitions referred to in Article 2 in order to ensure uniform application of this Directive in the Community;
- c the alignment of terminology and the framing of definitions in the Directive in accordance with subsequent Community acts on regulated entities and related matters;
- d a more precise definition of the calculation methods set out in Annex I in order to take account of developments on financial markets and prudential techniques;
- e coordination of the provisions adopted pursuant to Articles 7 and 8 and Annex II with a view to encouraging uniform application within the Community.

2 The Commission shall inform the public of any proposal presented in accordance with this Article and will consult interested parties prior to submitting the draft measures to the Financial Conglomerates Committee referred to in Article 21.

#### *Article 21*

##### **Committee**

1 The Commission shall be assisted by a Financial Conglomerates Committee, hereinafter referred to as the 'Committee'.

2 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.

3 The Committee shall adopt its rules of procedure.

4 Without prejudice to the implementing measures already adopted, on the expiry of a four-year period following the entry into force of this Directive, the application of the provisions thereof requiring the adoption of technical rules and decisions in accordance with the procedure referred to in paragraph 2 shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and, to that end, they shall review them prior to the expiry of the period referred to above.

5 The Committee may give general guidance as to whether the supplementary supervision arrangements of competent authorities in third countries are likely to achieve the objectives of the supplementary supervision as defined in this Directive, in relation to the regulated entities in a financial conglomerate, the head 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 supplementary supervision carried out by such competent authorities.

6 The Committee shall be kept informed by Member States of the principles they apply concerning the supervision of intra-group transactions and risk concentration.

## CHAPTER IV

### AMENDMENTS TO EXISTING DIRECTIVES

#### *Article 22*

#### **Amendments to Directive 73/239/EEC**

Directive 73/239/EEC is amended as follows:

1. the following Article shall be inserted:

#### *Article 12a*

1 The competent authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to an insurance undertaking, which is:

- a a subsidiary of an insurance undertaking authorised in another Member State; or
- b a subsidiary of the parent undertaking of an insurance undertaking authorised in another Member State; or
- c controlled by the same person, whether natural or legal, who controls an insurance undertaking authorised in another Member State.

2 The competent authority of a Member State involved responsible for the supervision of credit institutions or investment firms shall be consulted prior to the granting of an authorisation to an insurance undertaking which is:

- a a subsidiary of a credit institution or investment firm authorised in the Community; or
- b a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or
- c controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

3 The relevant competent authorities referred to in paragraphs 1 and 2 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.

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2. the following subparagraphs shall be added to Article 16(2):

The available solvency margin shall also be reduced by the following items:

- (a) participations which the insurance undertaking holds in
- insurance undertakings within the meaning of Article 6 of this Directive, Article 6 of First Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance<sup>(17)</sup>, or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council<sup>(18)</sup>,
  - 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,
  - credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council<sup>(19)</sup>,
  - investment firms and financial institutions within the meaning of Article 1(2) of Directive 93/22/EEC<sup>(20)</sup> and of Article 2(4) and (7) of Directive 93/6/EEC<sup>(21)</sup>;
- (b) each of the following items which the insurance undertaking holds in respect of the entities defined in (a) in which it holds a participation:
- instruments referred to in paragraph 3,
  - instruments referred to in Article 18(3) of Directive 79/267/EEC,
  - subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.

Where shares in another credit institution, investment firm, 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 under (a) and (b) of the fourth subparagraph.

As an alternative to the deduction of the items referred to in (a) and (b) of the fourth subparagraph which the insurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their insurance undertakings to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to 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<sup>(22)</sup>. 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 overtime.

Member States may provide that, for the calculation of the solvency margin as provided for by this Directive, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in (a) and (b) of the fourth subparagraph which are held in credit institutions,

investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies which are included in the supplementary supervision.

For the purposes of the deduction of participations referred to in this paragraph, participation shall mean a participation within the meaning of Article 1(f) of Directive 98/78/EC.

### *Article 23*

#### **Amendments to Directive 79/267/EEC**

Directive 79/267/EC is amended as follows:

1. the following Article shall be inserted:

#### *Article 12a*

- 1 The competent authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to a life assurance undertaking, which is:

- a subsidiary of an insurance undertaking authorised in another Member State; or
- b a subsidiary of the parent undertaking of an insurance undertaking authorised in another Member State; or
- c controlled by the same person, whether natural or legal, who controls an insurance undertaking authorised in another Member State.

- 2 The competent authority of a Member State involved, responsible for the supervision of credit institutions or investment firms, shall be consulted prior to the granting of an authorisation to a life assurance undertaking, which is:

- a a subsidiary of a credit institution or investment firm authorised in the Community; or
- b a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or
- c controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

- 3 The relevant competent authorities referred to in paragraphs 1 and 2 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.

2. the following subparagraphs shall be added to Article 18(2):

The available solvency margin shall also be reduced by the following items:

- (a) participations which the assurance undertaking holds, in  
— insurance undertakings within the meaning of Article 6 of this Directive, Article 6 of Directive 73/239/EEC<sup>(23)</sup>, or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council<sup>(24)</sup>,

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- 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,
  - credit institutions and financial institutions within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council<sup>(25)</sup>,
  - investment firms and financial institutions within the meaning of Article 1(2) of Directive 93/22/EEC<sup>(26)</sup> and of Articles 2(4) and 2(7) of Directive 93/6/EEC<sup>(27)</sup>;
- (b) each of the following items which the assurance undertaking holds in respect of the entities defined in (a) in which it holds a participation:
- instruments referred to in paragraph 3,
  - instruments referred to in Article 16(3) of Directive 73/239/EEC,
  - subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.

Where shares in another credit institution, investment firm, 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 under (a) and (b) of the third subparagraph.

As an alternative to the deduction of the items referred to in (a) and (b) of the third subparagraph which the insurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their insurance undertakings to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to 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<sup>(28)</sup>. 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 the solvency margin as provided for by this Directive, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in (a) and (b) of the third subparagraph which are held in credit institutions, investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies which are included in the supplementary supervision.

For the purposes of the deduction of participations referred to in this paragraph, participation shall mean a participation within the meaning of Article 1(f) of Directive 98/78/EC.

#### *Article 24*

### **Amendments to Directive 92/49/EEC**

Directive 92/49/EEC is amended as follows:



1. the following paragraph shall be inserted in Article 15:
  - 1a. If the acquirer of the holdings referred to in paragraph 1 is an insurance undertaking, a credit institution or an investment firm authorised in another Member State, or the parent undertaking of such an entity, or a natural or legal person controlling such an entity, and if, as a result of that acquisition, the undertaking 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 12a of Directive 73/239/EEC.
2. Article 16(5c) shall be replaced by the following:
  - 5c. 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.

#### *Article 25*

#### **Amendments to Directive 92/96/EEC**

Directive 92/96/EEC is amended as follows:

1. the following paragraph shall be inserted in Article 14:
  - 1a. If the acquirer of the holdings referred to in paragraph 1 is an insurance undertaking, a credit institution or an investment firm authorised in another Member State, or the parent undertaking of such an entity, or a natural or legal person controlling such an entity, and if, as a result of that acquisition, the undertaking 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 12a of Directive 79/267/EEC.
2. Article 15(5c) shall be replaced by the following:
  - 5c. 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.

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### Article 26

#### Amendments to Directive 93/6/EEC

In Article 7(3) of Directive 93/6/EEC the first and the second indents shall be replaced by the following:

- “financial holding company” shall mean a financial institution, the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions, at least one of which is an investment firm, 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<sup>(29)</sup>,
- “mixed-activity holding company” shall mean a parent undertaking, other than a financial holding company or an investment firm or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm.

### Article 27

#### Amendments to Directive 93/22/EEC

Directive 93/22/EEC is amended as follows:

1. in Article 6 the following paragraphs shall be added:

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

- (a) a subsidiary of a credit institution or insurance undertaking authorised in the Community; or
- (b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in the Community; or
- (c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking 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.

2. Article 9(2) shall be replaced by the following:

2. If the acquirer of the holding referred to in paragraph 1 is an investment firm, a credit institution or an insurance undertaking authorised in another Member

State, or the parent undertaking of an investment firm, credit institution or insurance undertaking authorised in another Member State, or a natural or legal person controlling an investment firm, credit institution or insurance undertaking authorised in another Member State, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to acquire a holding would become the acquirer's subsidiary or come under his control, the assessment of the acquisition must be subject to the prior consultation provided for in Article 6.

### Article 28

#### Amendments to Directive 98/78/EC

Directive 98/78/EC is amended as follows:

1. in Article 1 points (g), (h), (i) and (j) shall be replaced by the following:
  - (g) “participating undertaking” shall mean an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
  - (h) “related undertaking” shall mean either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
  - (i) “insurance holding company” shall mean a parent undertaking, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings, reinsurance undertakings, or non-member-country insurance undertakings, at least one of such subsidiary undertakings being an insurance undertaking, 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<sup>(30)</sup>;
  - (j) “mixed-activity insurance holding company” shall mean a parent undertaking, other than an insurance undertaking, a non-member country insurance undertaking, a reinsurance undertaking, an insurance holding company or a mixed financial holding company within the meaning of Directive 2002/87/EC, which includes at least one insurance undertaking among its subsidiary undertakings.
2. in Article 6(3) the following sentence shall be added:

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.
3. in Article 8(2) the first subparagraph shall be replaced by the following:

Member States shall require insurance undertakings 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 as provided for in paragraph 1 appropriately. Member States shall

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also require at least annual reporting by insurance undertakings to the competent authorities of significant transactions. These processes and mechanisms shall be subject to overview by the competent authorities.

4. the following Articles shall be inserted:

*Article 10a*

**Cooperation with third countries' competent authorities**

- 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 supplementary supervision over:

- a insurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 2 which have their head office situated in a third country; and
- b non-member country insurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 2 which have their head office in the Community.

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

- a that the competent authorities of the Member States are able to obtain the information necessary for the supplementary supervision of insurance undertakings which have their head office in the Community and which have subsidiaries or hold participations in undertakings outside the Community; and
- b that the competent authorities of third countries are able to obtain the information necessary for the supplementary supervision of insurance undertakings which have their head office in their territories and which have subsidiaries or hold participations in undertakings in one or more Member States.

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

*Article 10b*

**Management body of insurance holding companies**

The Member States shall require that persons who effectively direct the business of an insurance holding company are of sufficiently good repute and have sufficient experience to perform these duties.

5. in Annex I.1.B. the following paragraph shall be added:

Where there are no capital ties between some of the undertakings in an insurance group, the competent authority shall determine which proportional share will have to be taken account of.

6. in Annex I.2. the following point shall be added:

#### 2.4a. Related credit institutions, investment firms and financial institutions

When calculating the adjusted solvency of an insurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, the rules laid down in Article 16(1) of Directive 73/239/EEC and in Article 18 of Directive 79/267/EEC on the deduction of such participations shall apply *mutatis mutandis*, as well as the provisions on the ability of Member States under certain conditions to allow alternative methods and to allow such participations not to be deducted.

#### Article 29

#### Amendments to Directive 2000/12/EC

Directive 2000/12/EC is amended as follows:

1. Article 1 shall be amended as follows:
  - (a) Point (9) shall be replaced by the following:
    9. “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;
  - (b) Points (21) and (22) shall be replaced by the following:
    21. “financial 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<sup>(31)</sup>;
    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;
2. in Article 12 the following paragraphs shall be added:

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

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- (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.

3. Article 16(2) shall be replaced by the following:

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.

4. Article 34(2) shall be amended as follows:

- (a) in the first subparagraph points 12 and 13 shall be replaced by the following:
  - 12. 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<sup>(32)</sup>,

- 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;

(b) the second subparagraph shall be replaced by the following:

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.

5. Article 51(3) shall be replaced by the following:
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.
6. the last sentence in Article 52(2) shall be replaced by the following:
- 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.
7. Article 54 shall be amended as follows:

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- (a) in paragraph 1 the following subparagraph shall be added:

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.

- (b) in paragraph 4, first subparagraph, the third indent shall be deleted;

8. the following Article shall be inserted:

*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.

9. the following Article shall be inserted:

*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.

10. in Article 56(7) the following sentence shall be added:

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.

11. the following Article shall be inserted:



### *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.

## CHAPTER V

### **ASSET MANAGEMENT COMPANIES**

#### *Article 30*

##### **Asset management companies**

Pending further coordination of sectoral rules, Member States shall provide for the inclusion of asset management companies:

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- (a) in the scope of consolidated supervision of credit institutions and investment firms, and/or in the scope of supplementary supervision of insurance undertakings in an insurance group; and
- (b) where the group is a financial conglomerate, in the scope of supplementary supervision within the meaning of this Directive.

For the application of the first paragraph, Member States shall provide, or give their competent authorities the power to decide, according to which sectoral rules (banking sector, insurance sector or investment services sector) asset management companies shall be included in the consolidated and/or supplementary supervision referred to in (a) of the first paragraph. For the purposes of this provision, the relevant sectoral rules regarding the form and extent of the inclusion of financial institutions (where asset management companies are included in the scope of consolidated supervision of credit institutions and investment firms) and of reinsurance undertakings (where asset management companies are included in the scope of supplementary supervision of insurance undertakings) shall apply *mutatis mutandis* to asset management companies. For the purposes of supplementary supervision referred to in (b) of the first paragraph, the asset management company shall be treated as part of whichever sector it is included in by virtue of (a) of the first paragraph.

Where an asset management company is part of a financial conglomerate, any reference to the notion of regulated entity and any reference to the notion of competent authorities and relevant competent authorities shall therefore, for the purposes of this Directive, be understood as including, respectively, asset management companies and the competent authorities responsible for the supervision of asset management companies. This applies *mutatis mutandis* as regards groups referred to in (a) of the first paragraph.

## CHAPTER VI

### TRANSITIONAL AND FINAL PROVISIONS

#### *Article 31*

#### **Report by the Commission**

1 By 11 August 2007, the Commission shall submit to the Financial Conglomerates Committee referred to in Article 21 a report on Member States' practices, and, if necessary, on the need for further harmonisation, with regard to

- the inclusion of asset management companies in group-wide supervision,
- the choice and the application of the capital adequacy methods set out in Annex I,
- the definition of significant intra-group transactions and significant risk concentration and the supervision of intra-group transactions and risk concentration referred to in Annex II, in particular regarding the introduction of quantitative limits and qualitative requirements for this purpose,
- the intervals at which financial conglomerates shall carry out the calculations of capital adequacy requirements as set out in Article 6(2) and report to the coordinator on significant risk concentration as set out in Article 7(2).

The Commission shall consult the Committee before making its proposals.

2 Within one year of agreement being reached at international level on the rules for eliminating the double gearing of own funds in financial groups, the Commission shall examine how to bring the provisions of this Directive into line with those international agreements and, if necessary, make appropriate proposals.

#### *Article 32*

#### **Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 11 August 2004. They shall forthwith inform the Commission thereof.

Member States shall provide that the provisions referred to in the first subparagraph shall first apply to the supervision of accounts for the financial year beginning on 1 January 2005 or during that calendar year.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

#### *Article 33*

#### **Entry into force**

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

#### *Article 34*

#### **Addressees**

This Directive is addressed to the Member States.

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## ANNEX I

### CAPITAL ADEQUACY

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate referred to in Article 6(1) shall be carried out in accordance with the technical principles and one of the methods described in this Annex.

Without prejudice to the provisions of the next paragraph, Member States shall allow their competent authorities, where they assume the role of coordinator with regard to a particular financial conglomerate, to decide, after consultation with the other relevant competent authorities and the conglomerate itself, which method shall be applied by that financial conglomerate.

Member States may require that the calculation be carried out according to one particular method among those described in this Annex if a financial conglomerate is headed by a regulated entity which has been authorised in that Member State. Where a financial conglomerate is not headed by a regulated entity within the meaning of Article 1, Member States shall authorise the application of any of the methods described in this Annex, except in situations where the relevant competent authorities are located in the same Member State, in which case that Member State may require the application of one of the methods.

#### I. Technical principles

##### 1. Extent and form of the supplementary capital adequacy requirements calculation

Whichever method is used, when the entity is a subsidiary undertaking and has a solvency deficit, or, in the case of a non-regulated financial sector entity, a notional solvency deficit, the total solvency deficit of the subsidiary has to be taken into account. Where in this case, in the opinion of the coordinator, the responsibility of the parent undertaking owning a share of the capital is limited strictly and unambiguously to that share of the capital, the coordinator may give permission for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

Where there are no capital ties between entities in a financial conglomerate, the coordinator, after consultation with the other relevant competent authorities, shall determine which proportional share will have to be taken into account, bearing in mind the liability to which the existing relationship gives rise.

##### 2. Other technical principles

Regardless of the method used for the calculation of the supplementary capital adequacy requirements of regulated entities in a financial conglomerate as laid down in Section II of this Annex, the coordinator, and where necessary other competent authorities concerned, shall ensure that the following principles will apply:

- (i) the multiple use of elements eligible for the calculation of own funds at the level of the financial conglomerate (multiple gearing) as well as any inappropriate intra-group creation of own funds must be eliminated; in order to ensure the elimination of multiple gearing and the intra-group creation of own funds, competent authorities shall apply by analogy the relevant principles laid down in the relevant sectoral rules;
- (ii) pending further harmonisation of sectoral rules, the solvency requirements for each different financial sector represented in a financial conglomerate shall be covered by own funds elements in accordance with the corresponding sectoral rules; when there is a deficit of own funds at the financial conglomerate level, only own funds elements

which are eligible according to each of the sectoral rules (cross-sector capital) shall qualify for verification of compliance with the additional solvency requirements;

where sectoral rules provide for limits on the eligibility of certain own funds instruments, which would qualify as cross-sector capital, these limits would apply *mutatis mutandis* when calculating own funds at the level of the financial conglomerate;

when calculating own funds at the level of the financial conglomerate, competent authorities shall also take into account the effectiveness of the transferability and availability of the own funds across the different legal entities in the group, given the objectives of the capital adequacy rules;

where, in the case of a non-regulated financial sector entity, a notional solvency requirement is calculated in accordance with section II of this Annex, notional solvency requirement means the capital requirement with which such an entity would have to comply under the relevant sectoral rules as if it were a regulated entity of that particular financial sector; in the case of asset management companies, solvency requirement means the capital requirement set out in Article 5a(1)(a) of Directive 85/611/EEC; the notional solvency requirement of a mixed financial holding company shall be calculated according to the sectoral rules of the most important financial sector in the financial conglomerate.

## II. Technical calculation methods

### Method 'Accounting consolidation'

#### 1: method

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate shall be carried out on the basis of the consolidated accounts.

The supplementary capital adequacy requirements shall be calculated as the difference between:

- (i) the own funds of the financial conglomerate calculated on the basis of the consolidated position of the group; the elements eligible are those that qualify in accordance with the relevant sectoral rules;

and

- (ii) the sum of the solvency requirements for each different financial sector represented in the group; the solvency requirements for each different financial sector are calculated in accordance with the corresponding sectoral rules.

The sectoral rules referred to are in particular Directives 2000/12/EC, Title V, Chapter 3, as regards credit institutions, 98/78/EC as regards insurance undertakings, and 93/6/EEC as regards credit institutions and investment firms.

In the case of non-regulated financial sector entities which are not included in the aforementioned sectoral solvency requirement calculations, a notional solvency requirement shall be calculated.

The difference shall not be negative.

### Method 'Deduction and aggregation'

#### 2: method

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The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate shall be carried out on the basis of the accounts of each of the entities in the group.

The supplementary capital adequacy requirements shall be calculated as the difference between:

- (i) the sum of the own funds of each regulated and non-regulated financial sector entity in the financial conglomerate; the elements eligible are those which qualify in accordance with the relevant sectoral rules;
- and
- (ii) the sum of
    - the solvency requirements for each regulated and non-regulated financial sector entity in the group; the solvency requirements shall be calculated in accordance with the relevant sectoral rules, and
    - the book value of the participations in other entities of the group.

In the case of non-regulated financial sector entities, a notional solvency requirement shall be calculated. Own funds and solvency requirements shall be taken into account for their proportional share as provided for in Article 6(4) and in accordance with Section I of this Annex.

The difference shall not be negative.

Method 'Book value/Requirement deduction'

3:

method

The calculation of the supplementary capital adequacy requirements of the regulated entities in a financial conglomerate shall be carried out on the basis of the accounts of each of the entities in the group.

The supplementary capital adequacy requirements shall be calculated as the difference between:

- (i) the own funds of the parent undertaking or the entity at the head of the financial conglomerate; the elements eligible are those which qualify in accordance with the relevant sectoral rules;
- and
- (ii) the sum of
    - the solvency requirement of the parent undertaking or the head referred to in (i), and
    - the higher of the book value of the former's participation in other entities in the group and these entities' solvency requirements; the solvency requirements of the latter shall be taken into account for their proportional share as provided for in Article 6(4) and in accordance with Section I of this Annex.

In the case of non-regulated financial sector entities, a notional solvency requirement shall be calculated. When valuing the elements eligible for the calculation of the supplementary capital adequacy requirements, participations may be valued by the equity method in accordance with the option set out in Article 59(2)(b) of Directive 78/660/EEC.

The difference shall not be negative.

Method Combination of methods 1, 2 and 3

4:

Competent authorities may allow a combination of methods 1, 2 and 3, or a combination of two of these methods.

## ANNEX II

### TECHNICAL APPLICATION OF THE PROVISIONS ON INTRA-GROUP TRANSACTIONS AND RISK CONCENTRATION

The coordinator, after consultation with the other relevant competent authorities, shall identify the type of transactions and risks regulated entities in a particular financial conglomerate shall report in accordance with the provisions of Article 7(2) and Article 8(2) on the reporting of intra-group transactions and risk concentration. When defining or giving their opinion about the type of transactions and risks, the coordinator and the relevant competent authorities shall take into account the specific group and risk management structure of the financial conglomerate. In order to identify significant intra-group transactions and significant risk concentration to be reported in accordance with the provisions of Articles 7 and 8, the coordinator, after consultation with the other relevant competent authorities and the conglomerate itself, shall define appropriate thresholds based on regulatory own funds and/or technical provisions.

When overviewing the intra-group transactions and risk concentrations, the coordinator shall in particular monitor the possible risk of contagion in the financial conglomerate, the risk of a conflict of interests, the risk of circumvention of sectoral rules, and the level or volume of risks.

Member States may allow their competent authorities to apply at the level of the financial conglomerate the provisions of the sectoral rules on intra-group transactions and risk concentration, in particular to avoid circumvention of the sectoral rules.

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- (1) [OJ C 213 E, 31.7.2001, p. 227.](#)
- (2) [OJ C 36, 8.2.2002, p. 1.](#)
- (3) [OJ C 271, 26.9.2001, p. 10.](#)
- (4) Opinion of the European Parliament of 14 March 2002 (not yet published in the Official Journal), Council Common Position of 12 September 2002 ([OJ C 253 E, 22.10.2002, p. 1](#)) and Decision of the European Parliament of 20 November 2002 (not yet published in the Official Journal).
- (5) [OJ L 184, 17.7.1999, p. 23.](#)
- (6) [OJ L 228, 16.8.1973, p. 3.](#) Directive as last amended by Directive 2002/13/EC of the European Parliament and of the Council ([OJ L 77, 20.3.2002, p. 17](#)).
- (7) [OJ L 63, 13.3.1979, p. 1.](#) Directive as last amended by Directive 2002/12/EC of the European Parliament and of the Council ([OJ L 77, 20.3.2002, p. 11](#)).
- (8) [OJ L 228, 11.8.1992, p. 1.](#) Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council ([OJ L 290, 17.11.2000, p. 27](#)).
- (9) [OJ L 360, 9.12.1992, p. 1.](#) Directive as last amended by Directive 2000/64/EC.
- (10) [OJ L 141, 11.6.1993, p. 1.](#) Directive as last amended by Directive 98/33/EC of the European Parliament and of the Council ([OJ L 204, 21.7.1998, p. 29](#)).
- (11) [OJ L 141, 11.6.1993, p. 27.](#) Directive as last amended by Directive 2000/64/EC.
- (12) [OJ L 330, 5.12.1998, p. 1.](#)
- (13) [OJ L 126, 26.5.2000, p. 1.](#) Directive as amended by Directive 2000/28/EC ([OJ L 275, 27.10.2000, p. 37](#)).
- (14) [OJ L 375, 31.12.1985, p. 3.](#) Directive as last amended by Directive 2001/108/EC of the European Parliament and of the Council ([OJ L 41, 13.2.2002, p. 35](#)).
- (15) [OJ L 193, 18.7.1983, p. 1.](#) Directive as last amended by Directive 2001/65/EC of the European Parliament and of the Council ([OJ L 283, 27.10.2001, p. 28](#)).
- (16) [OJ L 222, 14.8.1978, p. 11.](#) Directive as last amended by Directive 2001/65/EC.
- (17) [OJ L 63, 13.3.1979, p. 1.](#) Directive as last amended by Directive 2002/12/EC of the European Parliament and of the Council ([OJ L 77, 20.3.2002, p. 11](#)).
- (18) [OJ L 330, 5.12.1998, p. 1.](#)
- (19) [OJ L 126, 26.5.2000, p. 1.](#) Directive as amended by Directive 2000/28/EEC ([OJ L 275, 27.10.2000, p. 37](#)).
- (20) [OJ L 141, 11.6.1993, p. 27.](#) Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council ([OJ L 290, 17.11.2000, p. 27](#)).
- (21) [OJ L 141, 11.6.1993, p. 1.](#) Directive as last amended by Directive 98/33/EC of the European Parliament and of the Council ([OJ L 204, 21.7.1998, p. 29](#)).
- (22) [OJ L 35, 11.2.2003.](#)’
- (23) [OJ L 228, 16.8.1973, p. 3.](#) Directive as last amended by Directive 2002/13/EC of the European Parliament and of the Council ([OJ L 77, 20.3.2002, p. 17](#)).
- (24) [OJ L 330, 5.12.1998, p. 1.](#)
- (25) [OJ L 126, 26.5.2000, p. 1.](#) Directive as last amended by Directive 2000/28/EC ([OJ L 275, 27.10.2000, p. 37](#)).
- (26) [OJ L 141, 11.6.1993, p. 27.](#) Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council ([OJ L 290, 17.11.2000, p. 27](#)).
- (27) [OJ L 141, 11.6.1993, p. 1.](#) Directive as last amended by Directive 98/33/EC of the European Parliament and of the Council ([OJ L 204, 21.7.1998, p. 29](#)).
- (28) [OJ L 35, 11.2.2003.](#)’
- (29) [OJ L 35, 11.2.2003.](#)’



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**Status:** EU Directives are being published on this site to aid cross referencing from UK legislation. After IP completion day (31 December 2020 11pm) no further amendments will be applied to this version.

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- (30) OJ L 35, 11.2.2003.’
- (31) OJ L 35, 11.2.2003’.
- (32) OJ L 330, 5.12.1998, p. 1.’