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

CHAPTER 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.

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.

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-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 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.

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.

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.

[[F1]2 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 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).