Proposal for a Directive of the European Parliament and of the Council 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 the Council

(2001/C 213 E/07)

(Text with EEA relevance)

COM(2001) 213 final — 2001/0095(COD)

(Submitted by the Commission on 24 April 2001)

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,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Having regard to the opinion of the European Central Bank,

Acting in accordance with the procedure laid down in Article 251 of the Treaty,

Whereas:

(1) The current Community legislation provides for a comprehensive set of rules on the prudential supervision of credit institutions, investment firms and insurance undertakings on a stand alone basis and credit institutions, investment firms and insurance undertakings that 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 lead to the creation of financial groups that 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, investment firms and insurance undertakings that are part of such a conglomerate, in particular as regards the solvency position and risk concentration at the level of the conglomerate, the transactions between entities of the conglomerate and the fit and proper character of the management. Some of these conglomerates belong to the biggest financial groups that are active in the financial markets and provide services on a global basis. If such conglomerates, and in particular credit institutions, investment firms and insurance undertakings that are part of such a conglomerate, were to face financial difficulties, these could seriously destabilise the financial system and affect individual depositors, insurance police holders and investors.

(3) The Commission Action Plan for Financial Services [1] identifies a series of actions that are needed in order to complete the Single Market for Financial Services, and announces the development of supplementary prudential legislation for financial conglomerates that 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 by 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 fora also have 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, 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.

(6) The competent authorities should be able to assess at a group-wide level the financial situation of credit institutions, insurance undertakings and investment firms that 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 transaction.

(7) Financial conglomerates are often managed on a business-line basis that does not fully coincide with the conglomerate's legal structures. In order to take account of this evolution the requirements for management should be further extended.

(8) The competent authorities involved must have the means of obtaining from the entities within a financial conglomerate the information necessary for the performance of their supplementary supervision.

[1] COM(1999) 232 final.

(9) 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 co-operation arrangements between the authorities involved in the supervision of entities belonging to the same financial conglomerate.

(10) In the case of financial conglomerates, providing a range of cross-sector and in most cases also cross-border services, a co-ordinator should in principle be appointed among the supervisory authorities involved.

(11) Credit institutions, insurance undertakings and investment firms, that have their head office in the Community, can be part of a financial conglomerate, the head of which is outside the Community. It is necessary that these regulated entities also are subject to an equivalent appropriate supplementary supervisory regime.

(12) In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty, the objectives 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 by the Community. This Directive confines itself to the minimum required in order to achieve those objectives and does not go beyond what is necessary for that purpose. Although this Directive defines minimum standards, Member States may, however, lay down stricter rules.

(13) This directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as general principles of Community law.

(14) Since the measures necessary for the implementation of this Directive are measures of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [1], they should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.

(15) The existing sectoral rules for credit institutions, insurance undertakings and investment firms should be supplemented to a minimum level, in particular to avoid an unlevel playing field amongst regulated entities as well as regulatory arbitrage between the sectoral rules and those for financial conglomerates and between the sectoral rules themselves. Therefore, Council Directives 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance [2], 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 [3], 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) [4], 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life insurance Directive) [5], 93/6/EEC of 15 March 1993 on the capital adequacy of investments firms and credit institutions [6] and 93/22/EEC of 10 May 1993 on investment services in the securities field [7], as well as European Parliament and Council Directives 98/78/EC of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group [8] and 2000/12/EC of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions [9] should be amended accordingly. The objective of further harmonisation can however only be achieved by stages and needs to be based on careful analysis,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

OBJECTIVE, DEFINITIONS AND SCOPE

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 that apply to these regulated entities.

[1] OJ L 184, 17.7.1999, p. 23.

[2] OJ L 228, 16.8.1973, p. 3. Directive last amended by Directive 2000/26/EC of the European Parliament and of the Council (OJ L 181, 20.7.2000, p. 65).

[3] OJ L 63, 13.3.1979, p. 1. Directive last amended by Directive 95/26/EC of the European Parliament and of the Council (OJ L 168, 18.7.1995, p. 7).

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

[5] OJ L 360, 9.12.1992, p. 1. Directive last amended by Directive 2000/64/EC.

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

[7] OJ L 141, 11.6.1993, p. 27. Directive last amended by Directive 2000/64/EC.

[8] OJ L 330, 5.12.1998, p. 1.

[9] OJ L 126, 26.5.2000, p. 1. Directive amended by Directive 2000/28/EC (OJ L 275, 27.10.2000, p. 37).

Article 2

Definitions

For the purposes of this Directive:

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

2. 'insurance undertaking' means 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' means 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' means a credit institution, an insurance undertaking or an investment firm;

5. 'reinsurance undertaking' means a reinsurance undertaking within the meaning of Article 1(c) of Directive 98/78/EC;

6. 'sectoral rules' 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;

7. 'financial sector' means the banking, and/or insurance, and/or investment services sector; the terms banking, insurance, and/or investment services sector refer to activities provided by natural and/or legal persons that are covered by sectoral rules;

8. 'parent undertaking' means a parent undertaking within the meaning of Article 1 of Council Directive 83/349/EEC [1] and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;

9. 'subsidiary undertaking' means 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 subsidiary undertakings of the parent undertaking;

10. 'participation' means a participation within the meaning of Article 17, first sentence, of Council Directive 78/660/EEC [2], or the direct or indirect ownership of 20 % or more of the voting rights or capital of an undertaking;

11. 'group' means two or more natural or legal persons between whom there are close links;

12. 'close links' means close links within the meaning of Article 1(l) of Directive 92/49/EEC, Article 1(m) of Directive 92/96/EEC, Article 1(15) of Directive 93/22/EEC or Article 1(26) of Directive of 2000/12/EC, as well as:

    (a) a situation in which in the opinion of the competent authorities one or more persons effectively exercise a dominant influence over another person;

    (b) a situation in which persons are linked by a participation within the meaning of Article 17, first sentence, of Council Directive 78/660/EEC;

    (c) or a situation in which persons are linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

13. 'financial conglomerate' means a group that meets, subject to Article 3, the following conditions:

    (a) its activities mainly consist in providing financial services in the financial sector;

    (b) it comprises at least one regulated entity that has obtained an authorisation in accordance with 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;

    (c) it comprises at least one insurance or reinsurance undertaking, and at least one other entity of a different financial sector;

    (d) its cross-sectoral activities in the financial sector as referred to in (c) are significant;

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

[1] OJ L 193, 18.7.1983, p. 1.

[2] OJ L 222, 14.8.1978, p. 11.

15. 'competent authorities' 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;

16. 'intra-group transactions' mean all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly upon other entities within the same group for the fulfilment of an obligation, whether or not contractual, whether or not for payment;

17. 'risk concentration' means 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, and which 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 to determine a financial conglomerate

1. For the purposes of determining whether the activities of a group consist mainly in providing financial services within the meaning of Article 2(13)(a), the ratio of the consolidated and/or aggregated balance sheet total of the regulated and non-regulated financial sector entities in the group to the consolidated and/or aggregated balance sheet total of the group as a whole, calculated on the basis of the annual accounts, should exceed 50 %.

When a group is headed by a regulated entity, and if the conditions set out in Article 2(13)(b), (c) and (d) are met, the group will qualify as a financial conglomerate, regardless of the group's ratio.

2. For the purposes of determining whether activities in different financial sectors are significant within the meaning of Article 2(13)(d), the average of the ratio of the balance sheet total of the smallest financial sector to the consolidated and/or aggregated balance sheet total of the financial sector entities in the group, calculated on the basis of the annual accounts, and the ratio of the solvency requirements of the smallest financial sector to the total solvency requirements of the financial sector entities in the group, should exceed 10 %.

The smallest financial sector in a financial conglomerate is the sector with the smallest average. For the purposes of calculating the average, the banking sector and the investment services sector shall be considered together. The solvency requirements shall be calculated in accordance with the provisions of the sectoral rules and this Directive.

3. For the application of paragraphs 1 and 2, the competent authorities concerned may by common agreement decide:

(a) that in the cases referred to in Article 5(4) an entity need not be included for the calculation of the ratios;

(b) to lower the ratios in order to avoid sudden regime shifts, in particular in the case of groups that are on the borderline of exclusion from the definition of a financial conglomerate;

(c) in a particular case, to replace the criterion based on balance sheet total with one or more of the following parameters or to add one or more of these parameters, if they are of the opinion that these parameters are of particular relevance: income structure, off-balance sheet activities.

Article 4

Scope

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 that are part of a financial conglomerate, to the extent and in the manner prescribed in this Directive.

2. The following entities shall be subject to supplementary supervision at the level of the financial conglomerate, in accordance with Articles 5 to 13:

(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 that has its head office in the Community,

(c) every regulated entity in a financial conglomerate linked 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 that meets the requirements of the first subparagraph, Member States may apply the provisions of Article 5 to 13 to the latter group only and any reference in the Directive to the notions 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 14.

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 competent authorities concerned shall determine whether and to what extent these entities together with other entities constitute a financial conglomerate and supplementary supervision is to be carried out to the regulated entities.

The entities referred to in the first subparagraph together must provide financial services in the financial sector and meet the conditions set out in Article 2(13), (b), (c) and (d). The competent authorities shall take their decision, taking into account the objectives of the supplementary supervision as provided by this Directive.

5. 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, as well as to unregulated entities in a financial conglomerate, on a stand alone basis.

CHAPTER II

SUPPLEMENTARY SUPERVISION

Section 1

Financial position

Article 5

Capital adequacy

1. Without prejudice to the sectoral rules, competent authorities shall exercise a supplementary supervision on the capital adequacy of the regulated entities in a financial conglomerate in accordance with the rules laid down in paragraphs 2 to 5, in section 2, and in Annex I.

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

The Member States or the competent authorities shall also require regulated entities to have in place adequate capital adequacy policies at the level of the financial conglomerate, as well as appropriate internal control mechanisms as regards capital adequacy.

The requirements referred to in the first and second subparagraph shall be subject to overview by the competent authorities responsible for the supplementary supervision in accordance with section 2.

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

The regulated entities or the mixed financial holding companies shall submit to the relevant competent authority either the calculation results or the relevant data for the calculation.

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 supervision: undertakings referred to in Article 7(3) of Directive 93/6/EEC, undertakings referred to in Article 3(2) of Directive 98/78/EC and credit institutions, financial institutions and ancillary banking services undertakings referred to in Article 1, (1), second subparagraph, (5) and (23), of Directive 2000/12/EC.

4. The Member States or the competent authorities responsible for exercising supplementary supervision may decide not to include a particular entity in the scope for calculating the supplementary capital adequacy 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 intended to be excluded pursuant to point (b) of the first subparagraph, they must nevertheless be included when collectively they are of non-negligible interest.

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

5. If the capital adequacy position at the level of the financial conglomerate falls below the requirements as referred to in the first subparagraph of paragraph 2, or if the other requirements set out in paragraph 2 are not met, or where the requirements are met but the solvency may nevertheless be jeopardised, the competent authorities responsible for the supervision of the regulated entities in the financial conglomerate shall ensure that these entities and where appropriate other entities in the group take the necessary measures to rectify the situation as soon as possible.

The competent authorities involved shall where appropriate co-ordinate their supervisory actions.

Article 6

Intra-group transactions and risk concentration

1. Without prejudice to the sectoral rules, competent authorities shall exercise a supplementary supervision on the intra-group transactions and the risk concentration of regulated entities in a financial conglomerate in accordance with the rules laid down in paragraphs 2 to 6, in section 2, and in Annex II.

2. The Member States or the competent authorities concerned shall require regulated entities to have in place within the financial conglomerate adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control the intra-group transactions within a financial conglomerate and the risk concentration at the level of the financial conglomerate appropriately.

These processes and mechanisms shall be subject to overview by the competent authorities responsible for the supplementary supervision.

3. The Member States or the competent authorities concerned shall require regulated entities or mixed financial holding companies to report on a regular basis and at least annually to the competent authority responsible for the supplementary supervision, all significant intra-group transactions within a financial conglomerate as well as 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.

These intra-group transactions and risk concentrations shall be subject to supervisory overview by the competent authorities responsible for the supplementary supervision in accordance with section 2.

4. Pending further co-ordination of Community legislation, Member States may set quantitative limits or allow their competent authorities to set quantitative limits, or take other supervisory measures that would achieve similar objectives, with regard to intra-group transactions within a financial conglomerate and risk concentration at the level of a financial conglomerate.

5. Where a financial conglomerate is headed by a mixed financial holding company, the sectoral rules regarding intra-group transactions and risk concentration of the largest financial sector in the financial conglomerate shall apply to that sector as a whole, including the mixed financial holding company.

6. If the regulated entities in a financial conglomerate do not comply with the requirements referred to in paragraphs 2 to 5, the competent authorities responsible for the supervision of the regulated entities in the financial conglomerate shall ensure that these entities and where appropriate other entities in the group take the necessary measures to rectify the situation as soon as possible.

Where the intra-group transactions or risk concentrations are a threat to the regulated entities' financial position, the competent authorities shall take appropriate measures.

The competent authorities involved shall where appropriate co-ordinate their supervisory actions.

Section 2

Measures to facilitate supplementary supervision

Article 7

Competent authorities responsible for exercising supplementary supervision (the co-ordinator)

1. In order to ensure a proper supplementary supervision of the regulated entities in a financial conglomerate, the competent authorities concerned shall appoint amongst them a co-ordinator, where necessary composed of more than one competent authority, responsible for co-ordination and exercise of the supplementary supervision.

2. The competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company is set up, shall seek agreement as to who amongst them shall exercise the role of co-ordinator.

In the absence of an immediate agreement, the role of the co-ordinator shall be exercised by the competent authority or authorities identified on the basis of the following criteria:

(a) Where a financial conglomerate is headed by a regulated entity, the task of co-ordinator shall be exercised by the competent authority that 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 co-ordinator 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 the co-ordinator shall be exercised by the competent authority that has authorised that 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 is set up, the task of co-ordinator shall be exercised by the competent authority of the regulated entity authorised in that Member State;

however, where the financial conglomerate's main activity is in a different financial sector than that of the regulated entity authorised in the Member State referred to in the first subparagraph, the supplementary supervision shall be exercised by a co-ordinator composed of the competent authority referred to in the first subparagraph and the competent authority that authorised the regulated entity with the largest balance-sheet total in the most important financial sector;

where more than one regulated entity, that are active in different financial sectors, have been authorised in the Member State in which the mixed financial holding company is set up, the task of the co-ordinator 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 set up in different Member States and there is a regulated entity in each of these States, the task of the co-ordinator 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 is set up, the task of the co-ordinator shall be exercised by the competent authority that 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, the task of the co-ordinator shall be exercised by the competent authority that authorised the regulated entity with the largest balance-sheet total in the most important financial sector.

3. The co-ordinator for the supplementary supervision with regard to a financial conglomerate shall inform the competent authorities of the other Member States involved and the Commission of its identification.

Article 8

Tasks of the co-ordinator

1. The tasks to be carried out by the co-ordinator with regard to the supplementary supervision shall include:

(a) the co-ordination of gathering and dissemination of relevant or essential information in going concern and emergency situations, including the dissemination of information that is of importance for a competent authority's supervisory task under sectoral rules;

(b) the assessment of the financial situation, and the overview and monitoring of the compliance with the rules on capital adequacy and of risk concentration and intra-group transactions as set out in Articles 5 and 6;

(c) the assessment of the financial conglomerate's structure, organisation and internal control systems;

(d) the planning and co-ordination of supervisory activities in going concern as well as in emergency situations, in co-operation with the relevant competent authorities involved.

In order to facilitate the supplementary supervision, the co-ordinator, the competent authorities responsible for the sectoral group-wide supervision of the regulated entities in a financial conglomerate and where relevant other competent authorities concerned shall have co-ordination arrangements in place. The co-ordination arrangement may confine additional tasks to the co-ordinator.

2. Without prejudice to the possibility to delegate specific supervisory competences and responsibilities as provided by Community legislation, the presence of a co-ordinator entrusted with specific tasks on the supplementary supervision of regulated entities in a financial conglomerate does not affect the tasks and responsibilities of the competent authorities as provided by the sectoral rules.

Article 9

Co-operation and exchange of information between competent authorities

1. The competent authorities responsible for the supervision of regulated entities in a financial conglomerate shall co-operate closely. 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 competent authorities' supervisory tasks, as well as the co-ordinator with any information which is relevant for the exercise of his tasks as defined in Article 8. In this regard, competent authorities shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

This co-operation 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, including important acquisitions and restructurings;

(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 this information;

(g) adverse developments in regulated entities or in other entities of the financial conglomerate that could seriously affect the regulated entities;

(h) major sanctions and exceptional measures taken by competent authorities in accordance with sectoral rules or the provisions of this Directive.

The competent authorities may also exchange information with the following authorities as may 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, other bodies with a similar function in their capacity as monetary authorities, and where appropriate other authorities responsible for overseeing payment systems.

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, that require the approval or authorisation of competent authorities;

(b) major sanctions or exceptional measures taken by competent authorities.

A competent authority may in exceptional circumstances decide not to exchange particular information or to consult, if this is considered to be inappropriate under these exceptional circumstances.

2. The co-ordinator may invite the competent authorities of the Member State in which a parent undertaking is located, and which do not themselves exercise the supplementary supervision pursuant to Article 7, to ask the parent undertaking for any information which would be relevant for the exercise of its co-ordination tasks as laid down in Article 8, and to transmit that information to the co-ordinator.

Where the information referred to in Article 11(2) has already been given to a competent authority in accordance with sectoral rules, the competent authorities responsible for exercising supplementary supervision may address themselves to the former authority for obtaining the information.

3. 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 and 2. The collection or possession of information with regard to an entity within a financial conglomerate which is not a regulated entity does not in any way imply that the competent authorities are required to play a supervisory role in relation to these entities standing alone.

Information received in the framework of the 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 of professional secrecy and communication of confidential information laid down in the sectoral rules.

Article 10

Internal control mechanisms

The competent authorities shall ensure that in all undertakings included in the scope of supplementary supervision pursuant to Article 4, 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.

Article 11

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 the supplementary supervision from exchanging amongst themselves any information that would be relevant for the purposes of supplementary supervision.

2. Member States shall provide that their competent authorities responsible for exercising supplementary supervision shall, by approaching the entities in a financial conglomerate either directly or indirectly, have access to any information that would be relevant for the purposes of supplementary supervision.

Article 12

Verification

Where, in applying this Directive, competent authorities wish in specific cases to verify the information concerning an entity, regulated or not, that 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 competence, 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 who made the request to carry it out itself.

Where the competent authority who made the request does not carry out the verification itself, it may ask to participate in the verification.

Article 13

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 provisions of criminal law, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on mixed financial holding companies, or their effective managers, that infringe laws, regulation or administrative provisions enacted to implement the provisions of this Directive. In certain cases, such measures may require the intervention of courts. The competent authorities shall co-operate closely to ensure that the above-mentioned penalties or measures produce the desired results.

Section 3

Third countries

Article 14

Parent undertakings outside the Community

1. Without prejudice to the sectoral rules, in the case referred to in Article 4(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, that is equivalent to the provisions of this Directive on the supplementary supervision of regulated entities referred to in Article 4(2). The verification shall be done by the competent authority that would be responsible for the supplementary supervision if paragraph 2 would apply. The Member State shall notify the Commission and the other Member States of each case of equivalent supervision it has recognised or intends to recognise. If within two months of Member States and the Commission having been so notified an objection is raised by a Member State or the Commission on the equivalence of such supervision, the Commission shall subject the matter to the procedure referred to in Article 17(2). The Member State concerned shall take the appropriate measures to implement the decisions taken in accordance with that procedure.

2. In the absence of such equivalent supervision, Member States shall apply to the regulated entities, by analogy, the provisions with regard to the supplementary supervision of regulated entities referred to in Article 4(2). As an alternative, competent authorities may apply one of the methods set out in paragraph 3.

3. Member States may allow their competent authorities to apply other methods that ensure an appropriate supplementary supervision of the regulated entities in a financial conglomerate. Those methods must be agreed upon at least by the competent authorities responsible for the sectoral group-wide supervision of the regulated entities in the financial conglomerate, and where relevant by other competent authorities concerned. Competent authorities may in particular require the establishment of a mixed financial holding company that has its head office in the Community, and apply to the regulated entities in the financial conglomerate headed by this holding the provisions of this Directive. The methods must achieve the objectives of the supplementary supervision as defined in this Directive and must be notified to the other Member States and the Commission, whereupon the procedure set out in paragraph 1 shall apply.

Article 15

Co-operation with third country competent authorities

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

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

CHAPTER III

POWERS CONFERRED ON THE COMMISSION AND COMMITTEE PROCEDURE

Article 16

Powers conferred on the Commission

The Commission shall adopt, in accordance with the procedure referred to in Article 17(2), the technical adaptations to be made to this Directive in the following areas:

(a) clarification of the definitions referred to in Articles 2 and 3, in order to take into account in the application of this Directive developments on financial markets;

(b) the clarification of the definitions referred to in Articles 2 and 3, in order to ensure uniform application of this directive in the Community;

(c) the alignment of terminology on and the framing of definitions in the Directive in accordance with subsequent Community acts on regulated entities and related matters;

(d) clarification and adaptation of the capital adequacy requirements set out in Article 5 and of the technical principles set out in Annex I, in order to take account of developments on financial markets and prudential techniques.

Article 17

Committee

1. The Commission shall be assisted by a Financial Conglomerates Committee composed of representatives of the Member States and chaired by the representative of the Commission.

2. Where reference is made to this paragraph, the regulatory procedure laid down in Article 5 of Decision 1999/468/EC shall apply, in compliance with Articles 7 and 8 thereof.

3. The period referred to in Article 5(6) of Decision 1999/468/EC shall be three months.

CHAPTER IV

AMENDMENTS TO EXISTING DIRECTIVES

Article 18

Amendments of Directive 73/239/EEC

Directive 73/239/EEC is amended as follows:

1. In Article 8(1)(e) the following subparagraph is added:

'Where the business of an insurance undertaking is co-directed by persons appointed in a different legal entity or where persons appointed in a different legal entity have a material influence on the direction of an insurance undertaking's business, the provisions of the first subparagraph shall apply *mutatis mutandis* to these persons.'

2. The following Article 12a is inserted:

'*Article 12a*

1. The competent authorities of the other Member State involved shall be consulted prior to granting 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, that 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 granting 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, that 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 about all information with regard to the suitability of shareholders and the reputation and experience of directors that is of relevance for the other competent authorities involved, for the granting an authorisation as well as for the ongoing assessment of the compliance with operating conditions.'

3. In Article 16(1) the following final subparagraph is added:

'The solvency margin shall be reduced by holdings in other insurance undertakings, reinsurance undertakings, 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 (*), amounting to more than 10 % of their capital, as well as subordinated claims and instruments referred to in this paragraph, in Article 18, second subparagraph, point 1, 5th and 6th indent, of Directive 79/267/EEC and in Articles 35 and 36(3) of Directive 2000/12/EC, which an insurance undertaking holds in respect of insurance undertakings, reinsurance undertakings, credit institutions and financial institutions, in which it has holdings exceeding 10 % of the capital in each case. Where shares in another credit institution, financial institution, insurance or reinsurance undertaking are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive this provision. Nevertheless, Member States may provide that for the calculation of the solvency margin on a stand alone basis, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC (**) or Directive 2001/. . ./EC of the European Parliament and of the Council need not deduct the aforementioned holdings, subordinated claims and instruments in entities which are included in the supplementary supervision.

(*) OJ L 126, 26.5.2000, p. 1.
(**) OJ L 330, 5.12.1998, p. 1.'

Article 19

Amendments of Directive 79/267/EEC

Directive 79/267/EC is amended as follows

1. In Article 8(1)(e) the following subparagraph is added:

'Where the business of a life insurance undertaking is co-directed by persons appointed in a different legal entity or where persons appointed in a different legal entity have a material influence on the direction of a life insurance undertaking's business, the provisions of the first subparagraph shall apply *mutatis mutandis* to these persons.'

2. The following Article 12a is inserted:

'*Article 12a*

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

(a) a subsidiary of a life insurance undertaking authorised in another Member State, or

(b) a subsidiary of the parent undertaking of a life insurance undertaking authorised in another Member State, or

(c) controlled by the same person, whether natural or legal, that controls a life 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 granting an authorisation to a life 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, that 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 about all information with regard to the suitability of shareholders and the reputation and experience of directors that is of relevance for the other competent authorities involved, for the granting of an authorisation as well as for the ongoing assessment of the compliance with operating conditions.'

3. In Article 18 the following subparagraph is added:

'4. The solvency margin shall be reduced by holdings in other insurance undertakings, reinsurance undertakings, 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 (*), amounting to more than 10 % of their capital, as well as subordinated claims and instruments referred to in this paragraph, in Article 16 (1), second subparagraph, 7th and 8th indent, of Directive 73/239/EEC, and in Articles 35 and 36(3) of Directive 2000/12/EC, which an insurance undertaking holds in respect of insurance undertakings, reinsurance undertakings, credit institutions and financial institutions in which it has holdings exceeding 10 % of the capital in each case. Where shares in another credit institution, financial institution, insurance or reinsurance undertaking are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive this provision. Nevertheless, Member States may provide that for the calculation of the solvency margin on a stand alone basis, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC (**) or Directive 2001/. . ./EC of the European Parliament and of the Council need not deduct the aforementioned holdings, subordinated claims and instruments in entities which are included in the supplementary supervision.

(*) OJ L 126, 26.5.2000, p. 1.
(**) OJ L 330, 5.12.1998. p. 1.'

Article 20

Amendment of Directive 92/49/EEC

In Article 15 of Directive 92/49/EEC the following paragraph (1a) is inserted:

'(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 of the prior consultation referred to in Article 12a of Directive 73/239/EC.'

Article 21

Amendments of Directive 92/96/EEC

In Article 14 of Directive 92/96/EEC the following paragraph (1a) is inserted:

'(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 of the prior consultation referred to in Article 12a of Directive 79/267/EC.'

Article 22

Amendment of Directive

In Article 7(3) of Directive 93/6/EEC the first and the second indent are 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 one at least of which is an investment firm, and which is not a mixed financial holding company within the meaning of Directive 2001/. . ./EC of the European Parliament and of the Council (*),

— 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 2001/. . ./EC, the subsidiaries of which include at least one investment firm.

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(*) OJ L . . .'

Article 23

Amendments of Directive 93/22/EC

Directive 93/22/EC is amended as follows:

1. In the first subparagraph of Article 3(3) the following sentence is added to the second indent:

'Where the business of an investment firm is co-directed by persons appointed in a different legal entity or where persons appointed in a different legal entity have a material influence on the direction of an investment firm's business, these provisions shall apply *mutatis mutandis* to these persons.'

2. In Article 6 the following paragraphs are added:

'The competent authority of a Member State involved responsible for the supervision of credit institutions or insurance undertakings shall be consulted prior to granting 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, that controls a credit institution or insurance undertaking authorised in the Community.

The relevant competent authorities referred to in the first and second paragraph 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 about all information with regard to the suitability of shareholders and the reputation and experience of directors that is of relevance for the other competent authorities involved, for the granting of an authorisation as well as for the ongoing assessment of the compliance with operating conditions.'

3. Article 9(2) is 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 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 the subject of the prior consultation provided for in Article 6.'

Article 24

Amendments of Directive 98/78/EC

Directive 98/78/EC is amended as follows:

1. In Article 1 the points (g), (h), (i) and (j) are replaced by the following:

'(g) "participating undertaking" means 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" means either a subsidiary or other undertaking in which a participation is held, or undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

(i) "insurance holding company" means 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, one at least of such subsidiary undertakings being an insurance undertaking, and which is not a mixed financial holding within the meaning of Directive 2001/. . ./EC of the European Parliament and of the Council (*);

(j) "mixed-activity insurance holding company" means 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 2001/. . ./EC, which includes at least one insurance undertaking among its subsidiary undertakings.

(*) OJ L . . .'

2. In Article 6(3) the following sentence is added:

'Where the competent authority who made the request does not carry out the verification itself, it may ask to participate in the verification.'

3. In Article 8(2) the first subparagraph is 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 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 Article 10a is inserted:

'*Article 10a*

Co-operation 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 offices situated in a third country, and

(b) non-member 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,

(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.'

5. In Annex I, 1 (b) the following paragraph is 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.'

Article 25

Amendments of Directive 2000/12/EC

Directive 2000/12/EC is amended as follows:

1. Article 1 is amended as follows:

(a) Point (9) is replaced by the following:

'(9) "participation for the purposes of supervision on a consolidated basis" shall mean participation within the meaning of Article 17, first sentence, 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) are 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 2001/. . ./EC of the European Parliament and of the Council (*);

(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 2001/. . ./EC, the subsidiaries of which include at least one credit institution;

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(*) OJ L . . .'

2. In Article 6(1), second subparagraph, the following sentence is added:

'Where the business of a credit institution is co-directed by persons appointed in a different legal entity or where persons appointed in a different legal entity have a material influence on the direction of a credit instittution's business, these provisions shall apply *mutatis mutandis* to these persons.'

3. In Article 12 the following paragraphs are added:

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

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

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

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

The relevant competent authorities referred to in the first and second paragraph 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 about all information with regard to the suitability of shareholders and the reputation and experience of directors that is of relevance for the other competent authorities involved, for the granting of an authorisation as well as for the ongoing assessment of the compliance with operating conditions.'

4. Article 16(2) is 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 of the prior consultation referred to in Article 12.'

5. Article 34(2) is amended as follows:

(a) In the first subparagraph points (12) and (13) are replaced by the following:

'(12) holdings in other credit institutions, financial institutions, insurance and reinsurance undertakings, amounting to more than 10 % of their capital, as well as subordinated claims, instruments referred to in Article 35, and instruments referred to in Article 16(1), second subparagraph, 7th and 8th indent, of Directive 73/239/EEC and Article 18, second subparagraph, point 1, 5th and 6th indent, of Directive 79/267/EEC, which a credit institution holds in respect of credit institutions, financial institutions, insurance and reinsurance undertakings, in which it has holdings exceeding 10 % of the capital in each case;

where shares in another credit institution, financial institution, insurance or reinsurance undertaking are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive this provision;

(13) holdings in other credit institutions, financial institutions, insurance and reinsurance undertakings of up to 10 % of their capital, as well as subordinated claims, instruments referred to in Article 35, and instruments referred to in Article 16(1), second subparagraph, 7th and 8th indent, of Directive 73/239/EEC and Article 18, second subparagraph, point 1, 5th and 6th indent, of Directive 79/267/EEC, which a credit institution holds in respect of credit institutions, financial institutions, insurance and reinsurance undertakings, other than those referred to in point (12), 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 point (12) and this point.'

(b) In the second subparagraph, the first sentence is replaced by the following:

'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 or to supplementary supervision in accordance with Directive 2001/. . ./EC, need not deduct their holdings in other credit institutions, financial institutions, insurance or reinsurance undertakings, which are included in the consolidation or in the scope of supplementary supervision.'

6. Article 54 is amended as follows:

(a) In paragraph 1 the following third subparagraph is added:

'In the case in which 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 is deleted.

7. The following Article 55a is inserted:

'*Article 55(a)*

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 other significant transaction with these entities 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.'

8. In Article 56(7) the following sentence is added:

'Where the competent authority who made the request does not carry out the verification itself, it may ask to participate in the verification.'

9. The following Article 56(a) is inserted:

'*Article 56(a)*

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 according to the provisions of Article 52, the competent authorities shall verify whether the credit institution is subject to consolidated supervision by a third country competent authority that is equivalent with the principles laid down in Article 52. The verification shall be done by the competent authority that would be responsible for consolidated supervision if the second subparagraph would apply. The Member State shall notify the Commission and the other Member States of each case of equivalent consolidated supervision it has recognised or intends to recognise. If within two months of Member States and the Commission having been so notified an objection is raised by a Member State or the Commission on the equivalence of such supervision, the Commission shall subject the matter to the procedure laid down in Article 5 of Decision 1999/468/EC. The Member State concerned shall take the appropriate measures to implement the decisions taken in accordance with that procedure.

In the absence of such equivalent supervision, Member States shall apply to the credit institution by analogy the provisions of Article 52.

As an alternative, Member States may allow their competent authorities to apply other appropriate supervisory techniques that achieve the objectives of the supervision on a consolidated basis of credit institutions. Those methods must be agreed upon by the competent authorities involved. Competent authorities may in particular require the establishment of a financial holding company that has its head office in the Community, and apply the provisions on consolidated supervision on 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 Member States and the Commission, whereupon the procedure set out in the first paragraph shall apply.'

CHAPTER V

FINAL PROVISIONS

Article 26

Transposition

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [. . .] at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Article 27

Entry into force

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

Article 28

Addressees

This Directive is addressed to the Member States.

ANNEX I

CAPITAL ADEQUACY

The calculation of the supplementary capital adequacy of the regulated entities in a financial conglomerate referred to in Article 5(1) shall be carried out in accordance with the technical principles and one of the methods described in this Annex.

I. TECHNICAL PRINCIPLES

1. **Extent and form of the supplementary capital adequacy calculation**

When calculating the supplementary capital adequacy with regard to a financial conglomerate by applying method 1 ('Accounting consolidation'), 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 1(1), (b), of Directive 98/78/EC.

When applying methods 2 or 3 ('Deduction and aggregation', 'Requirement deduction'), 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 that is held, directly or indirectly, by that undertaking.

However, 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 competent authorities, the responsibility of the parent undertaking owning a share of the capital is limited strictly and unambiguously to that share of the capital, the competent authorities 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, competent authorities shall determine which proportional share will have to be taken account of, taking into account the liability the existing ties give rise to.

2. **Regardless of the method used for the calculation of the supplementary capital adequacy of regulated entities in a financial conglomerate as laid down in point II, the competent authorities 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; only own funds elements that are eligible according to each of the sectoral rules ('cross-sector capital') shall qualify for the verification of the compliance with additional solvency requirements at the financial conglomerate level;

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

when calculating the 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 point II of this Annex, notional solvency requirement means the capital requirement such an entity would have to comply with according to the relevant sectoral rules if it were a regulated entity of that particular financial sector; a mixed financial holding company shall be treated according to the sectoral rules of the most important financial sector in the financial conglomerate.

II. TECHNICAL CALCULATION METHODS

Method 1: 'Accounting consolidation' method

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

The supplementary capital adequacy 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 that are not included in the aforementioned sectoral solvency requirement calculations, a notional solvency requirement shall be calculated.

The difference shall not be negative.

Method 2: 'Deduction and aggregation' method

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

(i) the sum of the own funds of each regulated and non-regulated entity in the financial conglomerate; the elements eligible are those that qualify in accordance with the relevant sectoral rules;

and

(ii) the sum of

— the solvency requirements for each regulated and non-regulated 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 entities, a notional solvency requirement shall be calculated. Own funds and solvency requirements shall be taken into account for their proportional share in accordance with point I of this Annex.

The difference shall not be negative.

Method 3: 'Requirement deduction' method

The calculation of the supplementary capital adequacy 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 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 that 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 requirement; the solvency requirements of the latter shall be taken into account for their proportional share in accordance with point I of this Annex.

In the case of non-regulated entities, a notional solvency requirement shall be calculated. When valuing the elements eligible for the calculation the supplementary capital adequacy, 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 4: Combination of methods 1, 2 and 3

Competent authorities may apply 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 co-ordinator, the competent authorities responsible for the sectoral group-wide supervision of the regulated entities in a financial conglomerate and where relevant other competent authorities concerned shall identify and agree with each other on the type of transactions and risks regulated entities in a particular financial conglomerate shall report in accordance with the provisions of Article 6(3) on the reporting of intra-group transactions and risk concentration. When defining the type of transactions and risks, 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 Article 6, the relevant competent authorities shall define appropriate thresholds based on regulatory own funds and/or technical provisions.

When overviewing the intra-group transactions and risk concentrations, competent authorities responsible for supplementary supervision 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 the circumvention of the sectoral rules.
