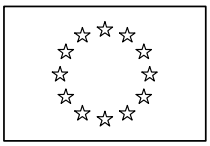

EUROPEAN COMMISSION

Brussels, 16.8.2010
COM(2010) 433 final

2010/0232 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate

SEC(2010) 981
SEC(2010) 979

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

About 20 years ago, financial groups with business models that combine the provision of services and products in different sectors of financial markets began to develop. These became known as financial conglomerates. Conglomerates may include banks, insurance undertakings, investment firms and possibly asset management companies. For several years, different expert groups at international and European level discussed how to supervise such conglomerates appropriately. This resulted in the Joint Forum's[1] 'Principles for the supervision of financial conglomerates' in 1999[2]. Against this background, Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002[3] ('FICOD') introduced group-wide supplementary supervision. The objective of this supplementary supervision was to control potential risks arising from double gearing (i.e. multiple use of capital) and so-called group risks, that is the risks of contagion, management complexity, concentration, and conflicts of interest, which could arise when several licenses for different financial services are combined.

Whilst the banking and insurance directives aim at calculating sufficient capital buffers for the protection of customers and policyholders, FICOD, regulates the supplementary supervision of group risks. This implies that financial entities which have a mutual relationship that affects the risk profiles of both of them must be included in the supervisory scope. In this way, FICOD supplements the sectoral directives, the Banking Directive 2006/48/EC[4] ('CRD') and various insurance directives, all of which can be applied on a solo level, per licensed entity, and on a consolidated level, where all licensed legal entities subject to the same directive are aggregated.

A review of FICOD was envisaged some years after its implementation. The revision of the 1988 Basel Accord in 2004, the European implementation into the CRD in 2006, and the introduction of a comprehensive set of new rules for insurance companies in Solvency II[5] reflect recent developments, as far as legal entities of a group are active in the same sector, banking or insurance. Until Solvency II is implemented, the FICOD supplements the insurance directives presently in place, especially the Insurance Group Directive[6] ('IGD').

The Commission intends to proceed in two steps. With the present proposal, the most urgent technical issues identified during the review, as analysed by the Joint Committee on Financial

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1 Joint G10 Committee of Basel Committee of Banking Supervisors, International Association of Insurance Supervisors, and International Organisation of Securities Commissions.

2 Supervision of Financial Conglomerates, 19 February 1999, see http://www.bis.org/publ/bcbs47.pdf?noframes=1.

3 OJ L 35, 11.2.2003, p. 1.

4 CRD consists of two directives: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast), OJ L 177, 30.6.2006, p. 1 and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast), OJ L 177, 30.6.2006, p. 201.

5 Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast), OJ L 335, 17.12.2009, p. 1.

6 Directive 98/78/EC of the European Parliament and of the Council of 27.10.1998 on the supplementary supervision of insurance and reinsurance undertakings in an insurance of reinsurance group, OJ L 330, 5.12.1998, p. 1.

Conglomerates[7] ('JCFC'), are addressed, including the technical issues detected in earlier review exercises. Calls for advice and a consultation were issued to assess the impact of these potential changes[8]. Later in 2010, a more fundamental debate will take place in the context of G20 developments regarding supplementary supervision. This debate is likely to focus on supervisory scope and capital related issues.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The review of the FICOD effectively started in 2008 and formed the basis of this legislative proposal. Certain technical issues were included in the Commission's proposal for an Omnibus Directive[9] in October 2009, accompanying the Regulations establishing the new European Supervisory Authorities.

During the financial crisis, so-called group risks have materialized all across the financial sector, emphasising the importance of supplementary supervision of inter-linkages within financial groups and among financial institutions. Initiatives similar to the current review were undertaken in the U.S. and Australia[10], based on the Joint Forum's principles.

The aim of this legislative proposal is to amend the IGD, the FICOD and the CRD in order to eliminate unintended consequences and technical omissions in the sectoral directives and ensure that the objectives of the FICOD are effectively achieved.

2.1. Results of the Consultations

Calls for Advice to the Joint Committee on Financial Conglomerates 'JCFC'

The JCFC presented their findings in response to the Commission's Third Call for Advice to the Finance Ministries represented in the European Financial Conglomerates Committee (EFCC) in January 2009. The main issues identified relate to supervision at top level, risk based identification, clear inclusion in the scope of the directive and in the identification of conglomerates, and clear supervisory treatment of participations.

Commission working group meetings and JCFC public hearing

Commission working group meetings with Member States were held on 18 June and 23 November 2009, and 21 January 2010. A public hearing was organized by the JCFC on 8 July 2009. These discussions with stakeholders confirmed the relevance of the identified issues

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7 JCFC is the level 3 committee for financial conglomerates within the so-called 'Lamfalussy' structure; while the European Financial Conglomerates Committee (EFCC) is the (level 2) committee according to FICOD.

8 See the Conglomerates website for further details, http://ec.europa.eu/internal_market/financial-conglomerates/supervision_en.htm.

9 COM(2009) 576 final, proposal for a directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

10 The Australian Prudential Regulation Authority is considering how to supervise and control the potential contagion coming from non-regulated entities of financial groups; see http://www.apra.gov.au/media-releases/10_06.cfm .

and revealed that effective supervision of conglomerates might require discussing even more issues, e.g. differences in eligible capital across sectors, as well as potential distortions of using different capital calculation methods. Also, the Commission initiatives with respect to alternative investment fund managers raised questions as to the inclusion of not only asset management companies but also other related undertakings in the scope of supplementary supervision on the group risks of large complex financial institutions.

The Targeted Consultation on the review of the FICOD

The responses to the targeted consultation launched in November 2009 included the view of 18 conglomerates, one authority, two associations, one union, and one research centre[11] which was in line with the limited number of its main target groups, and the technical nature of the questions. The initiative was broadly welcomed, and respondents recognized the major problems, as listed below, as well as the Commission Services suggestions to solve them:

– the applicability of sectoral top level provisions of the banking and insurance directives at the level of Mixed Financial Holding Companies (MFHCs);

– clarity about the inclusion of asset management companies in the scope of supplementary supervision;

– allowing a more risk-based identification of conglomerates,

– clarity about the treatment of participations in supplementary supervision.

However, diverging views were expressed in relation to the cross-sectoral alignment in the definition of capital, which has been s under consideration since the Capital Advice delivered by the JCFC in April 2008. Member States participating in the EFCC indicated a preference for a deferral of these proposals until the sectoral debates on banking and insurance issues were finalised. Respondents also pointed to the difficulties of making further distinctions between proprietary trading and non-proprietary trading of financial conglomerates' asset management companies. Finally, the consultation confirmed that the treatment of participations in supplementary supervision was not a problem that needed to be solved in full at this stage.

With regard to issues that could be subject of a future review, the responses broadly rejected the idea to consider remuneration policies in a cross-sectoral manner[12] but supported initiatives in the areas of capital, i.e. regarding the consistency of eligibility provisions, as well as the taking into account of non-regulated entities affecting the risk profiles of financial groups.

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11 The (non-confidential) stakeholder responses are available at http://ec.europa.eu/internal_market/consultations/2009/fcd_review_en.htm

12 Remuneration policies in the banking sector were treated by the Proposal for a Directive amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (COM/2009/362). A similar proposal is envisaged with regard to remuneration policies the insurance sector.

2.2. Result of the Impact Assessment

In the Impact Assessment, 17 policy options have been developed, assessed and compared with a view to addressing the issues identified in the analysis. This section describes the expected impacts of preferred policy measures in each area.

Supplementary supervision on holding company level and supervisory coordination

In order to align supervisory powers at the top level of a conglomerate, to prevent the loss of powers when a group structure changes as well as the duplication of supervision at the conglomerate level, and to facilitate coordination by the most relevant supervisors, the following amendments were positively assessed:

– include top level holding companies of a banking or an insurance group that are classified as a MFHC, so that provisions and powers that are applied to the former Financial Holding Company (FHC) or Insurance Holding Company (IHC) do not disappear when the classification of a group and its holding company changes as a result of an acquisition in the other sector;

– limit the definition of 'relevant competent authority' so that it only includes the supervisors of ultimate parent entities within individual sectors and other competent authorities, considered relevant by the supervisors of the ultimate parent entities.

Identification of financial conglomerates

– The inclusion under all circumstances of asset management companies in the scope of supplementary supervision complemented with guidance on indicators for this inclusion was considered useful.

– In order to tackle the ambiguity regarding parameters and the lack of a risk-based identification of conglomerates, guidelines on the application of the existing 'waiver option' for larger groups in Article 3(3) of the FICOD was positively assessed. This should be combined with an option to waive supplementary supervision for groups where the assets held by the smallest sector are below the absolute threshold of €6 billion.

Participations

The problem of the day-to-day treatment of participations under supplementary supervision, which is aggravated by the fact that company law may prohibit a minority owner from accessing information which is not accessible to other shareholders, should be addressed by guidelines on the treatment of participations in various situations.

Impact of preferred policy options

The positively assessed policy changes were expected to render the supplementary supervision framework more robust, leading to more effective risk management incentives and practices. This should be beneficial to the international competitiveness position of EU financial groups. These options should contribute positively to containing the risks to financial stability and the possible costs to society. With regard to individual stakeholder groups and systemic concerns, expected impacts were evaluated as follows:

– Certain smaller EU financial groups with a simple structure and not more than a few licenses in both sectors may be excluded from supplementary supervision and would therefore benefit from reduced compliance costs. This may be available to about ten smaller financial groups with combined assets of approximately €69 billion. On the other hand, compliance costs for bigger groups with more than hundred licenses, being active in both sectors could increase as such groups, representing up to €9 trillion assets in the financial sector, may be included in the scope of the supplementary supervision. Increased compliance costs could also be incurred by those financial groups whose structures include asset management business and that will be identified as financial conglomerates following the proposed changes to the conglomerate identification process. Compliance costs for financial groups that are newly included in the scope of the supplementary supervision should, given their overall size, be non-substantial.

– In any event, compliance costs are expected to be set off against benefits arising from more effective risk management practices. Another positive impact can be expected from a greater visibility and trust in the markets that should result from the identification as a conglomerate. These benefits should enhance the international competitiveness of large EU groups.

– The positively assessed changes to the conglomerate identification process will render the scope of the supplementary supervision more appropriate and should enhance the effectiveness of supervisors' monitoring of the risks to which financial groups are exposed. Combined with a more streamlined supervision at the top level of conglomerates and improved supervisory measures for detection of contagion, concentration, complexity issues and conflicts of interests in firms connected to a conglomerate through participations, this should make a positive contribution to financial stability.

– Enhanced clarity of provisions governing the inclusion of asset management companies in the identification and supplementary supervision should provide a level playing field in this area.

– As regards clients of the financial groups concerned, the cost impact is expected to be negligible given the overall low level of materiality of the net incremental effect of the identified options.

3. LEGAL ELEMENTS OF THE PROPOSAL

An amending Directive is the most appropriate instrument because the required changes need to be introduced to several existing Directives. This amending Directive should have the same legal basis as the Directives it amends. Therefore, the proposal is based on Article 53(1) TFEU, which is the appropriate legal basis for the harmonisation of rules relating to financial institutions and financial conglomerates. In accordance with the principles of proportionality and subsidiarity as set out in Article 5 TEU, the objectives of the proposed action cannot be sufficiently achieved by the Member States but be more efficiently achieved by the European Union. Only European Union legislation can ensure that financial conglomerates operating in more than one Member State are subject to the same requirements and supervision, in this case by ensuring that provisions are clarified and supervisory gaps inadvertently created by earlier amendments of sectoral Directives are closed. The provisions of this proposal do not go beyond of what is necessary to achieve the objectives pursued.

4. BUDGETARY IMPLICATION

The proposal has no implication for the budget of the European Union[13].

5. DETAILED EXPLANATION OF THE PROPOSAL

5.1. Top level supervision - Articles 1 (IGD) and 3 (CRD) of this Proposal Articles 1, 2(2), 3(1), 4(2), 10(2) and several instances of Annex I and II IGD Articles 4, 71, 72, 84, 105, 125, 126, 127, 129, 141, 142 and 143 CRD

The focus and primary aim of this proposal is to ensure appropriate supplementary supervision, i.e. to fix the unintended gaps that have evolved in supplementary supervision due to definitions in the sectoral directives, namely the CRD and the insurance directives. Given that the consolidated/group supervision in the sectoral directives is applied only to financial/insurance holding companies and the sectoral provisions do not refer to mixed financial holding companies, a financial/insurance holding company changing structure and becoming a mixed financial holding company will only be subject to supplementary supervision according to FICOD and the consolidated/group supervision at the ultimate parent level is lost. Thus, supervisory authorities have to choose (in terms of applying – or not – a waiver in determining whether a group is a financial conglomerate) if they wish to continue to classify companies as financial/insurance holding companies in order to keep consolidated/group supervision, or if they want to apply 'only' supplementary supervision according to FICOD. Keeping consolidated/group supervision means that the additional risk resulting from the combination with another sector could not be covered. However, supplementary supervision implies that all the supervisory insight resulting from consolidated/group supervision is lost. Consequently, the continued application of sectoral supervision may not adequately address the additional prudential risks that arise from the increased size and complexity of the group. The current regime may also result in differences in supervisory treatment (based on the structure rather than on the risk profile) of conglomerates.

In order to ensure that all necessary supervisory tools can be applied, this proposal introduces the term 'mixed financial holding company' into the relevant provisions on consolidated/group supervision in the sectoral directives.

5.2. Articles 3 and 30 FICOD - Identification of a conglomerate

Provisions governing the identification of financial conglomerates give rise to three sub-problems.

– First, the directive does not require the inclusion of 'asset management companies' in the threshold tests. Asset management companies are managers of UCITS (undertakings for collective investments in transferable securities), as regulated by the UCITS Directive[14].

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[13] Tasks assigned to the Joint Committee of the European Supervisory Authorities in regard to guidelines are covered by its proposed mandate and do not lead to any specific or additional budgetary implications.

[14] Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS); OJ L 375, 31.12.1985, p. 3, repealed by Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative

UCITS and their managers are at present not covered by the sectoral prudential supervision in FICOD, although FICOD does contain a possibility to include asset management companies in the scope of supplementary supervision (Article 30).

– Second, the threshold tests can be based on different parameters with respect to assets and capital requirements. The provisions are ambiguous as regards the calculation of the tests arising from, for example, different accounting treatments of assets (see below point (i) on Article 3(5)).

– Third, the threshold conditions, given their fixed amounts, are not risk-based, and the notion of expected group risks is not addressed by the threshold test. This implies that very small groups with a few licenses in each sector are subject to supplementary supervision, while the largest most complex groups can technically be identified as not being a conglomerate. As a result, the current provisions on identification may undermine the effective achievement of the underlying objectives of the directive.

In order to tackle these deficiencies, this proposal introduces the following changes:

(i) Asset management companies are included in Article 3(2) and Article 30 point (c); 'total assets under management' is introduced as an alternative indicator in Article 3(5); and a possibility to adopt guidelines on the application of Articles 3(2) and 3(5) is introduced.

(ii) A waiver for smaller groups in a new Article 3(3a) is introduced, allowing for guidelines for the application of the waiver to smaller groups.

(iii) Article 3(3) is re-worded to properly distinguish the applicable conditions for groups below and above the EUR 6 billion threshold and adds requirements as to possible guidelines for the application of the waiver to larger groups and thus ensures a level playing field.

5.3. Article 3(4) FICOD - Treatment of participations

The consistent treatment of participations in day-to-day supplementary supervision is hampered by the lack of relevant information to properly assess group risks. For example, if information about risks with respect to participations in insurance and reinsurance companies cannot be obtained by bank-led conglomerates, they cannot provide their supervisors with the evidence of a satisfactory level of integration of management and internal control with these entities that is necessary for consolidation. In that case, the group needs to deduct such participations from their capital.

While the issue of information on minority participations is not yet fully examined, a first step contained in this proposal is the introduction of a waiver where participation is the only trigger for identification (Article 3(5) new point (c)). As long as national company law provisions may hamper the fulfilment of requirements, specific treatment in view of risk concentration and intra group transaction requirements is allowed in Articles 7 and 8 which may be specified via guidelines. Guidelines may support also the consistent application of

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provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302, 17.11.2009, p. 32.

supervisory review processes, including specific treatment of participations, as provided for in Article 9 FICOD, Article 124 CRD and Article 36 Solvency II.

5.4. Other issues

Articles 1 and 2 FICOD – Update of the definitions

Articles 1 and 2 have to be updated in light of repealed and recast directives. However, as in particular the recast of the insurance directive (Solvency II) repeals the previous directives only with effect from 1 November 2012, references to the initial insurance directives – which are thus still in force – were maintained.

Article 2(17) FICOD – Amendment of the definition of relevant competent authority and supervisory coordination

FICOD supplements the CRD and insurance directives as regards additional supervision at the top level of a group. To that end, it also contains provisions for coordination among different supervisors of a group. FICOD defines the relevant competent authority and requires the coordinator (the top level supervisor) to consult this authority as regards certain supervisory questions. However, the current provisions leave room for different interpretations as regards the identification of the relevant competent authorities. An extensive interpretation results in a high number of authorities that must be consulted by the coordinator at the financial conglomerate level. This may undermine the effective and efficient coordination of the work to be carried out by the "college" of a coordinator and relevant competent authorities.

Article 6(4) and Annex I FICOD – Deletion of the third calculation method,

Part II of Annex I FICOD list three methods for calculating capital at the conglomerate level. An analysis by the JCFC in 2008 showed that the third eligible capital calculation method always results in outcomes that are significantly different from methods 1 (consolidation) and 2 (deduction and aggregation). Therefore, the third method should be deleted. By restricting the eligible calculation methods to the consolidation and the deduction and aggregation method, FICOD is also aligned to the sectoral directives it supplements.

Article 2 FICOD – Inclusion of reinsurance undertakings,

With the introduction of authorisation and supervision of reinsurance undertakings in Directive 2005/68/EC, reinsurance undertakings were included in the scope of regulated entities that can be part of a financial conglomerate. Consequently, a reference to reinsurance undertakings has to be included in FICOD. References are added in Articles 2(4), 2(7), 2(8), 2(14) and 2(16).

Articles 3(8), 7(5), 8(5), 9(6), 11(4) and 11(5) FICOD – Introduction of provisions regarding guidelines in certain areas

In order to allow for further convergence of supervisory practices, a possibility for the European Banking Authority and the European Insurance and Occupational Pensions Authority to issue guidelines in line with Chapter IV Section 2 of the Regulation establishing

a European Banking Authority[15] and Chapter IV Section 2 of the Regulation establishing a European Insurance and Occupational Pensions Authority[16] ("Joint Committee of European Supervisory Authorities") to issue guidelines is introduced.

These guidelines should reflect the supplementary nature of this Directive. By way of example, when assessing risk concentrations on a group wide basis relating to several risk types potentially materializing throughout the group (interest rate risk, market risk, etc.), this assessment should complement the specific supervision of for example large exposures as provided for in the CRD. Guidelines may also support the consistent application of the different supervisory review processes, including specific treatment of participations, as provided for in Article 9 FICOD, Article 124 CRD and Article 36 Solvency II.

Update of references in various Articles

Articles 1, 2, 6(3), 6(4), 19, 21(2) of the FICOD, and Article 143(3) CRD have been amended in order to update references and wording.

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15 Proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority {COM(2009) 499 final} {COM(2009) 500 final} {COM(2009) 502 final} {COM(2009) 503 final} {SEC(2009) 1233} {SEC(2009) 1234} {SEC(2009) 1235} /* COM/2009/0501 final - COD 2009/0142 */

16 Proposal for a Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority {COM(2009) 499 final} {COM(2009) 500 final} {COM(2009) 501 final} {COM(2009) 503 final} {SEC(2009) 1233} {SEC(2009) 1234} {SEC(2009) 1235} /* COM/2009/0502 final - COD 2009/0143 */

2010/0232 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 98/78/EC, 2002/87/EC and 2006/48/EC as regards the supplementary supervision of financial entities in a financial conglomerate

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank,[17]

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) 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 provides competent authorities in the financial sector with supplementary powers and tools for the supervision of groups of many regulated entities, which are active in different sectors of the financial markets. These groups, called financial conglomerates, are thus exposed to risks related to controlling a group, which are called group risks, and which include the risks of contagion, which involves the spreading of risks from one end of the group to another end, the concentration of risks, where the same type of risk materializes in various parts of the group at the same time, the complexity of managing many different legal entities, and potential conflicts of interest, as well as the challenge of allocating regulatory capital to all its regulated entities, thereby avoiding the multiple use of capital. Supplementary supervision should be applied to conglomerates on top of the supervision on a stand alone, consolidated or group basis, without duplicating or affecting the group, regardless of the legal structure of the group.

(2) It is appropriate to ensure consistency with the aim of Directive 2002/87/EC and 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[18], to enable supervision of insurance groups as well as appropriate

[17] OJ C […]

[18] OJ L 35, 11.2.2003, p. 1.

supplementary supervision of insurance and other entities within a mixed financial holding structure. For this reason, Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance and reinsurance undertakings in an insurance or reinsurance group[19] should be amended to define and include mixed financial holding companies. In order to ensure timely coherent supervision, Directive 98/78/EC should be amended, notwithstanding the imminent application of Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (recast)[20].

(3) It is necessary that financial conglomerates are identified throughout the European Union according to the extent to which they are exposed to group risks, based on common guidelines issued by the European Banking Authority and the European Insurance and Occupational Pensions Authority in accordance with Article 42 of the Regulation (EU) No ../.. establishing a European Banking Authority[21] and Article 42 of the Regulation (EU) No ../.. establishing a European Insurance and Occupational Pensions Authority[22], following cooperation within the Joint Committee of European Supervisory Authorities.. It is also important that the requirements regarding the waiving of the application of supplementary supervision are applied in a risk-based manner according to these guidelines. This is of particular importance in the case of the larger, internationally operating conglomerates.

(4) The comprehensive and adequate monitoring of group risks in large, complex, internationally operating conglomerates, as well as the supervision of the group-wide capital policies of these groups, is only possible when competent authorities gather supervisory information and plan supervisory measures beyond the national scope of their mandate. It is therefore necessary that competent authorities coordinate supplementary supervision on international conglomerates among the competent authorities which are regarded as most relevant for the supplementary supervision of a conglomerate. The college of a financial conglomerate's relevant competent authorities should reflect the supplementary nature of this Directive, and as such it should add value to existing colleges for the banking subgroup and the insurance subgroup in the conglomerate, without replicating, duplicating or replacing them.

(5) The supplementary supervision of large, complex, internationally operating conglomerates requires coordination throughout the European Union, in order to contribute to the stability of the internal market for financial services. To this end, competent authorities need to agree upon the supervisory approaches applied to these conglomerates. The European Banking Authority and the European Insurance and Occupational Pensions Authority should issue, in accordance with Article 42 of the

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19 OJ L 330, 5.12.1998, p.1.

20 OJ L 335, 17.12.2009, p. 1.

21 Proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority {COM(2009) 499 final} {COM(2009) 500 final} {COM(2009) 502 final} {COM(2009) 503 final} {SEC(2009) 1233} {SEC(2009) 1234} {SEC(2009) 1235} /* COM/2009/0501 final - COD 2009/0142 */

22 Proposal for a Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority {COM(2009) 499 final} {COM(2009) 500 final} {COM(2009) 501 final} {COM(2009) 503 final} {SEC(2009) 1233} {SEC(2009) 1234} {SEC(2009) 1235} /* COM/2009/0502 final - COD 2009/0143 */

Regulation (EU) No ../.. establishing a European Banking Authority[23] and Article 42 of the Regulation (EU) No ../.. establishing a European Insurance and Occupational Pensions Authority[24], following cooperation within the Joint Committee of European Supervisory Authorities, common guidelines for these common approaches, thus ensuring a comprehensive prudential framework of the supervisory tools and powers available in the banking, insurance and financial conglomerates directives. The guidelines which will be issued as provided for in this Directive must reflect the supplementary nature of this Directive, and complement the sector-specific supervision as provided for by Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC, 93/22/EEC, 98/78/EC, 2000/12/EC, 2004/39/EC, 2006/48/EC, 2006/49/EC and 2009/138/EC.

(6) There is a genuine need to monitor and control potential group risks, posed to the conglomerate, coming from participations in other companies. For those cases where the specific supervisory powers provided by this Directive appear to be insufficient, the supervisory community should develop alternative methods to address and appropriately take into account these risks, preferably by work conducted by the European Banking Authority and the European Insurance and Occupational Pensions Authority in the forum of the Joint Committee of the European Supervisory Authorities. If a participation is the only element of identification of a financial conglomerate, supervisors should be allowed to assess whether the group is exposed to group risks and waive the group from supplementary supervision, if appropriate.

(7) With regard to certain group structures, supervisors were left without powers in the current crisis since the combination of directives had forced them to choose either sector-specific or supplementary supervision. While a complete review of the Directive should be undertaken in the context of the G20 work on conglomerates, the necessary supervisory powers should be restored as soon as possible.

(8) It is appropriate to ensure consistency with the aim of Directive 2002/87/EC and Council Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)[25]. For this reason, Directive 2006/48/EC should be amended to define and include mixed financial holding companies.

(9) In accordance with the principles of subsidiarity as set out in Article 5 of the Treaty on European Union, the objectives of the action to be taken, namely improving the supplementary supervision of financial entities in a financial conglomerate, can be only achieved at Union level. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

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[23] Proposal for a Regulation of the European Parliament and of the Council establishing a European Banking Authority {COM(2009) 499 final} {COM(2009) 500 final} {COM(2009) 502 final} {COM(2009) 503 final} {SEC(2009) 1233} {SEC(2009) 1234} {SEC(2009) 1235} /* COM/2009/0501 final - COD 2009/0142 */

[24] Proposal for a Regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority {COM(2009) 499 final} {COM(2009) 500 final} {COM(2009) 501 final} {COM(2009) 503 final} {SEC(2009) 1233} {SEC(2009) 1234} {SEC(2009) 1235} /* COM/2009/0502 final - COD 2009/0143 */

[25] OJ L 177, 30.6.2006, p. 1.

(10) Directives 98/78/EC, 2002/87/EC and 2006/48/EC should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 98/78/EC

Directive 98/78/EC is amended as follows:

(1) The following point is added to Article 1:

"(m) *mixed financial holding company* means a mixed financial holding company as defined in Article 2 (15) of Directive 2002/87/EC;"

(2) Article 2(2) is replaced by the following:

"2. Every insurance undertaking or reinsurance undertaking the parent undertaking of which is an insurance holding company, a mixed financial holding company, a non-member-country insurance or a non-member country reinsurance undertaking shall be subject to supplementary supervision in the manner prescribed in Articles 5(2), and Articles 6, 8 and 10."

(3) Article 3(1) is replaced by the following:

"1. The exercise of supplementary supervision in accordance with Article 2 shall in no way imply that the competent authorities are required to play a supervisory role in relation to the non-member-country insurance undertaking, the non-member country reinsurance undertaking, insurance holding company, mixed financial holding company or mixed-activity insurance holding company taken individually."

(4) Article 4(2) is replaced by the following:

"2. Where insurance undertakings or reinsurance undertakings authorised in two or more Member States have as their parent undertaking the same insurance holding company, non-member-country insurance undertaking, non-member country reinsurance undertaking, mixed financial holding company or mixed-activity insurance holding company, the competent authorities of the Member States concerned may reach an agreement as to which of them shall be responsible for exercising supplementary supervision."

(5) Article 10(2) is replaced by the following:

"2. In the case referred to in Article 2(2), the calculation shall include all related undertakings of the insurance holding company, the mixed financial holding company, the non-member-country insurance undertaking or the non-member country reinsurance undertaking, in the manner provided for in Annex II."

(6) Annexes I and II are amended in accordance with Annex I to this Directive.

Article 2

Amendments to Directive 2002/87/EC

Directive 2002/87/EC is amended as follows:

(1) Articles 1 and 2 are replaced by the following:

"*Article 1*

Subject matter

This Directive lays down rules for supplementary supervision of regulated entities which have obtained an authorisation in accordance with Article 6 of Directive 73/239/EEC, Article 6 of Directive 79/267/EEC, Article 5 of Directive 2004/39/EC of the European Parliament and of the Council[26], Article 6 of Directive 2006/48/EC of the European Parliament and of the Council[27] or Article 14 of Directive 2009/138/EC of the European Parliament and of the Council[28] and which are part of a financial conglomerate.

This Directive also amends the relevant sectoral rules which apply to entities regulated by those Directives.

Article 2

Definitions

For the purposes of this Directive:

(1) 'credit institution' means a credit institution within the meaning of Article 4(1) of Directive 2006/48/EC;

(2) 'insurance undertaking means an insurance undertaking within the meaning of Article 13(1) and (2) of Directive 2009/138/EC;

(3) 'investment firm' means an investment firm within the meaning of Article 4(1) (1) of Directive 2004/39/EC, including the undertakings referred to in Article 3(1)(d) of Directive 2006/49/EC;

(4) 'regulated entity' means a credit institution, an insurance undertaking, an investment firm or a reinsurance undertaking;

(5) 'asset management company' means a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC, as well as an undertaking the registered office of which is outside the European Union and which would require authorisation if it had its registered office within the European Union;

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[26] OJ L 145, 30.4.2004, p. 1.
[27] OJ L 177, 30.6.2006, p. 1.
[28] OJ L 335, 17.12.2009, p. 1.

(6) ‘reinsurance undertaking’ means a reinsurance undertaking within the meaning of Article 13(4) and (5) of Directive 2009/138/EC;

(7) ‘sectoral rules’ means Union legislation relating to the prudential supervision of regulated entities, in particular laid down in Directives 2004/39/EC, 2006/48/EC, 2006/49/EC, and 2009/138/EC;

(8) ‘financial sector’ means a sector composed of one or more of the following entities:

(a) a credit institution, a financial institution or an ancillary services undertaking within the meaning of Article 4(1), (5) and (21) of Directive 2006/48/EC;

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Articles 13(1) and (2), 13(4) and (5) and 212(1)(f) of Directive 2009/138/EC;

(c) an investment firm within the meaning of Article 3(1)(b) of Directive 2006/49/EC;

(9) ‘parent undertaking’ means a parent undertaking as defined in Article 1 of seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts[29]and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;

(10) ‘subsidiary undertaking’ means a subsidiary undertaking as defined in 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 subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent;

(11) ‘participation’ means a participation within the meaning of the first sentence of Article 17 of Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies[30], or the direct or indirect ownership of 20% or more or the voting rights or capital of an undertaking;

(12) ‘group’ means a group of undertakings which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, as well as undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC, and includes any subgroup thereof;

(13) ‘close links’ means a situation in which two or more natural or legal persons are linked by participation or control (meaning the relationship between a parent undertaking and a subsidiary undertaking as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an

[29] OJ L 193, 18.7.1983, p. 1.
[30] OJ L 222, 14.8.1978, p. 11.

undertaking), or the fact that both or all are permanently linked to one and the same person by a control relationship;

(14) 'financial conglomerate' means a group or subgroup within the meaning of point (12), which, subject to Article 3, meets the following conditions:

(a) a regulated entity within the meaning of Article 1 is at the head of the group or at least one of the subsidiaries in the group is a regulated entity within the meaning of Article 1;

(b) where there is a regulated entity within the meaning of Article 1 of this Directive at the head of the group, it is either a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

(c) where there is no regulated entity within the meaning of Article 1 at the head of the group, the group's activities mainly occur in the financial sector within the meaning of Article 3(1);

(d) at least one of the entities in the group is within the insurance sector and at least one is within the banking or investment services sector;

(e) the consolidated and/or aggregated activities of the entities in the group within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3);

(15) 'mixed financial holding company' means a parent undertaking, other than a regulated entity, which together with its subsidiaries, at least one of which is a regulated entity which has its head office in the European Union, and other entities, constitutes a financial conglomerate;

(16) 'competent authorities' means the national authorities of the Member States which are empowered by law or regulation to supervise credit institutions, or insurance undertakings, or reinsurance undertakings, or investment firms whether on an individual or group-wide basis;

(17) 'relevant competent authorities' means:

(a) Member States' competent authorities responsible for the sectoral group-wide supervision of any of the regulated entities in a financial conglomerate, in particular of the ultimate parent undertaking of a sector;

(b) the coordinator appointed in accordance with Article 10 if different from the authorities referred to in point (a);

(c) other competent authorities concerned, where relevant, in the opinion of the authorities referred to in points (a) and (b);

(18) ‘intra-group transactions’ means all transactions by which regulated entities within a financial conglomerate rely either directly or indirectly on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

(19) ‘risk concentration’ means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of the regulated entities in the financial conglomerate; such exposures may be caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of these risks.”

(2) Article 3 is amended as follows:

(a) The following third subparagraph is added to paragraph 2:

“Asset management companies within the meaning of Article 30 are added to the sector they belong to within the group; if they do not belong exclusively to one sector within the group, they are added to the smallest financial sector.”

(b) Paragraph 3 is replaced by the following:

“3. Cross-sectoral activities shall also be presumed to be significant within the meaning of Article 2(14)(e) if the balance sheet total of the smallest financial sector in the group exceeds EUR 6 billion.

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

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

(c) The following paragraph 3a is added to Article 3:

“3.a If the group reaches the threshold referred to in paragraph 2, but the smallest sector does not exceed EUR 6 billion, the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate. They may also decide not to apply the provisions of Articles 7, 8, or 9, if they are of the opinion that the inclusion of the group in the scope of this Directive or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

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

(d) The following point (c) is added to paragraph 4:

"(c) exclude a minority participation in the smaller sector if such participation is the only element for the identification of a financial conglomerate."

(e) Paragraph 5 is replaced by the following:

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

(f) The following paragraph 8 is added:

"8. The European Banking Authority and the European Insurance and Occupational Pensions Authority shall issue common guidelines aimed at the convergence of supervisory practices with regard to the application of paragraphs 2, 3, 3a, 4 and 5 of this Article."

(3) Article 6 (3) and (4) are replaced by the following:

"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 services undertaking;

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company;

(c) an investment firm;

(d) a mixed financial holding company.

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 of this Directive, 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 Articles 133 and 134 of Directive 2006/48/EC and Article 221 of Directive 2009/138/EC.

When applying method 2 (Deduction and aggregation) 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 directly or indirectly held by that undertaking."

(4) The following paragraph 5 is added to Article 7:

"5. The European Banking Authority and the European Insurance and Occupational Pensions Authority shall issue common guidelines aimed at the convergence of

supervisory practices with regard to the application of supplementary supervision of risk concentration as provided for in paragraphs 1 to 4. They shall issue specific common guidelines on the application of paragraphs 1 to 4 to participations of the financial conglomerate in cases where national company law provisions obstruct the application of Article 14(2).”

(5) The following paragraph 5 is added to Article 8:

“5. The European Banking Authority and the European Insurance and Occupational Pensions Authority shall issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of intra-group transactions as provided for in paragraphs 1 to 4.. They shall issue specific common guidelines on the application of paragraphs 1 to 4 to participations of the financial conglomerate in cases where national company law provisions obstruct the application of Article 14(2).”

(6) The following paragraph 6 is added to Article 9:

“6. Competent authorities shall align the application of the supplementary supervision of internal control mechanisms and risk management processes as provided for in this Article with the supervisory review processes as provided for by Article 124 of Directive 2006/48/EC and Article 36 of Directive 2009/138/EC. To this end, the European Banking Authority and the European Insurance and Occupational Pensions Authority shall issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of internal control mechanisms and risk management processes as provided for in this Article, as well as on the consistency with the supervisory review processes as provided for by Article 124 of Directive 2006/48/EC and Article 36 of Directive 2009/138/EC. They shall issue specific common guidelines for the application of this Article to participations of the financial conglomerate, in cases where national company law provisions obstruct the application of Article 14(2).”

(7) The following paragraphs 4 and 5 are added to Article 11:

“4. The coordinator shall establish a college of the relevant competent authorities to facilitate the required cooperation under this section and the exercise of the tasks listed in paragraphs 1, 2 and 3 and Article 12 and, subject to the confidentiality requirements and compatibility with Union legislation, ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.

The establishment and functioning of that college shall be based on a written coordination arrangement within the meaning of paragraph 1. The coordinator shall decide which other competent authorities participate in a meeting or in any activity of that college.

5. The European Banking Authority and the European Insurance and Occupational Pensions Authority shall issue common guidelines aimed at the consistency of supervisory coordination arrangements according to Article 131a of Directive 2006/48/EC and Article 248(4) of Directive 2009/138/EC.”

(8) Article 19 is replaced by the following:

“Article 19

Cooperation with third-country competent authorities

1. Article 39(1) and (2) of Directive 2006/48/EC, Article 10a of Directive 98/78/EC and Article 264 of Directive 2009/138/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.

2. Without prejudice to the procedures provided for in Article 218 of the Treaty on the Functioning of the European Union, 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.”

(9) The title of Chapter III is replaced by the following:

"POWERS CONFERRED ON THE COMMISSION, COMMITTEE PROCEDURE AND ADOPTION OF COMMON GUIDELINES"

(10) The following Article 21b is inserted:

"Article 21b

Common Guidelines

The European Banking Authority and the European Insurance and Occupational Pensions Authority shall issue the common guidelines referred to in Article 3(3), Article 7(5), Article 8(5), Article 9(6) and Article 11(5) in accordance with the procedure laid down in Article 42 of the Regulation (EU) No ../.. establishing the European Banking Authority, and in Article 42 of the Regulation (EU) No ../.. establishing the European Insurance and Occupational Pensions Authority, following cooperation within the Joint Committee of the European Supervisory Authorities."

(11) The following point (c) is added to the first paragraph of Article 30:

“(c) in the identification process within the meaning of Article 3(2).”

(12) Annex I is amended in accordance with Annex II to this Directive.

Article 3

Amendments to Directive 2006/48/EC

Directive 2006/48/EC is amended as follows:

(1) The following point (49) is added to Article 4:

“(49) 'mixed financial holding company' means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC of the European Parliament and

of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate[31];"

(2) Article 71(2) is replaced by the following:

"2. Without prejudice to Articles 68, 69 and 70, credit institutions controlled by a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State shall comply, to the extent and in the manner prescribed in Article 133, with the obligations laid down in Articles 75, 120, 123 and Section 5 on the basis of the consolidated financial situation of that financial holding company or mixed financial holding company."

(3) Article 72(2) is replaced by the following:

"2. Credit institutions controlled by an EU parent financial holding company or an EU parent mixed financial holding company shall comply with the obligations laid down in Chapter 5 on the basis of the consolidated financial situation of that financial holding company or mixed financial holding company.

Significant subsidiaries of EU parent financial holding companies or EU parent mixed financial holding companies shall disclose the information specified in Annex XII, Part 1, point 5, on an individual or sub-consolidated basis."

(4) Article 84(6) is replaced by the following:

"6. When the IRB Approach is intended to be used by the EU parent credit institution and its subsidiaries, or by the EU parent financial holding company and its subsidiaries, or the EU parent mixed financial holding company and its subsidiaries, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles 129 to 132."

(5) Article 105(3) and (4) are replaced by the following:

"3. When an Advanced Measurement Approach is intended to be used by an EU parent credit institution and its subsidiaries or by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles 129 to 132. The application shall include the elements listed in Annex X, Part 3.

4. Where an EU parent credit institution and its subsidiaries or the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company use an Advanced Measurement Approach on a unified basis, the competent authorities may allow the qualifying criteria set out in Annex X, Part 3 to be met by the parent and its subsidiaries considered together."

(6) Article 125(2) is replaced by the following:

[31] OJ L 35, 11.2.2003, p. 1.

"2. Where the parent of a credit institution is a parent financial holding company in a Member State or an EU parent financial holding company or an EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities that authorised that credit institution under Article 6."

(7) Article 126 is replaced by the following:

"*Article 126*

1. Where credit institutions authorised in two or more Member States have as their parent the same parent financial holding company in a Member State or the same EU parent financial holding company or the same mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities of the credit institution authorised in the Member State in which the financial holding company or mixed financial holding company was set up.

Where the parents of credit institutions authorised in two or more Member States comprise more than one financial holding company with head offices in different Member States and there is a credit institution in each of these States, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total.

2. Where more than one credit institution authorised in the European Union has as its parent the same financial holding company or the same mixed financial holding company and none of these credit institutions has been authorised in the Member State in which the financial holding company or the mixed financial holding company was set up, supervision on a consolidated basis shall be exercised by the competent authority that authorised the credit institution with the largest balance sheet total, which shall be considered, for the purposes of this Directive, as the credit institution controlled by an EU parent financial holding company or an EU parent mixed financial holding company.

3. In particular cases, the competent authorities may by common agreement waive the criteria referred to in paragraphs 1 and 2 if their application would be inappropriate, taking into account the credit institutions and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. In these cases, before taking their decision, the competent authorities shall give the EU parent credit institution, or EU parent financial holding company, or the EU parent mixed financial holding company, or credit institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion on that decision.

4. The competent authorities shall notify the Commission of any agreement falling within paragraph 3."

(8) Article 127 is amended as follows:

(a) Paragraph 1 is replaced by the following:

"1. Member States shall adopt any measures necessary, where appropriate, to include financial holding companies or mixed financial holding companies in consolidated supervision. Without prejudice to Article 135, the consolidation of the

financial situation of the financial holding company or the mixed financial holding company shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the financial holding company on a stand alone basis."

(b) Paragraph 3 is replaced by the following:

"3. Member States shall provide that their competent authorities responsible for exercising supervision on a consolidated basis may ask the subsidiaries of a credit institution or a financial holding company or a mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 137. In such a case, the procedures for transmitting and verifying the information laid down in that Article shall apply."

(9) The first subparagraph of Article 129(1) is replaced by the following:

"In addition to the obligations imposed by the provisions of this Directive, the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies shall carry out the following tasks:"

(10) The first subparagraph of Article 129(2) is replaced by the following:

"In the case of applications for the permissions referred to in Articles 84(1), 87(9) and 105 and in Annex III, Part 6, respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject."

(11) Article 141 and 142 are replaced by the following:

"*Article 141*

Where, in applying this Directive, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary services undertaking, a mixed activity holding company, a mixed financial holding company, a subsidiary of the kind covered in Article 137 or a subsidiary of the kind covered in Article 127(3), situated in another Member State, they shall ask the competent authorities of that other Member State to have that 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 the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out. 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 142

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 financial holding companies, mixed financial holding companies and mixed activity holding companies, or their effective managers, that infringe laws, regulation or administrative provisions enacted to implement Articles 124 to 141 and this Article. The competent authorities shall cooperate closely to ensure that those penalties or measures produce the desired results, especially when the central administration or main establishment of a financial holding company or of a mixed financial holding company or of a mixed activity holding company is not located at its head office."

(12) Article 143(1) is replaced by the following:

"1. Where a credit institution, the parent undertaking of which is a credit institution or a financial holding company, or a mixed financial holding company, the head office of which is in a third country, is not subject to consolidated supervision under Articles 125 and 126, the competent authorities shall verify whether the credit institution is subject to consolidated supervision by a third country competent authority which is equivalent to that governed by the principles laid down in this Directive.

The verification shall be carried out by the competent authority which would be responsible for consolidated supervision if paragraph 3 were to apply, at the request of the parent undertaking or of any of the regulated entities authorised in the European Union or on its own initiative. The competent authority shall consult the other competent authorities involved."

(13) Annex X is amended in accordance with Annex III to this Directive.

Article 4

Transposition

1. Member States shall adopt and publish, by [30 April 2011] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [1 July 2011].

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.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 5

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

Article 6

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

ANNEX I

Annexes I and II to Directive 98/78/EC are amended as follows:

A. Annex I is amended as follows:

(14) Section 2.1. is amended as follows:

(a) the second indent is replaced by the following:

"- if the insurance undertaking or the reinsurance undertaking is a related undertaking of an insurance holding company or of a mixed financial holding company which has its registered office in the same Member State as the insurance undertaking or the reinsurance undertaking, and both the insurance holding company or mixed financial holding company and the related insurance undertaking or the related reinsurance undertaking are taken into account in the calculation carried out."

(b) the fifth sub-paragraph is replaced by the following:

"Member States may also waive calculation of the adjusted solvency of an insurance undertaking or reinsurance undertaking if it is a related insurance undertaking or a related reinsurance undertaking of another insurance undertaking, a reinsurance undertaking or an insurance holding company or a mixed financial holding company which has its registered office in another Member State, and if the competent authorities of the Member States concerned have agreed to grant exercise of the supplementary supervision to the competent authority of the latter Member State."

(15) Section 2.2. is replaced by the following:

"2.2 **Intermediate insurance holding companies**

When calculating the adjusted solvency of an insurance undertaking or a reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a non-member country insurance undertaking or a non-member country reinsurance undertaking, through an insurance holding company or a mixed financial holding company, the situation of the intermediate insurance holding company or the intermediate mixed financial holding company is taken into account. For the sole purpose of this calculation, to be undertaken in accordance with the general principles and methods described in this Annex, this insurance holding company or mixed financial holding company shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to a zero solvency requirement and were subject to the same conditions as are laid down in Article 16 of Directive 73/239/EEC, in Article 27 of Directive 2002/83/EC of the European Parliament and of the Council[32]or in Article 36 of Directive 2005/68/EC of the European Parliament and of the Council[33] in respect of elements eligible for the solvency margin."

B. Annex II is amended as follows:

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[32] OJ L 345, 19.12.2002, p. 1.

[33] OJ L 323, 9.12.2005, p. 1.

(16) The title of Annex II shall be replaced by:

"**SUPPLEMENTARY SUPERVISION FOR INSURANCE AND REINSURANCE UNDERTAKINGS THAT ARE SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY, A MIXED FINANCIAL HOLDING COMPANY, A NON-MEMBER-COUNTRY INSURANCE UNDERTAKING OR A NON-MEMBER COUNTRY REINSURANCE UNDERTAKING**"

(17) The first subparagraph of paragraph 1. is replaced by the following:

"1. In the case of two or more insurance undertakings referred to in Article 2(2) which are the subsidiaries of an insurance holding company, a mixed financial holding company, a non-member-country insurance undertaking or a non-member-country re-insurance undertaking and which are established in different Member States, the competent authorities shall ensure that the method described in this Annex is applied in a consistent manner."

(18) The second and third indents and the subparagraph following the third indent are replaced by the following:

"- if that insurance undertaking or re-insurance undertaking and one or more other insurance undertakings or re-insurance undertakings authorised in the same Member State have as their parent undertaking the same insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country re-insurance undertaking, and the insurance undertaking or re-insurance undertaking is taken into account in the calculation provided for in this Annex carried out for one of these other undertakings,

– if that insurance undertaking or re-insurance undertaking and one or more other insurance undertakings or re-insurance undertakings authorised in other Member States have as their parent undertaking the same insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country re-insurance undertaking, and an agreement granting exercise of the supplementary supervision covered by this Annex to the supervisory authority of another Member State has been concluded in accordance with Article 4(2).

Where other insurance holding companies or non-member country insurance or reinsurance undertakings hold successive participations in the insurance holding company or non-member country insurance or reinsurance undertaking, Member States may apply the calculations provided for in this Annex only at the level of the ultimate parent undertaking of the insurance undertaking or re-insurance undertaking which is an insurance holding company, a mixed financial holding company, a non-member-country insurance undertaking or a non-member-country re-insurance undertaking."

(19) Paragraph 3 is replaced by the following:

"3. The competent authorities shall ensure that calculations analogous to those described in Annex I are carried out at the level of the insurance holding company, or mixed financial holding company.

The analogy shall consist in applying the general principles and methods described in Annex I at the level of the insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country re-insurance undertaking.

For the sole purpose of this calculation, the parent undertaking shall be treated as if it were an insurance undertaking subject to the following conditions:

– a zero solvency requirement where it is an insurance holding company or mixed financial holding company,

– a solvency requirement determined in accordance with the principles of section 2.3 of Annex I, where it is a non-member-country insurance undertaking or a non-member-country reinsurance undertaking,

– the same conditions as laid down in Article 16(1) of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC as regards the elements eligible for the solvency margin.”

ANNEX II

In Annex I to Directive 2002/87/EC, under 'II. Technical Calculation Methods', Method 3 and Method 4 are replaced by the following:

"Method 3: 'Combination method'

Competent authorities may allow a combination of method 1 and method 2."

ANNEX III

In Directive 2006/48/EC, paragraph 30 of section 3 of part 3 of Annex X is replaced by the following:

"30. When an Advanced Measurement Approach is intended to be used by the EU parent credit institution and its subsidiaries, or by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the application shall include a description of the methodology used for allocating operational risk capital between the different entities of the group."