



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 28.01.1998
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95/ 0245 (COD)

Amended proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE
ON THE SUPPLEMENTARY SUPERVISION
OF INSURANCE UNDERTAKINGS IN AN INSURANCE GROUP

(presented by the Commission pursuant to Article 189 a (2)
of the EC-Treaty)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. On 4 October 1995 the Commission adopted a Proposal for a Directive on the supplementary supervision of insurance undertakings in an insurance group¹. The proposal was submitted to Parliament and Council by letter on 20 October 1995.
2. At its 334th plenary session on 27 March 1996, the Economic and Social Committee adopted a favourable opinion² on the Proposal for a Directive and suggested certain amendments.
3. The Parliament adopted a legislative resolution embodying its opinion³ on the Commission's Proposal for a Directive at its plenary session on 23 October 1997. The Parliament's opinion includes 24 amendments. A large number of these amendments, which will contribute to clarify and improve the Proposal, were accepted by the Commission, some totally, others in part, either in accordance with their spirit or with some adaptation of their text.
4. The amended proposal has been drafted to take account of the opinions of both institutions.

COMMENTS ON THE AMENDMENTS INTRODUCED INTO THE PROPOSAL

5. Article 1 (b) [new]

A definition of 'third country insurance undertaking' has been introduced in the text in order to be able to incorporate Parliament's Amendment N° 7, relating to the definition of 'mixed activity insurance holding company'. This amendment refers to third country insurance undertakings, a term which was not defined in the initial Proposal, although it was implicitly referred to in Article 9(2). The definition will also contribute to a clearer understanding of Annex I.

6. Article 1 (d) and (e) [formerly, Article 1(c) and (d)]

A reference to the whole of Article 1 of Directive 83/349/EEC⁴ (the initial Proposal only referred to paragraph 1) has been introduced in the definitions of 'parent undertaking' and 'subsidiary' to take partial account of Parliaments' Amendment N°s 1 and 2. This change will permit the inclusion in the definition of cases of effective dominant influence as provided for in Article 1(2) of Directive 83/349/EEC. However, since the application of Article 1(2) depends on Member States' discretion, the last sentence of the definitions contained in the initial

¹ OJ N° C 341, 19.12.1995, p. 16.

² OJ N° C 174, 17.06.1996, p. 16.

³ A4-0295/97. Minutes of the plenary session of 23.10.1997 (PE 262.699).

⁴ Seventh Company Law Directive: OJ N° L 193, 18.07.1983, p. 1.

Proposal has been maintained in order to permit the competent authorities to assess where a dominant influence is exercised. This assessment by the competent authorities is considered necessary so that they can properly perform their prudential duties.

7. Article 1 (f) [formerly, Article 1(e)]

A reference to Article 17, first sentence, of Directive 78/660/EEC⁵ has been introduced into the definition of a "participation" in order to take partial account of Amendment N° 3 adopted by the Parliament. In this way the qualitative criterion of "durable link" provided for in this Article is reflected in the definition. Nevertheless, the automatic criterion of the 20% threshold has been kept in the text. Legal certainty is required on such an important element to determine the scope of application of the Directive.

8. Article 1 (j) [formerly, Article 1(i)]

In accordance with Amendment N° 7 as proposed by Parliament, the definition of 'mixed activity insurance holding company' has been clarified by specifically excluding from its scope 'third country insurance undertakings' and 'reinsurance undertakings'.

9. Article 6

As suggested by the Parliament (Amendment N° 10) changes have been introduced into paragraph 1 of this Article in order to ensure that direct access to the information concerning an undertaking of the group is only granted when such information is not communicated by the insurance undertaking subject to supplementary supervision. Minor drafting changes have also been made in this paragraph to avoid unnecessary repetition.

A reference to paragraph 1 has been introduced into paragraph 3 of this Article to correct an omission in the initial Proposal.

10. Article 9 (1)

The text has been improved to take account of Parliament's Amendment N° 11.

11. Article 11

In paragraph 1 of this Article, the date of implementation of the Directive has been revised to take account of the expected timetable. A new paragraph 2 has been introduced in order to specify the first financial year for which the supplementary supervision provided for in the Directive should apply.

As requested by Parliament (Amendment N° 12) a new paragraph 6 has been included whereby the Commission shall submit a report to the Insurance Committee on the implementation of the Directive and, where appropriate, on any need for

⁵ Fourth Company Law Directive: OJ N° L 222, 14.08.1978, p. 11.

further harmonization in this area. The deadline for the preparation of this report is five years. After consultation with the national experts, this deadline has been considered more appropriate in order properly to assess the functioning of the supervisory mechanism provided for in the Directive.

12. Annex I, section I.A

References to the First Insurance Directives have been introduced in order to take account of Amendment N° 13 by Parliament. References to the Third Insurance Directives, also requested by Parliament, have not been included since, in accordance with the usual rules for drafting legal instruments in the Community, a reference to the original Directive is sufficient where a reference to the amending Directive is already contained in the recital or in other parts of the text.

13. Annex I, section I.C [formerly, second part of section I.B]

Changes to this section have been made in order to take partial account of Amendment N° 14 by Parliament, and have been incorporated in a separate section, under "C". Elements that were totally excluded from the calculation in accordance with the initial Proposal are now accepted with no restriction where they concern the participating insurance undertaking at the level of which the calculation of the adjusted solvency situation is being performed. They are also accepted, where they concern related insurance undertakings, insofar as they are eligible to cover the solvency margin requirement of that related undertaking. In addition, the admissibility of these elements must be consistent with the elimination of double gearing of capital: a sentence making reference to section B has therefore been introduced at the beginning of the new section C.

Other elements whose inclusion was requested by the Parliament have not been mentioned in this section, since either they are already included in the general references contained in section I.A of Annex I, or they are not admissible under the insurance directives for the cover of the solvency margin requirement.

14. Annex I, section I.D [formerly, section I.C]

The wording of this section has been modified as requested by Parliament (Amendment N° 15). The definition of the 'proportional share' (a footnote in the initial Proposal) has been inserted in the main text. In order to clarify the initial Proposal, explicit references have been made to the different calculation methods laid down in Annex I.

15. Annex I, section I.E [formerly, section I.D]

A reference to the Insurance Accounts Directive (Directive 91/674/EEC⁶) has been introduced in order to take into account Amendment N° 16 as requested by Parliament.

⁶ OJ N° L 374, 31.12.91, p. 7.

16. Annex I, section 2.1

The wording of the last paragraph of this section has been modified as also requested by Parliament (Amendment N° 17). The waiver provided for in the initial Proposal where participations are held within one Member State has been extended to the case where the participating undertaking of the insurance undertaking is located in another Member State. However, the use of the waiver in cross-border situations has been made subject to the condition that the competent authorities concerned have reached an agreement, in order to ensure that supervision is effective. Drafting changes have also been made with a view to facilitating the understanding of this section.

17. Annex I, section 2.3

As requested by Parliament (Amendment N°s 18 and 19), funds of an insurance holding company arising from outside the group have been recognised. In order to avoid that any kind of debt held by an insurance holding company is automatically considered as equivalent to own funds, it has been provided that the debt has to fulfil the same conditions as in the First Insurance Directives (as amended by the Third Insurance Directives) concerning subordinated loan capital, cumulative preferential shares, other securities with no specified maturity date and other instruments.

18. Annex I, section 3

Following Amendment N° 27 requested by Parliament, the exact treatment of related third country insurance undertakings, which was implicit in Annex I of the initial Proposal, has been specified. In principle, the EU solvency margin rules, which apply to the participating insurance undertaking, should also be used in relation to related insurance undertakings in order to assess the adjusted solvency situation of that participating undertaking. However, where a related insurance undertaking is situated in a third country in which a solvency margin requirement comparable to that of the EU is enforced, that requirement may be recognised in performing the calculation.

19. Annex I, section 4

This section has been deleted in accordance with Amendment N° 21 of Parliament.

20. Annex II, sections 2.1 and 2.2

Changes have been made to these sections in order to take into account Amendment N°s 23 and 24 as requested by Parliament. The same comments as for section 2.3 of Annex I (paragraph 17 of this Explanatory Memorandum) apply.

Amended Proposal for a European Parliament and Council Directive on the supplementary supervision of insurance undertakings in an insurance group

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 57 (2) thereof,

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Having regard to the proposal from the Commission,

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

Acting in accordance with the procedure referred to in Article 189b of the Treaty,

Whereas Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance⁽¹⁾, as last amended by European Parliament and Council Directive 95/26/EC⁽²⁾ and Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance⁽³⁾, as last amended by Directive 95/26/EC require insurance undertakings to possess a solvency margin;

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Whereas, as a result of Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life assurance Directive)⁽⁴⁾, and Council Directive 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 assurance Directive)⁽⁵⁾, the taking-up and the pursuit of the business of insurance is subject to the granting of a single authorization issued by the competent authorities of the Member State in which an insurance undertaking has its head office; whereas such authorization allows an undertaking to carry on business throughout the Community, under the right of establishment or the freedom to provide services; whereas the competent authorities of home Member States are responsible for monitoring the financial

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health of insurance undertakings, including their state of solvency;

Whereas measures involving supplementary supervision on insurance undertakings in a group should enable the authorities supervising a parent insurance undertaking to make a more soundly based judgement about the financial situation of that insurance undertaking; whereas supplementary supervision should take into account certain undertakings which are presently not subject to supervision under Community directives; whereas this Directive does not in any way imply that Member States are required to play a supervisory role in relation to those undertakings standing alone;

UNCHANGED

Whereas insurance undertakings in a single insurance market engage in direct competition with each other and the standards pertaining to capital requirements must therefore be equivalent; whereas, to that end, the criteria for determining supplementary supervision must not be left solely to Member States; whereas the adoption of common basic standards will be in the best interests of the Community in that it will prevent Distortions of competition and will strengthen the Community insurance system; whereas it is necessary to eliminate certain differences between the laws of the Member States as regards the prudential rules to which insurance undertakings that are part of a group are subject;

UNCHANGED

Whereas it is necessary to calculate an adjusted solvency situation for insurance undertakings in a group; whereas different methods are applied by some authorities in the Community to take into account the effects on the financial position of an insurance undertaking in a group; whereas the principle is accepted that these methods are prudentially equivalent;

UNCHANGED

Whereas the approach adopted consists in bringing about such harmonization as is essential, necessary and sufficient to achieve the mutual recognition of prudential control systems in this field;

UNCHANGED

Whereas certain provisions of this Directive define minimum standards; whereas a home Member State may lay down stricter rules for insurance undertakings authorized by its own competent authorities;

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Whereas this Directive is concerned solely with cases where one insurance undertaking is owned wholly or in part by another insurance undertaking or holding company; whereas the supervision of individual insurance undertakings by the competent authorities remains an essential principle of insurance supervision;

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Whereas the competent authorities must at least have the means of obtaining from all undertakings within a group the information necessary for the performance of their function; whereas cooperation between the authorities responsible for the supervision of insurance undertakings as well as between the authorities responsible for the supervision of different financial sectors must be established;

UNCHANGED

Whereas certain types of intra-group transactions can affect the financial position of an insurance undertaking; whereas the competent authorities should determine whether intra-group transactions are concluded in principle according to normal market conditions; whereas the application of this general principle does not imply that intra-group transactions concluded on other terms should be prohibited under all circumstances; whereas it is therefore desirable that the competent authorities monitor such transactions;

UNCHANGED

Whereas this Directive will, in particular, ensure the homogeneous application throughout the Community of prudential rules established by other Community legislation and facilitate the taking-up and pursuit of the business of insurance; whereas application of this Directive must be aimed at, in particular, protecting the interests of the policyholders of insurance undertakings;

UNCHANGED

Whereas the application of this Directive requires complicated adaptations to be made to the laws of certain Member States in the fields of prudential supervision, company law and taxation, and that these adaptations therefore justify that these Member States may apply the definition of a participation in another undertaking at the level of 25 % of the capital or the voting rights until 1 July 2001 at the latest,

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HAVE ADOPTED THIS DIRECTIVE:

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Article 1 Definitions

Article 1 Definitions

For the purpose of this Directive:

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(a) 'insurance undertaking' means an undertaking which has received official authorization in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;

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(b) 'third country insurance undertaking' means an undertaking which if it had its registered office in the Community would require authorization in accordance with Article 6 of Directive 73/239 or Article 6 of Directive 79/267/EEC;

(b) 'reinsurance undertaking' means an undertaking which only accepts risks ceded by an insurance undertaking or other reinsurance undertakings established in the Community or in a third country;

(c) 'reinsurance undertaking' means an undertaking which only accepts risks ceded by an insurance undertaking or other reinsurance undertakings established in the Community or in a third country;

(c) 'parent undertaking' means a parent undertaking within the meaning of Article 1 (1) of Council Directive 83/349/EEC⁽⁶⁾ and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;

(d) 'parent undertaking' means a parent undertaking within the meaning of Article 1 [...] of Council Directive 83/349/EEC⁽⁶⁾ and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;

(d) 'subsidiary' means a subsidiary undertaking within the meaning of Article 1 (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;

(e) 'subsidiary' 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 subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the undertaking that is their original parent;

(e) 'participation' means the ownership, direct or indirect, of 20 % or more of the voting rights or capital of an undertaking;

(f) 'participation' means participation within the meaning of Article 17, first sentence, of Directive 78/660/EEC⁽⁷⁾ or the ownership, direct or indirect, of 20% or more of the voting rights or capital of an undertaking;

(f) 'participating undertaking' means an undertaking which is either a parent undertaking or an undertaking which holds a participation;

(g) 'participating undertaking' means an undertaking which is either a parent undertaking or an undertaking which holds a participation;

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(g) 'related undertaking' means either a subsidiary or any other undertaking in which a participation is held;

(h) 'insurance holding company' means an undertaking other than an insurance undertaking, the subsidiary undertakings of which are exclusively or mainly insurance or reinsurance undertakings, one at least of such subsidiaries being an insurance undertaking;

(i) 'mixed activity insurance holding company' means a parent undertaking, other than an insurance holding company or an insurance undertaking, the subsidiaries of which include at least one insurance undertaking;

(j) 'competent authorities' means the national authorities which are empowered by law or regulation to supervise insurance undertakings.

Article 2 Scope

Subject to the provisions of Article 3, this Directive shall apply to insurance undertakings which have their registered offices in the Community.

Article 3 Supplementary supervision of insurance undertakings in a group

1. In addition to the provisions of Directives 73/239/EEC and 79/267/EEC laying down the rules for the supervision of insurance undertakings, Member States shall provide that the supervision of any insurance undertaking which is a participating undertaking of at least one insurance undertaking or reinsurance undertaking shall be supplemented to the extent and in the manner prescribed in Articles 5, 6, 8 and 9.

2. Every insurance undertaking the parent undertaking of which is an insurance holding company which has its registered office in the Community shall be subject, to the extent and in the manner prescribed in Articles 5 (2), 6, 8 and 10, to supplementary supervision.

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(h) 'related undertaking' means either a subsidiary or any other undertaking in which a participation is held

(i) 'insurance holding company' means an undertaking other than an insurance undertaking, the subsidiary undertakings of which are exclusively or mainly insurance or reinsurance undertakings, one at least of such subsidiaries being an insurance undertaking;

(j) 'mixed activity insurance holding company' means a parent undertaking, other than an insurance undertaking, a third country insurance undertaking, a reinsurance undertaking or an insurance holding company, the subsidiaries of which include at least one insurance undertaking;

(k) 'competent authorities' means the national authorities which are empowered by law or regulation to supervise insurance undertakings

Article 2 Scope

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Article 3 Supplementary supervision of insurance undertakings in a group

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3. Every insurance undertaking the parent undertaking of which is a mixed activity insurance holding company which has its registered office in the Community shall be subject, to the extent and in the manner prescribed in Articles 5 (2), 6 and 8, to supplementary supervision.

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4. The exercise of supplementary supervision in accordance with this Article shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the insurance holding company or mixed activity insurance holding company or reinsurance undertaking standing alone.

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5. Member States or the competent authorities responsible for exercising supplementary supervision may decide that in the cases listed below an insurance undertaking or other undertaking which is a subsidiary or in which a participation is held need not be included in the supplementary supervision:

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- if the undertaking that should be included is situated in a third country where there are legal impediments to the transfer of the necessary information;

- if, in the opinion of the competent authorities, the undertaking that should be included is of negligible interest only with respect to the objective of monitoring insurance undertakings; or

- if, in the opinion of the competent authorities, the inclusion of the financial situation of the undertaking in the calculation of the adjusted solvency situation would be inappropriate or misleading as far as the objectives of the supplementary supervision of insurance undertakings are concerned.

Article 4

Competent authorities for exercising supplementary supervision

Article 4

Competent authorities for exercising supplementary supervision

1. The supervision referred to in Article 3 shall be exercised by the competent authorities of the Member State that authorized the insurance undertaking under Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC.

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2. Where Member States have more than one

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competent authority for the prudential supervision of insurance undertakings and reinsurance undertakings. Member States shall take the requisite measures to organize coordination between such authorities.

Article 5

Availability and quality of information

1. Member States shall prescribe that the competent authorities shall require that, in any insurance undertaking, which is a participating undertaking or related undertaking of one or more insurance undertakings, insurance holding companies or reinsurance undertakings, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supervision in accordance with this Directive.

2. Member States shall take the necessary steps to ensure that there are no legal impediments preventing the undertakings that are subject to the supervision referred to in Article 3, and their related undertakings and participating undertakings, from exchanging amongst themselves any information which would be relevant for the purposes of supervision in accordance with this Directive.

Article 6

Access to information

1. Member States shall provide that their competent authorities responsible for exercising the supervision referred to in Article 3 shall have access to any information which would be relevant for the purpose of supervision of an insurance undertaking which has participating undertakings, related undertakings or related undertakings of participating undertakings in the insurance undertaking. The competent authorities may address themselves to the undertakings concerned directly to ensure the communication of the required information, or they may receive such information through the insurance undertaking.

2. Member States shall provide that their competent authorities may carry out, within their territory, themselves or through the intermediary of persons they appoint for that purpose, on-the-spot verification of the information received under paragraph 1.

3. Where, in applying paragraph 2, the competent authorities of one Member State wish

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Article 5

Availability and quality of information

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Article 6

Access to information

1. Member States shall provide that their competent authorities responsible for exercising supplementary supervision referred to in Article 3 shall have access to any information which would be relevant for the purpose of supervision of an insurance undertaking [...] subject to such supplementary supervision. The competent authorities may address themselves to the undertakings concerned directly to ensure the communication of the required information, [...] only when such information has been requested from the insurance undertaking and it has not been supplied by it.

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3. Where, in applying paragraphs 1 and 2, the competent authorities of one Member State wish

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in specific cases to verify the information concerning an insurance undertaking situated in another Member State, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request, must, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out.

Article 7

Cooperation between competent authorities

1. Where insurance undertakings are directly or indirectly related, or have a common participating undertaking and are established in different Member States, the competent authorities of each Member State shall communicate to each other all relevant information which may allow or aid the exercise of supervision in the framework of this Directive.

2. Where an insurance undertaking and a credit institution as defined in Council Directive 77/780/EEC⁽⁷⁾ or investment firm as defined in Council Directive 93/22/EEC⁽⁸⁾ are directly or indirectly related, or have a common participating undertaking, the competent authorities and the authorities entrusted with the public task of supervising those other undertakings shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular in the framework of this Directive.

3. Information received pursuant to this Directive and, in particular, any exchange of information between competent authorities which is provided for in this Directive shall be subject to the obligation of professional secrecy defined in Article 16 of Directive 92/49/EEC and Article 15 of Directive 92/96/EEC.

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in specific cases to verify the information concerning an insurance undertaking situated in another Member State, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request, must, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out.

Article 7

Cooperation between competent authorities

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2. Where an insurance undertaking and a credit institution as defined in Council Directive 77/780/EEC⁽⁸⁾ or investment firm as defined in Council Directive 93/22/EEC⁽⁹⁾ are directly or indirectly related, or have a common participating undertaking, the competent authorities and the authorities entrusted with the public task of supervising those other undertakings shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular in the framework of this Directive.

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Article 8
Intra-group transactions

1. With a view to establishing whether transactions are, in principle, carried out according to normal market conditions, Member States shall provide that the competent authorities monitor:

(a) the transactions referred to in paragraph 2 between an insurance undertaking and:

- (i) a related undertaking of the insurance undertaking;
- (ii) a participating undertaking in the insurance undertaking;
- (iii) a related undertaking of a participating undertaking in the insurance undertaking;

(b) the transactions referred to in paragraph 2 between the insurance undertaking and a natural person which holds a participation in:

- (i) the insurance undertaking or any of its related undertakings;
- (ii) a participating undertaking in the insurance undertaking;
- (iii) a related undertaking of a participating undertaking in the insurance undertaking.

2. Member States shall require at least an annual reporting by the insurance undertaking to the competent authorities of the transactions as described in paragraph 1, concerning in particular significant:

- loans,
- guarantees and other off-balance sheet transactions,
- elements eligible for the solvency margin,
- investments.

Article 8
Intra-group transactions

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Article 9

Adjusted solvency requirement

Article 9

Adjusted solvency requirement

1. Subject to Article 3 (1), Member States shall require that an adjusted solvency calculation shall be carried out in accordance with Annex I.

1. In the cases referred to in Article 3 (1), Member States shall require that an adjusted solvency calculation shall be carried out in accordance with Annex I.

2. The calculation described in Annex I shall include a related undertaking or participating undertaking which has its registered office in a third country and which is:

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- an undertaking which, if it were established in the Community, would be required to have an authorization in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC,

- a reinsurance undertaking, or
- an insurance holding company.

3. If the adjusted solvency situation is negative, the competent authorities shall take appropriate measures at the level of the relevant insurance undertaking.

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Article 10

Insurance holding companies

Article 10

Insurance holding companies

1. In the case referred to in Article 3 (2), Member States shall require the application of one of the supplementary methods of supervision in accordance with Annex II.

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2. In the case referred to in Article 3 (2), the calculation shall include all related undertakings of the insurance holding company referred to in Article 9 (2).

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3. If, as a result, the competent authorities are of the opinion that the state of solvency of a related insurance undertaking of the insurance holding company is affected, the competent authorities shall take appropriate measures at the level of that insurance undertaking.

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Article 11

Implementation

Article 11

Implementation

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 January 1997, and bring them into force no later than 1 July 1997. They shall immediately inform the Commission thereof.

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive no later than 1 January 1999 (...). They shall immediately inform the Commission thereof.

2. Member States may decide to apply the definition of a 'participation' at a level of 25 % for a period expiring not later than 1 July 2001.

3. When Member States adopt the measures referred to in paragraph 1, these shall contain a reference to this Directive, or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

2. Member States shall provide that the provisions referred to in paragraph 1 shall first apply to the supervision of accounts for financial years beginning on 1 January 2000 or during that calendar year.

3. Member States may decide to apply the definition of a 'participation' at a level of 25 % for a period expiring not later than 1 July 2001.

4. When Member States adopt the measures referred to in paragraph 1, these shall contain a reference to this Directive, or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

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

6. Five years at the latest after the deadline for implementation of this Directive, the Commission shall submit to the Insurance Committee a report on its implementation and, if appropriate, on any need for further harmonization of supplementary supervision of insurance undertakings in an insurance group.

Article 12
Entry into force

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

Article 12
Entry into force

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Article 13
Addressees

This Directive is addressed to the Member States.

Article 13
Addressees

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- (1) OJ No L 228, 16. 8. 1973, p. 3.
- (2) OJ No L 168, 18. 7. 1995, p. 7.
- (3) OJ No L 63, 13. 3. 1979, p. 1.
- (4) OJ No L 228, 11. 8. 1992, p. 1.
- (5) OJ No L 360, 9. 12. 1992, p. 1.
- (6) OJ No L 193, 18. 7. 1983, p. 1.
- (7) OJ No L 322, 17. 12. 1977, p. 30.
- (8) OJ No L 141, 11. 6. 1993, p. 27.

- (1) OJ No L 228, 16. 8. 1973, p. 3.
- (2) OJ No L 168, 18. 7. 1995, p. 7.
- (3) OJ No L 63, 13. 3. 1979, p. 1.
- (4) OJ No L 228, 11. 8. 1992, p. 1.
- (5) OJ No L 360, 9. 12. 1992, p. 1.
- (6) OJ No L 193, 18. 7. 1983, p. 1.
- (7) OJ No L 222, 14.08.1978, p. 11.
- (8) OJ No L 322, 17. 12. 1977, p. 30.
- (9) OJ No L 141, 11. 6. 1993, p. 27.

ANNEX I

ANNEX I

CALCULATION OF THE ADJUSTED SOLVENCY SITUATION

CALCULATION OF THE ADJUSTED SOLVENCY SITUATION

I. Choice of method of calculation and general principles

I. Choice of method of calculation and general principles

A. One or more of the methods described below shall be applied for the calculation of the adjusted solvency situation of insurance undertakings referred to in Article 3 (1). For this purpose, the elements eligible for the solvency margin shall be adjusted and compared with an adjusted solvency margin.

A. One or more of the methods described below shall be applied for the calculation of the adjusted solvency situation of insurance undertakings referred to in Article 3 (1). For this purpose, the elements eligible for the solvency margin mentioned in Article 16 paragraph 1 of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC shall be adjusted and compared with an adjusted solvency margin.

B. Regardless of the method applied, the intra-group creation of elements eligible for the solvency margin must be eliminated in the calculation of the adjusted solvency situation.

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For this purpose, where the methods do not already provide for this, for the calculation of the elements eligible for the adjusted solvency situation no account shall be taken of:

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(i) all elements eligible for the solvency margin of the insurance undertaking for which the adjusted solvency situation is calculated, which ultimately originate from:

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- a related undertaking of this insurance undertaking, or
- a related undertaking of a participating undertaking in the insurance undertaking;

and

(ii) all elements eligible for the solvency margin of a related insurance undertaking or the notional solvency requirement of a related reinsurance undertaking, of a participating insurance undertaking for which the adjusted solvency situation is calculated, originating from:

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- the participating insurance undertaking,
- related undertakings of the participating insurance undertaking,
- a related undertaking of a participating undertaking in the participating insurance undertaking for which the adjusted solvency situation is calculated.

Applying the same rules mutatis mutandis, the calculation shall also not take into account:

C. Without prejudice to the provisions of section B of this Annex:

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- all subscribed but non paid-in parts of the capital,

- profit reserves and future profits of life assurance undertakings.

C. With the exception of calculating a solvency deficit in a subsidiary, the calculation shall be carried out on a proportional basis⁽¹⁾ taking into account the relevant percentages of the mediating participations.

(1) Where this Annex refers to a proportional share or relevant percentage, the calculation shall be based on the basis of the percentage used for the establishment of the consolidated accounts.

D. The competent authorities shall ensure that the adjusted solvency situation is calculated at the same frequency as the calculation of the solvency margin for insurance undertakings according to Directives 73/239/EEC and 79/267/EEC. The value of the assets and liabilities shall be assessed according to the relevant provisions of Directives 73/239/EEC and Directive 79/267/EEC, as amended by Directives 92/49/EEC and 92/96/EEC.

2. Methods and relevant situations

2.1. Related insurance undertakings

In the case of an insurance undertaking which is a directly participating undertaking in another insurance undertaking, the adjusted solvency calculation shall be carried out in accordance with one of the following methods.

In all methods and in the case that the insurance undertaking has more than one directly related

- [...] subscribed but non paid-in parts of the capital of a related insurance undertaking of the insurance undertaking for which the adjusted solvency is calculated, and

- profit reserves and future profits arising in a related life insurance undertaking of the insurance undertaking for which the adjusted solvency is calculated

may only be included in the calculation insofar as they are eligible to cover the solvency margin requirement of that related undertaking.

D. The calculation of the adjusted solvency of an insurance undertaking shall take account of the proportional share held by the relevant participating undertaking in the related undertakings concerned.

Proportional share means either, where method 1 or method 2 is used, the proportion of the subscribed capital that is owned, directly or indirectly, by the relevant participating undertaking or, where method 3 is used, the percentages used in drawing up the consolidated accounts.

However, whichever method is used, when the related undertaking is a subsidiary and has a solvency deficit, the total solvency deficit of the subsidiary has to be taken into account.

E. The competent authorities shall ensure that the adjusted solvency situation is calculated at the same frequency as the calculation of the solvency margin for insurance undertakings according to Directives 73/239/EEC and 79/267/EEC. The value of the assets and liabilities shall be assessed according to the relevant provisions of Directives 73/239/EEC, [...] 79/267/EEC [...] and 91/674/EEC.

2. Methods and relevant situations

2.1. Related insurance undertakings

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insurance undertaking, the adjusted solvency calculation shall be carried out by integrating each of these directly related undertakings.

In cases of successive participations (e. g. an insurance undertaking is a participating undertaking in another insurance undertaking which is also a participating undertaking in an insurance undertaking) the adjusted solvency calculation shall be carried out at the level of each participating undertaking which has at least one related insurance or reinsurance undertaking.

If method 3 is applied, and without prejudice to specific provisions contained in other Directives, Member States may waive calculation of the adjusted solvency situation for an insurance undertaking, if this undertaking is a related undertaking of another insurance undertaking in the same Member State, which calculates an adjusted solvency situation taking into account its related insurance undertakings and reinsurance undertakings. The same waiver shall be allowed where the participating undertaking is an insurance holding company which has its head office in the same Member State as the insurance undertaking, provided that it is subject to the same standard of supervision as that exercised over insurance undertakings. In both cases, steps must be taken to ensure that capital is distributed adequately within the insurance group, and is genuinely available for transfer between the related and participating undertaking or undertakings concerned.

METHOD 1: Deduction and aggregation method

The adjusted solvency situation of the participating insurance undertaking is the

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[...] Member States may waive calculation of the adjusted solvency [...] of an insurance undertaking:

- either if the undertaking is a related undertaking of another insurance undertaking authorized in the same Member State, and that related undertaking is taken into account in the calculation of the adjusted solvency of the participating insurance undertaking;

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

Member State may also provide for the waiver involved in the above two cases to be granted in the case of an insurance undertaking which is a related undertaking of another insurance undertaking or insurance holding company that has its registered office in another Member State, if the competent authorities of the Member States concerned have agreed to allow the competent authorities of the other Member State to carry out supplementary supervision.

In all cases, the waiver may only be granted if the competent authorities are satisfied that the elements eligible for the solvency margin of the insurance undertakings to be included in the calculation are distributed adequately [...] and genuinely available for transfer between those undertakings.

METHOD 1: Deduction and aggregation method

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difference between:

(i) the sum of:

- 1. the elements eligible for the solvency margin of the participating undertaking;
- 2. the proportional share of the participating undertaking in the solvency margin of the related undertaking, which originates from the participating undertaking;

and

(ii) the sum of:

- (a) the book value in the participating undertaking of all elements eligible for the solvency margin of the related undertaking;
- (b) the solvency requirement of the participating undertaking;
- (c) the proportional share of the solvency requirement of the related undertaking; if the related undertaking is a subsidiary and has a solvency deficit, the total requirement has to be taken into account.

METHOD 2: Requirement deduction method

METHOD 2: Requirement deduction method

The adjusted solvency situation of the participating insurance undertaking is the difference between⁽²⁾:

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- (i) the sum of the elements eligible for the solvency margin of the participating undertaking;

and

(ii) the sum of:

- (a) the solvency requirement of the participating undertaking;
- (b) the proportional share of the solvency requirement of the related undertaking; if the related undertaking is a subsidiary and has a solvency deficit, the total requirement has to be taken into account.

(2) The participation in a related undertaking must be included at the net asset value of shares.

METHOD 3: Accounting consolidation-based method

METHOD 3: Accounting consolidation-based method

The calculation of the adjusted solvency situation of the participating undertaking shall start from the consolidated accounts in order to

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calculate the consolidated elements eligible for the solvency margin of the participating and the related undertakings concerned in accordance with Directive 91/674/EEC and Directive 73/239/EEC and Directive 79/267/EEC, as amended by Directives 92/49/EEC and 92/96/EEC.

The adjusted solvency situation of the participating undertaking is the difference between:

(i) the elements eligible for the solvency margin as shown in the consolidated accounts;
and

(ii) the sum of the solvency requirement of the participating undertaking, and the full or relevant proportional share of the solvency requirement of the related undertaking. If the related undertaking is a subsidiary and has a solvency deficit, its solvency requirement shall be taken into account in full.

2.2. Related reinsurance undertaking

For each related reinsurance undertaking of an insurance undertaking, a notional solvency requirement shall be established according to the same rules that have been laid down in Article 16 (3) of Directive 73/239/EEC or Article 18 (3) of Directive 79/267/EEC. The same own funds elements for the related reinsurance undertaking shall be recognized as eligible for its national own funds, as those according to the rules laid down in Article 24 of Directive 92/49/EEC or Article 25 of Directive 92/96/EEC. The value of the assets and liabilities shall be assessed according to the same rules that have been laid down in Directive 73/239/EEC and Directive 79/267/EEC, as amended by Directives 92/49/EEC and 92/96/EEC.

The adjusted solvency situation of the participating insurance undertaking is obtained by applying the methods and general principles described above.

2.3. Intermediate insurance holding company

Methods 1 and 2

For each participating insurance undertaking in an insurance holding company which is a participating undertaking in an insurance undertaking or reinsurance undertaking, the adjusted solvency situation shall be calculated applying the methods and general principles

2.2. Related reinsurance undertaking

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2.3. Intermediate insurance holding company

Methods 1 and 2

For each participating insurance undertaking in an insurance holding company which is a participating undertaking in an insurance undertaking or reinsurance undertaking, the adjusted solvency situation shall be calculated applying the methods and general principles

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described above, *mutatis mutandis*.

Method 3

The insurance holding company shall be taken into account in the assessment by integration in the accounting consolidation applying the methods and general principles described above, *mutatis mutandis*.

3. Undertakings in third countries

Where there are legal impediments to the transfer of the information necessary for the inclusion of a related undertaking situated in a third country as referred to in Article 9 (2), the calculation shall, in applying the methods referred to in this Annex, deduct from the elements eligible for the adjusted solvency margin, the book value in the participating undertaking of all elements eligible for the solvency margin of the related undertaking.

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described above, *mutatis mutandis*. When carrying out this calculation, resources of the insurance holding company which fulfil the same conditions as laid down in Article 16 paragraph 1 of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC shall be recognized as elements eligible for the solvency margin.

Method 3

The insurance holding company shall be taken into account in the assessment by integration in the accounting consolidation applying the methods and general principles described above, *mutatis mutandis*. When carrying out this calculation, resources of the insurance holding company which fulfil the same conditions as laid down in Article 16 paragraph 1 of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC shall be recognized as elements eligible for the solvency margin.

3. Undertakings in third countries

When calculating the adjusted solvency of an insurance undertaking which is a participating undertaking in a third country insurance undertaking, the latter shall be treated, for the sole purpose of that calculation, in a similar way to a related insurance undertaking, by applying the general principles and methods described in this Annex.

However, when the third country in which that undertaking is established makes it subject to authorization and imposes on it a solvency requirement comparable to that laid down in Directives 73/239/EEC or 79/267/EEC, taking into account the elements of cover of that requirement, Member States may provide that the calculation shall take into account, as regards that undertaking, the solvency requirement and the elements eligible to satisfy that requirement as laid down by the third country in question.

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4. Non-specified cases*DELETED*

The competent authorities shall require in cases that are not covered in 2.1-2.3, an appropriate combination of the described methods.

ANNEX II**ANNEX II**

SUPPLEMENTARY SUPERVISORY METHODS FOR INSURANCE UNDERTAKINGS THAT ARE SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY WHICH IS THE ULTIMATE PARENT OF AN INSURANCE UNDERTAKING IN A GROUP

SUPPLEMENTARY SUPERVISORY METHODS FOR INSURANCE UNDERTAKINGS THAT ARE SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY WHICH IS THE ULTIMATE PARENT OF AN INSURANCE UNDERTAKING IN A GROUP

1. Choice of supplementary supervisory method**1. UNCHANGED**

- One of the methods described below shall be applied in order to check that its capital is sufficient.

- In the case of insurance undertakings referred to in Article 3 paragraph 2, which are the subsidiaries of an insurance holding company and which are established in different Member States, the competent authorities shall ensure that the methods described in this Annex are applied in a coherent manner.

- The competent authorities shall exercise the supplementary supervision in the same frequency as the calculation of the solvency margin for insurance undertakings according to Directives 73/239/EEC and 79/267/EEC.

2. Methods**2. Methods****2.1. 'Solvency warning test'****2.1. 'Solvency warning test'**

The capital of an insurance holding company shall equal or exceed the sum of the solvency requirements of its related insurance undertakings and the notional solvency requirements of its related reinsurance undertakings.

The resources of an insurance holding company which fulfil the same conditions as laid down in Article 16 paragraph 1 of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC shall equal or exceed the sum of the solvency requirements of its related insurance undertakings and the notional solvency requirements of its related reinsurance undertakings.

2.2. 'Accounting consolidation test'**2.2. 'Accounting consolidation test'**

The capital situation of an insurance holding company must equal or exceed the sum of the solvency requirements of its related insurance undertakings and the notional solvency requirements of its related reinsurance

The resources of an insurance holding company must equal or exceed the sum of the solvency requirements of its related insurance undertakings and the notional solvency requirements of its related reinsurance

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undertakings. The capital situation of this insurance holding company is calculated in accordance with the accounting consolidation method in Annex 1, under 2.3, method 3.

3. Undertakings in third countries

Where there are legal impediments to the transfer of the information necessary for the inclusion of a related undertaking situated in a third country as referred to in Article 10 (2), the calculation shall, in applying the methods referred to in this Annex, deduct from the elements eligible for the adjusted solvency margin the book value of the participation and of all other elements eligible for the solvency margin of the related undertaking, which are held by the insurance undertaking.

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undertakings. The resources of this insurance holding company, including the elements which fulfil the same conditions as laid down in Article 16 paragraph 1 of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC, are calculated in accordance with the accounting consolidation method in Annex 1, under 2.3, method 3.

3. Undertakings in third countries

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