COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a
EUROPEAN PARLIAMENT AND COUNCIL DIRECTIVE

on the supplementary supervision of insurance undertakings in an insurance group

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(presented by the Commission)

EXPLANATORY MEMORANDUM

I. Main objectifs of the proposal

The main objective of this proposal is to introduce measures that will make insurance supervisors better equipped to ascertain the true solvency of an insurance undertaking that is part of an insurance group. This will enhance the protection of policy holders and introduce level competitive playing fields amongst insurance undertakings in the Community.

The competent insurance supervisory authorities of the Member States of the European Union are charged by national laws and EC directives to ensure that the insurance undertakings they supervise meet mandatory minimum solvency requirements. The objective is to ensure that insurance undertakings are in a position to meet the contractual commitments entered into with policyholders. The Court of Justice of the EC has also underlined the need for mandatory rules in regard of a permanent supervision of the financial position of insurance undertakings "in view of the sensitive nature of the insurance sector"[1].

Although insurance undertakings are legally independant and are required to meet solvency requirements on an independent basis, the solvency and general financial position of an insurance undertaking may be affected and come under pressure if it belongs to a wider group of undertakings. This may occur if an insurance undertaking sets-up an (insurance) subsidiary undertaking, or if it is itself a subsidiary of another undertaking. The interest of insurance supervisory authorities and concern about insurance undertakings that are part of a group is therefore evident.

Insurance undertakings may be part of groups which have different characteristics. For instance a group which predominantly includes insurance undertakings, or a group which has a broader financial focus and also comprises credit institutions and investment firms, or even a group which has a wider area of activity extending to commercial and industrial business. The present discussion is limited to insurance undertakings that belong to groups which are predominantly composed of insurance undertakings. Although the discussion of groups with a broader range of financial activity, in particular those also involving credit institutions and investment firms ("financial conglomerates") clearly pose equally important supervisory questions, they will be addressed with Member States seperately. Although a certain connection exists between the present subject and that of financial conglomerates, progress on insurance groups is equally desirable and in many respects technically less complex. It is evident that progress in the area of insurance groups will facilitate the discussion on financial conglomerates.

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(1) Case 205/84, Commission v Germany, [1986] ECR 3755, paras 30-32.

The present state of EC coordination and harmonization in the insurance sector limits the scope of supervisory responsability for the solvency of insurance undertakings to the individual financial position of an insurance undertaking ('solo' supervision). The financial or non-financial influence of any other members of a group to which an insurance undertaking may belong are not taken into account for the supervisory assessment of solvency.

The Third Non-Life Insurance Directive (92/49/EEC) and the Third Life Assurance Directive (92/96/EEC)[2] which were to be implemented by 1st July 1994, do not modify the general supervisory approach adopted in the First- and Second Life and Non-Life Directives in this respect. Article 22 of Directive 92/49/EEC and Article 22 of Directive 92/96/EEC do however take into account, the existence of subsidiary undertakings of insurance undertakings for the application of the rules in the Directives concerning the diversification of assets backing the technical provisions. This is the first acknowledgement in the directives of the need to take a wider supervisory view.

A specific point which is pertinent in the case of insurance companies in a group concerns the potential of double gearing of capital which may arise. This practice, which is of concern to all competent authorities carrying-out the prudential supervision of any financial institution, insurance undertaking, credit institution or investment firm, was first discussed in the insurance area by the Commission in the Council working group on the proposal for a Third Non-Life Directive in November 1991. Member States did not consider it opportune to seek solutions for the problem of double gearing at that particular point in time. The Commission did undertake however to address the problem as soon as possible after adoption of the Third Non-Life and Life Insurance Directives.

The Insurance Committee[3], which is composed of Member States' insurance supervisory and regulatory authorities has unanimously agreed on the need for an adequate prudential response at Community level to address the most pressing concerns relating to insurance groups. In reaching this opinion, the Insurance Committee also took into account the fact that the Third Insurance Directives that had to be implemented by 1 July 1994, are based on the mutual recognition of minimum prudential insurance standards and that there is a desire to maintain level competitive playing fields amongst insurance undertakings in the Community.

The prudential issues addressed in this paper relate directly to the solvency of insurance undertakings. In particular measures concerning the prevention of so-called double gearing are additional to the existing solvency rules that have been agreed at EC level in Directives 73/239/EEC and 79/267/EEC. These common solvency rules are the cornerstone of the principle of mutual recognition of minimum prudential standards as expressed in Directives 92/49/EEC and 92/96/EEC. Certain Member States have indeed at their own initiative already adopted measures to take into account the particular issues that arise and to ascertain the true solvency situation of an insurance company which is part of a group. This in itself illustrates the need to have measures in place at Member State level. Minimum measures should be taken by all Member States. First, the level of ultimate protection of policyholders could be said to be lower in Member States that do not have in place a regulatory practice acknowledging the prudential risks that a wider group poses to an insurer standing on its own. Second, solvency requirements for undertakings from Member States applying regulatory measures are stricter than in other States. This leads to an intransparent situation as regards the approach to solvency in insurance companies.

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(2) Directive 92/49/EEC, OJ No L 228, 11.8.1992, p. 1; Directive 92/96/EEC, OJ No L 360, 9.12.1992, p. 1.

(3) Directive 91/675/EEC, OJ No L 374, 1991.

It is essential that any approach that seeks to take account of supervisory issues arising from the fact of being an entity belonging to a wider insurance group should build upon the principle of solo-supervision of individual insurance undertakings. This implies that solo supervision remains the most important approach towards prudential supervision of insurance undertakings. Any new requirements to take account of the effect an insurance group may have on an insurance undertaking's financial position should be regarded as additional to existing solo supervisory requirements. They are not intended to replace the principle of solo supervision or solo requirements

Although the phenomenon of insurance groups may give rise to many supervisory issues and concerns, the present discussion focusses only on those issues which in its opinion are the most pressing and require addressing at EC-level. The discussion should take account of the fact that the aim is to define minimum rules so as to permit mutual recognition and to ensure supervision by the home country. Member States would naturally continue to be able to apply stricter rules to companies established in their own jurisdiction

II. Motivation of the "insurance groups directive" in respect of the principle of subsidiarity

The aim of this directive is to complement the existing key directives in the insurance sectors. These texts aim "to constitute the essential instrument for the achievement of an internal market for insurance a course determinated by the Single European Act and set out in timetable form in the Commission's White Paper, from the point of view of both the freedom of establishment and the freedom to provide financial services". They introduce the "European passport" for insurance undertakings by means of the mechanism of mutual recognition of authorisation and the essential harmonisation of the prudential control systems, in applying the principle of control by the home Member State. The present proposal for a directive aims to strengthen the prudential control system in an internal market. In this way, it falls under the obligations which arise to the Community according to Article 57 of the EEC Treaty

The measures under consideration in this directive must apply to all the institutions concerned in the Community. They also aim in particular at financial groups located in several Member States requiring cooperation and exchanges of information between prudential authorities of various countries in which such information is covered by rules on confidentiality. Certain Member States have already included in their national legislation certain aspects of these measures, or are doing so.

In order to be applied in a coherent manner, it is desirable that this legislation is coordinated at Community level. The absence of common rules affects the mutual confidence between authorities responsible for prudential supervision.

The envisaged measures bring considerable value to the strengthening of the prudential supervision of institutions in the insurance sectors, which contributes to the stability of financial markets as a precondition to a robust economy in general.

A directive forms the only possible method of sufficiently constraining legal action for the Community. A recommendation would be insufficient.

The directive will make it possible to apply the general principles of reinforcement of prudential supervision of the companies referred to above in the insurance sector. A uniform regulation is required insofar as it is absolutely necessary in this directive (in terms of the definitions, methods to prevent double gearing and intra-group transactions). A certain degree of flexibility can be accepted for the additional rules to be adopted at the national level (e.g. the choice of methods to be applied to prevent double gearing, more precise rules for intra-group transactions, etc.). Concrete application measures, drawn up by the Member States, will be able to supplement this directive.

III. Comments on individual Articles

Article 1

(i) Parent undertaking - subsidiary

This definition refers to that in Articles 1 and 2 of the 7th Company Law Directive (83/349/EEC). That definition is not completely adequate in the present context because when seeking to determine relationships between parent and subsidiary companies for supervisory purposes, the aim is to determine the reality of control. There is therefore a desire to have a more flexible approach permitting authorities to consider as a parent undertaking any undertaking which in their view effectively exercises a dominant influence over another undertaking. Consequentially, a subsidiary undertaking would not only be limited to those defined in Directive 83/349/EEC, but also any other undertaking over which a parent exercises a dominant influence in the view of the supervisor.

(ii) "Participation"

The definition threshold for a participation in an another undertaking to determine at which point that undertaking becomes sufficiently significant for the purpose of insurance supervision is important. The aim is to determine when a substantial link exists for any substantial influence on a company's activities. It is therefore proposed to align this threshold with that already existing in the field of company law (Article 17, 4th Company Law Directive 78/660/EEC) and to set it at holdings of capital or voting rights in another undertaking of 20% or more.

Article 2

This Article clarifies that the scope of application of the measures is limited to insurance undertakings with their registered office in the Community.

Article 3

This Article requires Member States to extend supervision to all other entities that could have a bearing on the financial and operating position of a supervised insurance undertaking. It also differentiates between the various supervisory measures and the group entities to which they may be applied. It includes the following enterprises (apart from other supervised insurance undertakings) with which an insurer may have a parent/subsidiary relationship, or in which a participation exists:

- Reinsurance undertakings,

- Holding companies (both at the top of a group or in an intermediate position), distinguisting between financial holding companies with principally or exclusively insurance subsidiaries, and mixed activity holding companies with a wider scope of activity;

- Other unsupervised enterprises carrying out activities that are a direct extension of insurance or are ancillary to insurance, such as asset management companies, real estate companies or companies managing data-processing services.

The inclusion of such unsupervised entities in no way implies that a supervisory function is exercised in relation to that entity standing on its own. An exception to this general rule is the case in which reinsurance undertakings are subject to direct supervision in certain Member States. It should however be left entirely to the discretion of each Member State to decide whether or not to supervise reinsurance undertakings. This Article also permits to exclude application of the measures if it would be inappropriate or if the undertakings are of less relevance or established in third countries and it is difficult to obtain relevant information.

Article 4

This Article clarifies that the authorities that should be charged with exercising any additional functions when an insurance undertaking is part of a group, should be the competent authorities of the Member States as defined in the Third Life (92/96/EEC) and Non-Life Insurance (92/49/EEC) Directives. Contrary to the banking sector (see Directive 92/30/EEC) there is no need to provide for a choice between competent supervisory authorities if a number of insurance undertakings are subsidiaries of a common parent company. The measures in the insurance sector should apply to every insurance undertaking in addition to regular solo supervision. banking supervision allows supervision on a consolidated basis to replace solo supervision under certain conditions

Article 5

This Article requires that the relevant information should be available to the supervisor. Adequate internal procedures should therefore exist to produce relevant information in each insurance undertaking or financial holding company, that is a parent or holds a participation in one or more insurance undertakings, financial holding companies or related undertakings, such as e.g. a reinsurance company. (Such a requirement indeed already exists for insurance undertakings according to Articles 9 and 8 of Directives 92/49/EEC and 92/98/EEC respectively)

Article 6

In order to supervise in any meaningful way the relevant links an insurance undertaking has with other enterprises it is important that insurance supervisors have a right of direct to any relevant information in those enterprises ("droit de suite"). It is proposed that this right should therefore apply with regard to

- any undertaking of which an insurance undertaking is a parent or a subsidiary,
- any undertaking in which a insurance undertaking holds a participation

With regard to the practical enforcement of such a right to information a large margin of flexibility is left to the competent authorities, who may acquire information either directly, or through a supervised insurance undertaking

There may exist a need on the part of the competent authorities also to verify, on spot, any information received. Such verification may also extend to insurance undertakings established in other Member States, e.g. if a financial holding company has insurance subsidiaries in more than one Member State. This Article therefore introduces cooperation rules between competent authoritites as to how to acquire such information

Article 7

Where an insurance undertaking has a parent undertaking, one or more subsidiaries, or holds a participating interest in an enterprise in another Member State, or States, there is also a clear need for competent authorities to cooperate with each other. This Article requires the competent authorities to communicate to each other all relevant information that is likely to simplify their task and allow the supervision of the activity and financial situation of the insurance undertakings that fall under their supervisory responsability Any information passed between competent authorities is already subject to the principle of professional secrecy contained in Directives 92/49/EEC and 92/96/EEC

Article 8

Intra-group transactions can have an important effect on the solvency of insurance undertakings involved. This is the reason why intra-group transactions are covered by the rules on asset diversification contained in the Third EEC-Insurance Directives. These rules are, however, only a partial solution as they are limited to assets backing the technical provisions of a company. Extending the present asset-diversification rules to this type of transactions appears to be an over-restrictive solution with undesirable side effects on the way in which insurance companies conduct their business. As an alternative it is proposed that Member States establish in principle that intra-group transaction should be conducted on market terms ("at arms' length"). This applies to transactions between an insurance undertaking and its parent or subsidiary enterprises, and with an enterprise in which an insurance undertaking holds a participation

Authorities should be informed of intra-group transactions at least by way of an annual reporting requirement. In the view of the Commission the precise rules on the procedure to be followed, the type of information to be supplied to the authorities and any time delay involved should best be determined by the Member States and not at EC-Level. Regarding the type of transactions that should be notified, only significant transactions should be concerned

Article 9

This Article requires Member States to ensure that an adjusted solvency calculation is carried out. The objective is to prevent 'double gearing' of capital. The problem of double gearing may occur when an insurance undertaking establishes holdings in undertakings. Double gearing is caused by using the same capital more than once in covering the required regulatory capital for insurance undertakings in the same group. While each undertaking would meet its solo solvency requirements, a view of the group as a whole may reveal that its solvency has been eroded, or that it is in fact undercapitalized. It is beyond question that double gearing is adverse to an insurer's solvency.

The Annex I to the proposal contains a description of three methods that can be applied to prevent double gearing occuring. All methods are designed to calculate an adjusted solvency requirement in addition to existing requirements

In the event that the adjusted solvency requirement is negative, the supervisory authorities would be required to take appropriate measures at the level of the relevant insurance undertaking.

Article 10

This Article requires Member States to take account of the fact that an insurance holding company that is placed at the top of a group or in an intermediate position, may impact the financial position of an insurance undertaking. It is not the intention to place a holding under direct supervision by the authorities: a holding company remains on unsupervised entity as such.

Annex II to this proposal suggests two methods to apply a capital test to a holding company owning one or more insurance subsidiaries. The choice of method is left to the Member States. In the case that the result of the methods indicates that the solvency of an insurance undertaking is under strain because of the position of its parent holding, and because the holding is not subject to supervision, it is proposed to direct any supervisory response to its insurance subsidiaries and to take adequate measures at that level.

ANNEX I

Three different approaches exist to prevent double gearing. All methods have as their objective to calculate the available supervisory capital in an insurance undertaking after elimination of any double gearing effects. This is in addition to the solo supervisory capital requirements as required by the relevant EC-insurance directives. The application of the three methods is described in Annex I.

I. Accounting consolidation-based method

The first method uses an accounting consolidation applied to the entire group for the calculation of the supervisory capital.

II. Requirement deduction method

A second method avoids the process of accounting consolidation and requires that the supervisory capital of the supervised undertaking has to equal or exceed the sum of the supervisory capital requirements of the supervised undertaking and the related undertakings which are included in the exercise.

III. Deduction and aggregation method

Similar to the "accounting consolidation-based method" and the "requirement deduction method", this method requires the deduction of the aggregated supervisory capital requirements from the supervisory capital.

In order to take into account the existence of a reinsurance undertaking in a group to avoid any double gearing of capital taking place (in Member States that directly supervise reinsurers) or equivalent effects (in Member States that apply an indirect form of supervision through a direct insurer) it is suggested to apply in practice a non-binding solvency calculation to a reinsurance subsidiary or participation. In effect, this approach introduces a "notional capital requirement" for reinsurance undertakings, limited in its use and effects to internal prudential calculations in the present context.

ANNEX II

Two methods may be applied by Member States to determine the financial situation of a "financial holding company", i.e. a company, other than an insurance undertaking, the subsidiaries of which are exclusively or mainly insurance undertakings. The holding company may be at the top of a group or in an intermediate position.

As both methods may be applied by supervisory authorities there may exist situations in which the insurance subsidiaries of a financial holding company are esablished in different Member States. This Annex requires Member States to ensure that there is coherence between the methods applied in different Member States.

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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,

Having regard to the proposal from the Commission[1],

Having regard to the opinion of the Economic and Social Committee[2],

Acting in accordance with the procedure referred to in Article 189b of the Treaty[3],

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[4] 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[5] require insurance undertakings to possess a solvency margin,

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)[6], 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)[7], 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 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,

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(1) OJ No C

(2) OJ No C

(3) OJ No C

(4) OJ No L 228, 16.8.1973, p. 3, Directive as last amended by Directive 95/26/EC, OJ No L 168, 18.7.1995, p. 7.

(5) OJ No L 63, 13.3.1979, p. 1, Directive as amended by Directive 95/26/EC

(6) OJ No L 228, 11.8.1992, p. 1, Directive as amended by Directive 95/26/EC

(7) OJ No L 360, 9.12.1992, p. 1, Directive as amended by Directive 95/26/EC,

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;

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;

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;

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;

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 authories remains an essential principle of insurance supervision;

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;

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,

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;

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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purpose of this Directive.

(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;

(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) "parent undertaking" means a parent undertaking within the meaning of Article 1(1) of Council Directive 83/349/EEC[8] 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) "participation" means 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) "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.

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[8] OJ No L 193, 18.7.1983, p. 1.

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.

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.

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.

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:

   - 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

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.

2. Where Member States have more than one 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 adress 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 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[9] or investment firm as defined in Council Directive 93/22/EEC[10] 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.

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.

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[9] OJ No L 322, 17.12.1977, p. 30
[10] OJ No L 141, 11.6.1993, p. 27

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.

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:

   - 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.

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.

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).

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.

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.

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.

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 13

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX I

CALCULATION OF THE ADJUSTED SOLVENCY SITUATION

1. 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.

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.

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:

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

- 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:

- 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.

- 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.

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 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 difference between:

(i) the sum of:

- the elements eligible for the solvency margin of the participating undertaking;

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[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.

- 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:

- the book value in the participating undertaking of all elements eligible for the solvency margin of the related undertaking;
- the solvency requirement of the participating undertaking;
- 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

The adjusted solvency situation of the participating insurance undertaking is the difference between[2]:

the sum of the elements eligible for the solvency margin of the participating undertaking

and

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.

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 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:

the elements eligible for the solvency margin as shown in the consolidated accounts;

and

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.

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

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 notional 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 Directives 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 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.

4. Non specified cases

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

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

- 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, whichare 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

2.1 "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.

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