COMMISSION OF THE EUROPEAN COMMUNITIES

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Brussels, 22 November 1990

Proposal for a

COUNCIL DIRECTIVE

relating to the supervision of credit Institutions on a consolidated basis

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(presented by the Commission)

EXPLANATORY MEMORANDUM

I. General

As long ago as 1983, the Council adopted a Directive on the supervision of credit institutions on a consolidated basis.[1] In essence, that Directive required Member States to exercise supervision of credit institutions on a consolidated basis. Initially, however, that requirement was established only for banking groups or parts of banking groups whose parent enterprise was a credit institution.

Both the current state of play and discussions within the Community's Banking Advisory Committee and the approaching single market call for an extension and reinforcement of the provisions of the 1983 Directive, which, incidentally, had been intended, at the time of its adoption, as a first stage.

Firstly, the aim is to cover and to subject to supervision on a consolidated basis banking groups whose parent undertaking is not a credit institution but a "financial holding company", i.e. an enterprise whose subsidiaries are exclusively or mainly one or more credit or financial institutions.

This consolidation encompassing the financial holding company presents a number of advantages. First of all, it provides a clearer view of the real own funds situation of the banking group. It also enables a fuller assessment to be made of the exposures incurred by the group as a whole and to relate the level of those exposures to the amount of own funds, which makes it easier for the supervisory authorities to assess the group's actual solvency.

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1 Directive 83/350/EEC of 13 June 1983, OJ No L 193, pp. 18-20

Supervision on a consolidated basis which encompasses the financial holding company also has the advantage of placing in an equivalent supervisory situation vertically structured groups, where the parent undertaking is a credit institution which has a number of subsidiaries and sub-subsidiaries, and horizontally structured groups, where the parent undertaking is a financial holding company whose various subsidiaries may be in a lateral relationship to each other; there is no reason why groups adopting a horizontal structure should be supervised less effectively than vertically structured groups.

It must be emphasized that supervision on a consolidated basis which encompasses the "financial holding company" is not intended to establish rules for supervising what are currently termed "financial conglomerates" or to give the supervisory authorities a kind of pre-eminent status in the supervision of multi-activity groups. The objective is to give the authorities supervising credit institutions a clearer view of the solvency of credit institutions belonging to a group and, therefore, to reinforce protection for depositors.

Secondly, the proposal for a Directive aimed to lay down arrangements for cases where the parent undertaking of a banking group is neither a credit institution nor a financial holding company but is - to use the terminology of the proposal - a "mixed-activity holding company". In situations of this type, consolidation is impossible owing to the variety of activities pursued by the group. It is therefore necessary to provide for alternative measures which consist, in this case, of requiring the mixed-activity holding company and its subsidiaries to provide any information requested by the supervisory authorities, particularly with regard to relationships established and transactions conducted between the mixed-activity holding company and its subsidiaries on the one hand and the group's credit institution(s) on the other.

The third improvement made by the proposal consists of specifying the aims of supervision on a consolidated basis. This could not be done in the 1983 Directive, which had referred to the subsequent coordination of supervisory standards. As great progress has been made in the meantime towards this subsequent coordination, it is now possible to identify the precise aims of supervision on a consolidated basis.

Finally, the fourth improvement made by the proposal concerns the consolidation methods. Here again, it is important to take account of the progress which has since been made by the Community in coordinating consolidation methods, and in particular Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions.[1]

II. Examination of the articles

Article 1: definitions

Most of the definitions are drawn from other Community Directives and should be retained in order to preserve the consistency of Community legislation. The definition of "financial institution" has been amended slightly to bring it into line with the definition in the second Directive on the coordination of banking legislation,[2] although this does not have any material significance.

There is one new definition, however, which is of vital importance for the provisions of the proposal, namely that of "financial holding company" which is defined as being a financial institution the subsidiary undertakings (one or more) of which are either exclusively or mainly credit institutions or financial institutions, one at least of these subsidiaries being a credit institution.

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1 OJ No L 372, 31.12.1986, pp. 1-17.

2 Second Council Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC, OJ No L 386, 30.12.1989, pp. 1-13.

As to the definition of "mixed-activity holding company", this is a residual concept covering any parent undertaking, other than a credit institution or financial holding company, which has at least one credit institution amongst its subsidiaries.

The definition of "participation" - which referred in the 1983 Directive to a holding of 25% or more of the capital of another institution, has been amended to bring it into line with Directive 86/635/EEC of 8 December 1986: the percentage has been reduced to 20% and this refers not only to the holding of the capital but also to the ownership of voting rights in the undertaking.

Article 2: scope

In order to ensure uniform application of the Banking Directives, the scope is the same as in the other Banking Directives, and in particular Directive 89/646/EEC. In addition, as the proposal includes provisions applicable to financial holding companies and mixed-activity holding companies, these enterprises are also encompassed.

Article 3: supervision of credit institutions and financial holding companies on a consolidated basis

This Article constitutes the heart of the proposal.

Paragraph 1 requires supervision of a credit institution to be carried out on the basis of its consolidated financial position. This provision does not differ from the 1983 Directive.

Paragraph 2, by contrast, constitutes the main innovation compared with the 1983 Directive, since it requires supervision of a financial holding company to be based on its consolidated financial position. As the wording of the paragraph makes clear, this supervision on a consolidated basis does not apply in any way that the competent authorities have a supervisory role in relation to the financial holding company in its own right. This clarification is important since, in the course of the preparatory work on the proposal, most of the experts representing national governments stressed that they were opposed to the introduction of individual supervision of financial holding companies as exists in France and Portugal (and outside the Community, in the United States).

Paragraph 3 specifies the cases in which an individual institution can be excluded from consolidation. No special comment is necessary on the first three indents, which already appeared in essence in the 1983 Directive. The fourth indent, by contrast, is new and covers the problem of the exercise of supervision of market risks on a consolidated basis. While Community legislation currently provides for the consolidation of own funds requirements to be carried out in accordance with the rules of Directive 89/647/EEC regarding the solvency ratio of credit institutions, the Commission, through its proposal for a Directive on capital adequacy of investment firms and credit institutions (COM(90)141), introduced an option permitting the supervisory authorities to replace, with regard to the trading book, the requirements of Directive 89/647/EEC by those which were provided for in that proposal and which primarily covered the market risks relating to such trading books. Indirectly, therefore, the question arises as to whether it is necessary to apply that option on a consolidated basis and so calculate on a consolidated basis the own funds requirements laid down to cover the market risks of the trading book. It should be pointed out first of all in this connection that the principle of supervision on a consolidated basis is to be applied generally, and there is no reason why the supervisory authorities should not monitor market risks on a group basis. Only supervision on

a group basis provides a complete picture of the market risks to which the credit institution(s) belonging to a group are exposed. While this principle would seem to be incontestable, it must be acknowledged that there is, as yet, no agreement at international level on the arrangements for supervising market risks on a consolidated basis. Supervision of market risks on a consolidated basis poses new problems compared with such supervision of credit risks. The principal problem is that, as a result of consolidation, opposite positions taken in different entities in a group could offset each other and so lead to a lesser own funds requirement, whereas in the event of the bankruptcy of these different entities there would be no obligation on the liquidators of the entity in which there is a gaining position to compensate for the decrease in net assets that will result, for the other entity, from the existence of a losing position. Other technical problems would arise, such as the problem of determining the time when a group's net position should be calculated where groups are made up of entities operating in different time zones.

There is a further unresolved difficulty, namely that of cases where a subsidiary specializing in securities is subject to special rules governing supervision of its market risks but where its parent bank applies to its trading book the rules laid down in Directive 89/647/EEC on the solvency ratio rather than those in the future Directive on capital adequacy. In such situations, it would not seem to be appropriate to require consolidation on the basis of the rules set out in Directive 89/647/EEC.

Until solutions are found to these problems based possibly on a broad consensus at international level, and therefore pending subsequent coordination, it is appropriate to leave it to the competent authorities to decide whether consolidation should be carried out and, if so, in what way. The exemption is aimed primarily at financial institutions which engage in activities that are principally subject to market risks.

However, it would be incorrect to reserve the exemption to these specialist institutions alone. Other institutions - credit or financial institutions - may perfectly well carry out, in addition to their credit risk operations, activities that are also mainly subject to market risks, particularly where such institutions operate a trading book. But it would wrong to exclude this second category of institutions from consolidation entirely, since, as pointed out above, their activities involve credit risks that should not be excluded from the application, on a consolidated basis, of Directive 89/647/EEC. The exemption from consolidation would therefore cover only the trading books of such institutions, and provided that the competent authorities apply separate supervisory rules to those books.

For the purpose of defining "trading book", references made, in Article 1 of the Directive, to the definition in the proposal for a Directive on capital adequacy in order to ensure, for the reasons given above, that there is perfect symmetry between the two Directives.

Paragraph 4 is intended to empower the competent authorities in Member States in which a credit institution's subsidiaries are situated to act where the competent authorities responsible for exercising supervision on a consolidated basis do not exercise that supervision on the basis of one of the cases described in paragraph 3.

Paragraph 5 identifies the aims of supervision on a consolidated basis: supervision of solvency and control of large exposures. In addition, as Article 12(6) of the second coordination Directive 89/646/EEC of 15 December 1989 requires compliance with the limits on non-financial holdings laid down in that Article 12 to be ensured by means of supervision on a consolidated basis, it is necessary to include this in the aims of supervision on a consolidated basis. However, these limits apply in Directive 89/646/EEC only to credit institutions, it is therefore necessary to restrict application of that provision to cases where the parent undertaking is a credit institution.

Paragraph 6 requires the competent authorities to ensure that there are adequate internal control mechanisms throughout the group subject to supervision on a consolidated basis. This provisions, which has an equivalent in Article 13(2) of the second coordination Directive (89/646/EEC), is justified by concern for the reliability of the consolidated accounts which will be transmitted to the competent authorities.

Paragraph 7 permits Member States to forego supervision on an individual basis of credit institution that, as parent undertakings, are subject to supervision on a consolidated basis.

Paragraphs 8 and 9 are consistent with paragraphs 5 and 6 of Article 3 of Directive 89/647/EEC on a solvency ratio, which set out the competent authorities' obligations as to the supervision of subsidiaries whose parent undertaking has been authorized in another Member State. These provisions have also necessitated the abolition of one exemption from consolidation provided for in the 1983 Directive, namely where 75% of the activities of the credit institution have already been consolidated at a higher level.

Article 4: competent authorities charged with exercising supervision on a consolidated basis

The arrangements introduced set out to identify closely, according to the various practical situations possible, a means of pinpointing the competent authorities responsible for exercising supervision on a consolidated basis. Where this proves impossible, subsidiary criteria are envisaged for cases in which the authorities concerned are unable to agree among themselves.

Leaving aside the case, which presents no difficulty, in which the parent undertaking is a credit institution, this Article resolves the problem in the following way where the parent undertaking is financial holding company:

	Supervision on a consolidated basis exercised by the competent authorities in ...
1. Financial holding company established in A and subsidiary credit institution established in A	A
2. Financial holding company established in A and subsidiary credit institutions established in A, B, C, ...	A
3. Financial holding company established in A and subsidiary credit institution established in B	B
4. Financial holding company established in A and subsidiary credit institutions established in B, C, D, ...	*

* Mutual agreement between the competent authorities in A, B, C and D; failing an agreement, application of the subsidiary criteria for assigning responsibility.

The competent authorities concerned may set aside these rules by mutual agreement.

The subsidiary criteria for assigning responsibility are as follows:

- the Member State in which the credit institution with the biggest balance sheet is established; it can be assumed that the competent authorities responsible for this institution will have most reason to exercise supervision on a consolidated basis;

- where balance-sheet totals are equal, responsibility would lie with the competent authorities which were first to authorize a subsidiary credit institution; in cases - which are certain to be extremely rare - where this criterion of priority is applied, it is likely that the authorities who gave that authorization will assume a role of "primus under pares".

(3)

It will be noted that, in the fourth case cited above, the subsidiary criterion are so designed that they will always mean that the supervision on a consolidated basis will be assigned to the competent authorities in a Member State in which a subsidiary credit institution belonging to the group is established.

Article 5: form and extent of consolidation

Paragraph 1 requires full consolidation of subsidiaries and of enterprises over which the parent undertaking exercises a dominant influence in the opinion of the competent authorities. A single exception is provided for in the second subparagraph. This covers the case where the responsibility of the parent undertaking is clearly limited to its part of the capital because of the explicit responsibility of other shareholders or members.

According to paragraph 2, proportional consolidation is compulsory in the case of participations in enterprises managed jointly with other enterprises and where the liability of each of the shareholders is limited to its share of the capital.

Paragraph 3 leaves Member States the option of providing for other cases of consolidation, while paragraph 4 provides for the consolidation of undertakings providing ancillary banking services.

Article 6: information to be supplied by mixed-activity holding companies and their subsidiaries

As pointed out in the general comments, consolidation based on the parent undertaking of groups headed by a mixed-activity holding company cannot be applied owing to the variety of activities pursued.

At this stage of coordination, and pending the adoption of other supervisory methods, the most effective alternative solution seems to be to require mixed-activity holding companies and their subsidiaries to provide the competent authorities with any information necessary for supervising the subsidiary credit institutions of those mixed-activity holding companies; this information should cover in particular relations established between those credit institutions on the one hand and the mixed-activity holding company and its other subsidiaries on the other.

Article 7

Paragraph 1 requires Member States to remove any impediments preventing a subsidiary or a company in which a participating interest is held from providing information necessary for supervision on a consolidated basis to be effected.

The main provision of paragraph 2 (set out in the second subparagraph) is that, where the competent authorities of the Member State in which the parent undertaking is situated do not exercise supervision on a consolidated basis by virtue of Article 4 of the proposal, they must nevertheless obtain from that parent undertaking the necessary information for supervision to be exercised on a consolidated basis and must transmit it to the competent authorities charged with exercising that supervision. Experience has shown that is frequently very difficult for competent authorities to obtain regular information from a parent undertaking where that undertaking is located in another Member State.

Paragraph 3 requires Member States to permit the exchange of information between their competent authorities.

Paragraph 4 provides for close cooperation between the authorities entrusted with the task of supervising credit institutions, insurance companies and enterprises providing investment services.

Paragraph 5 stipulates that information exchanged between competent authorities is subject to the obligation of professional secrecy as set out in the coordinating Directives.

Paragraph 6 provides for a list of financial holding companies to be drawn up. This provision is not designed to establish indirectly rules for supervising financial holding companies but simply to give the authorities an indication of a factual situation. Unlike the list of credit institutions provided for in the first Directive on the coordination of banking legislation,[1] the list of financial holding companies drawn up for the use of the supervisory authorities will not be published in the Official Journal.

Paragraph 7, which provides for on-the-spot verifications to be carried out, has been taken from the 1983 Directive; it has been extended, however, to enterprises providing ancillary banking services and to the subsidiaries of mixed-activity holding companies.

Paragraph 8 requires Member States to provide for penalties aimed at ensuring that measures taken in implementation of the Directive are properly applied.

Article 8: third countries

This Article seeks to allow the Commission to make proposals to the Council in order to conclude with third countries agreements in accord with the same objectives as the proposal for the directive.

Supervision on a consolidated basis is indeed all the more effective if it is carried out on a worldwide basis, or in any event on the widest possible geographical basis. There is thus a need to ensure that obstacles to the transfer of necessary information do not exist in third countries, and if such obstacles do exist, to strive to remove them for the purpose of the exercise of supervision on a consolidated

1 Article 3(7) of Directive 77/780/EEC, OJ No L 322, 17.12.1977.

basis. This philosophy is fully in line with that which has emerged in other international areas, in particular the Basle Committee on Banking Supervision. In its document entitled "Principles for the supervision of banks' foreign establishments", known as the "Basle Concordat" (revised version of 1983), the Basle Committee firmly recommended the principle of consolidated supervision. This document and the means of implementing it have been endorsed by the competent authorities of a large number of countries.

Regarding negotiations with third countries, it would seem more rational to hold them at the Community level, since it is a harmonised area, and the goals of Member States are therefore similar.

If it appears that an enterprise cannot be consolidated in practice, since it is not possible to obtain the necessary information, or to be assured of its veracity (the case provided for in Article 3(3), first indent of the current proposal), the participation in this enterprise must be deducted from the own funds of the credit institution, by the application of Article 2(1), 12th indent of the Council directive 89/299/EEC of 17 April 1989, concerning the own funds of credit institutions(1).

The provisions of Articles 5, paragraph 2, and 11 of the directive 89/646/EEC regarding the suitability of shareholders may prove equally useful in ensuring that appropriate information is provided by the parent undertaking.

Article 9: final provisions

The final deadline for transposing the Directive into national law is set at 1 January 1993.

1 OJ No L 124, 5.5.1989, pp. 16 to 20.

Article 10

This Article provides for the repeal of Directive 83/350/EEC with effect from 1 January 1993.

Article 11

This Article contains the normal wording to the effect that the Directive is addressed to the Member States.

Proposal for a

COUNCIL DIRECTIVE

relating to the supervision of credit institutions on a consolidated basis

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal of the Commission,

In cooperation with the European Parliament,

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

Whereas Council Directive 83/350/EEC of 13 June 1983 on the supervision of credit institutions on a consolidated basis[1] established the necessary framework for the introduction of the consolidated supervision of credit institutions; whereas following the transposition of the abovementioned Directive into the national law of the Member States the principle of consolidated supervision is applied throughout the Community;

Whereas in order to be effective consolidated supervision must be applied to all banking groups, including those whose parent undertaking is not a credit institution; whereas the competent authorities must have sufficient legal powers to be able to undertake such supervision;

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1 OJ No L 193, 18.7.1983, p. 18.

Whereas in the case of groups with diversified activities whose parent undertaking controls at least one credit institution subsidiary, the competent authorities must be able to assess the situation regarding inter-group credit within such groups; whereas the Member States can, until full coordination is achieved, lay down the method of consolidating such groups, bearing in mind the objective described in this Directive; whereas the competent authorities at least must have the means of obtaining (from all undertakings within the group) the information necessary to carry out their supervisory responsibilities; whereas cooperation between the authorities responsible for the supervision of different financial sectors and institutions must be established to ensure the effective supervision of groups undertaking a range of financial activities;

Whereas the rules of limiting the risks taken by a credit institution subsidiary on a mixed activity holding company of which it is a subsidiary, as well as those taken on the other subsidiaries of this mixed activity holding company, can be established to be particularly helpful; it would seem however preferable to settle this question in a more systematic manner in the framework of a future directive on the limitation of large exposures;

Whereas the Member States can furthermore refuse or withdraw the banking licence in the case of certain group structures considered inappropriate for the undertaking of banking activities, notably because such structures would not be susceptible to effective supervision; whereas in this respect the competent authorities have the powers mentioned in Article 11 of the Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions and amending Directive 77/780/EEC[1] in order to ensure the safe and prudent management of credit institutions;

Whereas the Member States can equally apply, to groups with structures not covered in this Directive, appropriate techniques of supervision; whereas if such structures become common this Directive should be extended to embody them;

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1 OJ No L 386, 30.12.1989, p. 1.

Whereas in principle all undertakings engaging in activities designated as banking activities in the Annex to Directive 89/646/EEC must be included in consolidated supervision; whereas in consequence the definition of financial institution must be modified;

Whereas until further coordination of the own funds requirements against market risks has been completed, the competent authorities may continue to exclude from the scope of consolidated supervision those financial institutions engaged in activities which are principally subject to market risks and which are subject to particular rules of supervision;

Whereas following the adoption of Council Directive 86/635/EEC of 8 December 1986 concerning the annual accounts and the consolidated accounts of banks and other financial establishments[1] establishing rules of consolidation applicable to consolidated accounts published by credit institutions, it is possible to define more precisely the methods to be used in prudential supervision conducted on a consolidated basis;

Whereas the consequent modifications to Directive 83/350/EEC are so considerable that it is preferable that this should be directly replaced by the present Directive;

Whereas the present Directive realizes general objectives defined in the Single European Act; whereas it will in particular ensure the homogeneous application throughout the Community of prudential rules established by other Community legislation which must be observed on a consolidated basis: Commission Recommendation 87/62/EEC of 22 December 1986 relating to the monitoring and control of large exposures of credit institutions[2], Council Directive 89/647/EEC of 18 December 1989

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1 OJ No L 372, 31.12.1986, p. 1.

(4) 2 OJ No L 33, 4.2.1987, p. 10.

regarding the solvency ratio of credit institutions[1] and rules harmonized by Directive 89/646/EEC; whereas the present Directive is of particular importance in order to ensure the correct application of Council Directive 89/299/EEC of 17 April 1989 defining the own funds of credit institutions[2];

Whereas it is desirable that agreement should be reached, on the basis of reciprocity, between the Community and third countries with a view to allowing the implementation of consolidated supervision on the widest possible geographical scale,

HAS ADOPTED THIS DIRECTIVE:

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1 OJ No L 386, 30.12.1989, p. 14.

2 OJ No L 124, 5.5.1989, p. 16.

ARTICLE 1

DEFINITIONS

For the purposes of this Directive:

- "credit institution" means a credit institution within the meaning of the first indent of Article 1 of Council Directive 77/780/EEC[1];

- "financial institution" means an undertaking other than a credit institution whose principal activity is to acquire and hold participations or to exercise one or more of the operations included in numbers 2 to 12 of the Annex to Directive 89/646/EEC;

- "financial holding company" means a financial institution the subsidiary undertakings (one or more) of which are either exclusively or mainly credit institutions or financial institutions, one at least of these subsidiaries being a credit institution;

- "mixed-activity holding company" means a parent undertaking other than a financial holding company whose subsidiaries include at least one credit institution;

- "ancillary banking services undertaking" means an undertaking whose principal activity consists in holding or managing property, managing data-processing services, or any other similar activity which is ancillary to the main activity of one or several credit institutions;

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1 OJ No L 322, 17.12.1977, p. 30.

- "participation" means the ownership, direct or indirect, of 20% or more of the voting rights or capital of an undertaking;

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

- "subsidiary" means a subsidiary undertaking within the meaning of Article 1(1) and Article 2 of Directive 83/349/EEC; all subsidiaries of subsidiary undertakings are treated as subsidiaries of the parent undertaking at the top of the group structure;

- "competent authorities" means the national authorities which are empowered by law or regulation to supervise credit institutions.

- "trading book" means the proprietary positions defined in Article 2 of Council Directive .../.../EEC[2] [on capital adequacy of investment firms and credit institutions]

1 OJ No L 193, 18.7.1983, p. 1.

2 OJ No L ..., ..., p. ... .

ARTICLE 2

SCOPE

This Directive shall apply to all credit institutions, financial holding companies and mixed activity holding companies.

The institutions permanently excluded by Article 2 of Directive 77/780/EEC, with the exceptions of the central banks of the Member States, shall be treated as financial institutions for the purposes of the Directive.

ARTICLE 3

SUPERVISION ON A CONSOLIDATED BASIS OF CREDIT INSTITUTIONS AND FINANCIAL HOLDING COMPANIES

1. Any credit institution which has a participation in another credit or financial institution shall be subject, to the extent and in the manner required by Article 5, to supervision on the basis of the consolidation of its financial situation with that of the institution in which it has such a participation. This supervision shall be applied at least in the areas referred to in paragraphs 5 and 6 of this Article.

2. Any financial holding company shall be subject, to the extent and in the manner required by Article 5, to supervision on the basis of the consolidation of its financial situation with that of the credit institutions and financial institutions in which it has a participation. This supervision shall be applied at least in the areas referred to in paragraphs 5 and 6 of this Article. This supervision shall not imply in any way that the competent authorities have a supervisory role in relation to the financial holding company in its own right.

3. The competent authorities charged with exercising consolidated supervision pursuant to Article 4 can exclude a credit institution or financial institution from consolidation:

   - if the credit institution or financial institution in which there is a participation is situated in a non-member country where there are legal impediments to the transfer of the necessary information, or

   - if the enterprise included is, in the opinion of the competent authorities, of only negligible interest in regard to the goal of monitoring credit institutions and in all cases if the total balance sheet of the credit or financial institution in which

there is a participation represents less than the smaller of the following two amounts : 1% of the total balance sheet of the credit institution or the financial holding company which has the participation or 10 million ECU; if several enterprises meet the above criteria, they must nevertheless be included in the consolidation where they collectively present a non-negligible amount with respect to the goal alluded to above, or

- if the nature of the business of the credit institution or financial institution in which there is a participation is such that, in the opinion of the competent authorities charged with exercising supervision on a consolidated basis, the consolidation of its financial situation would be inappropriate or misleading, or

- until further coordination of the capital requirements relating to market risks, if the financial institution in which the participation is held is involved in activities which are principally subject to market risks and it is subject to particular rules of supervision; the competent authorities may similarly exclude from consolidation the trading books of credit or financial institutions in which there is a participation, provided that those trading books are subject to special rules of supervision.

4. When the competent authorities of a Member State do not exercise supervision on a consolidated basis on the basis of the cases provided for in paragraph 3, the parent undertaking shall provide to the competent authorities of Member States where credit institution subsidiaries are situated, on request by the said authorities, information to enable supervision on a consolidated basis to be exercised in accordance with this Directive.

5. Supervision of solvency and control of large exposures of a credit institution or a financial holding company shall be carried out on a consolidated basis in accordance with the provisions of the Community acts in force. Member States may adopt any adjustments necessary to apply these acts to financial holding companies.

   When the parent undertaking is a credit institution, its submission to the limits set in Article 12(1) and (2) of Directive 89/646/EEC must be supervised and controlled on a consolidated basis.

6. The competent authorities shall ensure the existence of adequate internal control mechanisms in all the credit institutions and financial institutions included in the scope of the consolidated supervision which is exercised on a credit institution or a financial holding company.

7. Member States may forgo supervision on an individual basis of credit institutions that, as parent undertakings, are subject to supervision on a consolidated basis. If the competent authorities do undertake solo supervision of such credit institutions they may, for the calculation of own funds, make use of the provision contained in Article 2(1), third subparagraph of Directive 89/299/EEC.

8. In the case where a credit institution whose parent is a credit institution has been authorised and is situated in another Member State, the competent authorities which granted that authorisation shall exercise a sub-consolidated or non-consolidated supervision of this credit institution subsidiary.

9. Notwithstanding paragraph 8, the competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may delegate by way of a bilateral agreement their responsibility for supervision to the competent authorities

which have authorised and which supervise the parent undertaking. The Commission shall be kept informed of the existence and content of such agreements. It shall forward such information to the other authorities and to the Banking Advisory Committee.

ARTICLE 4

COMPETENT AUTHORITIES CHARGED WITH EXERCISING SUPERVISION ON A CONSOLIDATED BASIS

1. When the parent undertaking is a credit institution, supervision on a consolidated basis shall be exercised by the competent authorities that authorised it under Article 3 of Directive 77/780/EEC.

2. When the parent of a credit institution is a financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities which authorised this credit institution under Article 3 of Directive 77/780/EEC.

   However when credit institutions authorised in more than one Member State have for their parent, the same financial holding company, supervision on a consolidated basis shall be undertaken by the competent authorities of the credit institution authorised in the Member State where the financial holding company has been set up.

   If there is no credit institution subsidiary in the Member State where the financial holding company has been set up, the competent authorities of the Member States concerned (including the Member State where the financial holding company has been set up) will seek to reach a common agreement as to who amongst them will exercise supervision on a consolidated basis. In the absence of such an agreement, supervision on a consolidated basis will be exercised by the competent authorities of the credit institution with the biggest balance sheet; if this is the same for two or more credit institutions, supervision on a consolidated basis shall be undertaken by the competent authorities of the credit institution which was authorised first under Article 3 of Directive 77/780/EEC.

3. The competent authorities concerned can by common agreement waive the rules set out in the first and second subparagraphs of paragraph 2.

4. The agreements referred to in the third subparagraph of paragraph 2 and in paragraph 3 shall provide for concrete cooperation procedures to be established and the transmission of information to be effected, which is necessary for the goals of this Directive to be achieved.

ARTICLE 5

FORM AND EXTENT OF CONSOLIDATION

1. The competent authorities charged with the exercise of supervision on a consolidated basis must, for the purposes of supervision, require full consolidation of credit institutions and financial institutions which are subsidiaries of the parent undertaking or over which the latter effectively exercises a dominant influence in the opinion of the competent authorities. This consolidation must ensure the supervision on a consolidated basis of at least all the activities which are included in the Annex to Council Directive 89/646/EEC.

   However, pro-rata consolidation may be prescribed in the cases where, in the opinion of the competent authorities, the responsibility of the undertaking holding the participation is limited to its part of the capital, because of the responsibilities of other shareholders or members whose solvency is considered satisfactory. The responsibility of the other shareholders and members must be clearly established, if necessary by means of formal, signed commitments.

2. The competent authorities charged with the exercise of supervision on a consolidated basis must, in order to do so, require proportional consolidation of participations in credit institutions and financial institutions managed by an undertaking included in the consolidation together with one or more undertakings not included in the consolidation, where the liability of the said undertakings is limited according to the share of the capital held by them.

3. In cases of participations other than those in paragraphs 1 and 2, or where a significant influence is exercised in fact, the competent authorities shall determine whether and how consolidation is to be carried out. In particular, they may permit or require the equity method to be used.

4. Ancillary banking services undertakings shall be included in the consolidation in accordance with the methods laid down in paragraphs 1, 2 and 3.

ARTICLE 6

INFORMATION TO BE SUPPLIED BY MIXED-ACTIVITY HOLDING COMPANIES AND THEIR SUBSIDIARIES

1. Until further coordination of the methods for consolidating, Member States shall provide that the competent authorities require mixed-activity holding companies and their subsidiaries to supply any data or information which would be relevant for the purposes of supervising credit institutions which are subsidiaries of the said mixed-activity holding companies.

2. Member States shall provide that the competent authorities may themselves carry out, or have carried out on their behalf by external inspectors, inspections on the spot to verify data received from mixed-activity holding companies and their subsidiaries.

ARTICLE 7

MEASURES TO FACILITATE APPLICATION OF SUPERVISION ON A CONSOLIDATED BASIS

1. Member States shall take the necessary steps to ensure that there are no legal impediments preventing any credit institution, financial institution, ancillary banking services undertaking or a subsidiary of the kind covered in Article 6 from supplying to a credit institution, a financial holding company or a mixed-activity holding company which has a participation in it information which is necessary for supervision on a consolidated basis to be effected in accordance with this Directive.

2. When the parent undertaking and the credit institution(s) which is (are) its subsidiary (ies) are situated in different Member States, the competent authorities of each Member State shall communicate all information which may allow or aid the exercise of supervision on a consolidated basis.

   When the competent authorities of the Member State where the parent undertaking is situated do not exercise supervision on a consolidated basis by virtue of the provisions in Article 4 they must obtain from the parent undertaking the necessary information for supervision on a consolidated basis and transmit it to the competent authorities charged with exercising this supervision.

3. Member States shall permit the exchange between their competent authorities of the information provided for in paragraph 2, it being understood that, in the case of financial institutions or ancillary banking services undertakings, the collection or

possession of information shall not in any way imply that a supervisory function is being exercised on a single basis over those institutions by the competent authorities.

Likewise, the Member States shall authorise the exchange of information between their competent authorities provided for in Article 6 on the understanding that the collection or receipt of information does not in any way imply that the competent authorities are supervising the mixed activity holding company and its subsidiaries which are not credit institutions.

4. Where a credit institution, a financial holding company or a mixed-activity holding company controls one or more subsidiary insurance companies or other institutions providing investment services which are subject to licensing arrangements, the competent authorities and the authorities entrusted with the public task of supervising insurance companies or the said other institutions providing investment services shall cooperate closely. Those authorities shall provide one another with any information likely to simplify their task and to ensure supervision of the activity and overall financial situation of the undertakings they supervise.

5. Information received as a result of the provisions of 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 as set out in Article 12 of Directive 77/780/EEC.

6. The competent authorities shall establish a list of financial holding companies they supervise on a consolidated basis. This list shall be notified to other competent authorities and to the Commission.

7. When in applying this Directive to a credit institution, a financial holding company or a mixed-activity holding company, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit institution, a financial institution, an ancillary banking services undertaking or a subsidiary of the kind covered in Article 6, situated in another Member State, they must ask the competent authorities of that other Member State for this verification to be carried out. The authorities which have received the request must, within the framework of their competence, act upon it either by carrying out the verification themselves, or by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out.

8. Without prejudice to cases covered by criminal law, Member States shall ensure that their respective competent authorities may impose on financial holding companies and mixed activity holding companies or those who effectively direct the business of those financial holding companies which breach legislative, regulatory or administrative provisions implemented in compliance with this Directive, penalties or measures aimed specifically at ending observed breaches or the causes of such breaches. In certain cases these measures may require the intervention of the courts. The competent authorities shall cooperate closely in order to ensure that the above-mentioned penalties or measures will produce the due results, especially when the head office of a financial holding company or of a mixed-activity holding company is not located in the same place as its central administration or its main establishment.

ARTICLE 8

THIRD COUNTRIES

1. The Commission may submit proposals to the Council, whether at the request of a Member State, or on its own initiative, in order to negotiate agreements with one or more third countries with the goal of establishing means of applying supervision on a consolidated basis

   - to credit institutions having a head office in a third country and

   - to credit institutions situated in a third country whose parent undertaking, whether a credit institution or a financial holding company, has its head office in the Community.

2. The agreements referred to in paragraph 1 tend in particular to ensure both:

   - that the competent authorities of Member States are able to obtain the information necessary to supervise, on a consolidated basis, a credit institution or a financial holding company from the Community which holds participations in a credit institution or a financial institutions situated outside the Community, and

   - that the competent authorities of third countries are able to obtain the necessary information to supervise the parent undertakings whose head office is situated in their territory and which hold participations in credit institutions or in financial establishments situated in one or more Member States.

3. The Commission will examine with the Advisory Committee set up under Article 11 of Directive 77/780/EEC the result of these negotiations and the situation which ensues.

ARTICLE 9

FINAL PROVISIONS

Member States shall implement the provisions necessary to comply with the provisions of the present Directive at the latest by 1 January 1993. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, 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.

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

ARTICLE 10

Council Directive 83/350/EEC is hereby repealed with effect from 1 January 1993.

ARTICLE 11

This Directive is addressed to the Member States.

Done at Brussels, For the Council

FINANCIAL STATEMENT

This proposal will not entail any cost to the budget of the European Communities.

IMPACT ON COMPETITIVENESS AND EMPLOYMENT

I. What is the main justification for the measure?

The main justification for the measure is the need to extend the requirement regarding supervision on a consolidated basis (already established by Directive 83/350/EEC) to banking groups whose parent company is a "financial holding company", i.e. an enterprise which is not itself a credit institution and whose subsidiary enterprises are either exclusively or mainly credit or financial institutions.

II. Characteristics of the enterprises concerned

The enterprises concerned are principally credit institutions. The proposal also involves, in various respects, the subsidiaries of credit institutions, the parent companies of credit institutions and the other subsidiaries of such parent companies.

Given the minimum initial capital and own funds amounts laid down by Articles 4 and 10 of Directive 89/646/EEC, it is doubtful whether the credit institutions concerned include many SMEs.

There is no regional concentration.

III. What are the obligations imposed directly on enterprises?

The proposal does not impose any direct obligation on enterprises. The obligations provided for in the Directive are imposed on the authorities responsible for licensing and supervising credit institutions. In order to carry out their obligations, the competent authorities' main task will be to request the enterprises concerned to transmit consolidated accounts and to observe ratios laid down by other Community legislation. Indirectly, therefore, the enterprises concerned

will have obligations imposed on them; but it should be noted that those obligations were already very largely provided for in the 1983 Directive: the proposal creates new obligations only for the parent companies of credit institutions which are not themselves credit institutions and for the other subsidiaries of those parent companies.

IV. What obligations are likely to be imposed indirectly on enterprises through local authorities?

No obligations are likely to be imposed on the enterprises concerned by local authorities.

V. Are there special measures for SMEs? If so, of what kind?

The proposal is designed to improve supervision of a regulated category of enterprises (credit institutions); it therefore has nothing to do with SMEs. In accordance with the principle of materiality, however, the Directive permits the competent authorities to exclude from consolidation enterprises that are of only negligible interest in regard to the goal of monitoring credit institutions and in all cases if the total balance sheet of the credit or financial institution in which there is a participation represents less than the smaller of the following two amounts: 1% of the total balance sheet of the credit institution or the financial holding company which has the participation or ECU 10 million.

VI. What is the anticipated effect on:

(a) the competitiveness of enterprises?

(b) employment?

(a) Given that the proposal is intended to ensure fuller monitoring of the activities of credit institutions, the danger of such institutions failing should be lessened, which can only have a

beneficial effect on their performance and on the stability of economic and financial activity in general.

(b) No effect on employment is anticipated.

VII. Have the social partners been consulted? What are their views?

Wage- and salary-earners' representatives were informed of the Commission's intention to draft this Directive, which will have no effect on their situation.

With regard to the enterprises involved, informal discussions have been held with the Banking Federation of the European Community, the Savings Banks Group of the European Economic Community and the Association of Cooperative Banks of the EC.

Generally speaking, those associations have welcomed the proposal.

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