

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(91) 491 final - SYN 306

Brussels, 2 December 1991

Amended proposal for a

COUNCIL DIRECTIVE

**RELATING TO THE SUPERVISION OF CREDIT INSTITUTIONS  
ON A CONSOLIDATED BASIS**

(presented by the Commission pursuant to Article 149(3)  
of the EEC-Treaty)

EXPLANATORY MEMORANDUM

1. On 9 October 1990 the Commission transmitted to the Council a proposal for a Directive relating to the supervision of credit institutions on a consolidated basis.<sup>1</sup> The main aim of that proposal is to reinforce supervision of credit institutions belonging to a group, particularly by extending the scope of supervision on a consolidated basis to banking groups whose parent undertaking is not a credit institution.

2. The Economic and Social Committee delivered its opinion on 27 February 1991.<sup>2</sup> Parliament has carried out a first reading and delivered an opinion on 20 November 1991 on the basis of a report drawn up by the Committee on Legal Affairs and Citizens' Rights. In accordance with Article 149(3) of the Treaty and in the light of the two opinions delivered, the Commission is presenting an amended version of its proposal for a Directive.

3. The Commission has incorporated into its proposal a number of amendments proposed by Parliament and the Economic and Social Committee. A number of other amendments designed to improve and clarify certain provisions are also proposed.

The main amendments are commented on below.

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1 COM(90) 451; OJ No C 315, 14.12.1990.

2 OJ No C 102, 18.4.1991, p. 19.

Recitals

Two new recitals, the fifth and the twelfth, have been added in the light of amendments proposed by Parliament.

Article 3: Supervision of credit institutions on a consolidated basis

Paragraph 3

Given the progress made in discussions in the Council and Parliament on the proposal for a Council Directive on capital adequacy of investment firms and credit institutions,<sup>1</sup> the Commission no longer considers it necessary to retain the fourth indent which gave Member States the option of excluding from consolidation financial institutions that are principally subject to market risks. Pending the adoption of the above-mentioned Directive, the consolidation of such institutions will be carried out according to the methods determined by Member States (see comments below on the new paragraph 2 of Article 9).

Paragraph 4

A new first subparagraph has been incorporated in the light of an amendment proposed by Parliament.

Paragraph 5

Supervision of capital adequacy in relation to market risks has been added to the list of subjects to be covered by supervision on a consolidated basis.

A third subparagraph has been added in the light of an amendment proposed by Parliament.

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<sup>1</sup> COM(90) 141; OJ No C 152, 21.6.1990.

Paragraph 7

Provision has been made, subject to observance of strict conditions, for a further option for forgoing supervision on an individual basis, namely where a credit institution is the subsidiary of a financial holding company with its head office in the same Member State.

A new second subparagraph sets out, by analogy with the provisions of Article 3(4) of Directive 89/647/EEC on the solvency ratio, the conditions governing the exemption arrangements.

Paragraph 10

This new paragraph authorizes the competent authorities to request information from the non-consolidated subsidiaries of a credit institution or financial holding company.

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

Paragraph 5

This paragraph has been inserted in order to ensure cooperation between competent authorities where, in the Member States, more than one authority is responsible for the prudential supervision of credit and financial institutions.

Article 5: Form and extent of consolidation

Paragraph 3

Paragraph 3 has been redrafted so as to cover only cases where there is a participation or other capital link.

In the light of an amendment proposed by Parliament, a few words have been added to specify the conditions under which the equity method may be used.

Paragraph 4

This new paragraph sets out, on an optional basis, other cases that may give rise to supervision on a consolidated basis. It covers cases where there is no participation or other capital link.

Article 9: Final provisions

Paragraph 2

This new paragraph stipulates that, pending adoption of the above-mentioned Directive on capital adequacy, the competent authorities will determine the methods for consolidating financial institutions which are exposed mainly to market risks, and this by way of derogation from the rules laid down in Article 3(5) (see above comments on Article 3(3)).

Amended 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 from the Commission<sup>(1)</sup>,

In co-operation with the European Parliament<sup>(2)</sup>,

Having regard to the Opinion of the Economic and Social Committee<sup>(3)</sup>,

Whereas Council Directive 83/350/EEC of 13 June 1983 on the supervision of credit institutions on a consolidated basis<sup>(4)</sup> established the necessary framework for the introduction of supervision of credit institutions on a consolidated basis; whereas following the transposition of that Directive into the national law of the Member States the principle of supervision on a consolidated basis is now applied throughout the Community;

Whereas, in order to be effective, supervision on a consolidated basis must be applied to all banking groups, including those the parent undertakings of which are not credit institutions; whereas the competent authorities must have sufficient legal powers to be able to exercise such supervision;

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(1) OJ C 315 of 14.12.1990, p. 15.

(2) Decision of 20 November 1991 (not yet published in the Official Journal).

(3) OJ C 102 of 18.4.1991, p. 19.

(4) OJ L 193 of 18.7.1983, p. 18.

Whereas, in the case of groups with diversified activities the parent undertakings of which control at least one credit institution subsidiary, the competent authorities must be able to assess the financial situation of a credit institution in such a group; whereas, pending subsequent co-ordination, the Member States may lay down appropriate methods of consolidation for the achievement of the objective of this Directive; 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 co-operation between the authorities responsible for the supervision of different financial sectors must be established to ensure the effective supervision of groups carrying on a range of financial activities;

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

Whereas risks taken by one or more credit institutions are revealed not only in figures shown in (consolidated) balance sheets and annual accounts but are also subject to the manner in which relations within groups are organized and the relative independence of the management of the credit institutions involved;

Whereas the Member States can, furthermore, refuse or withdraw banking authorization in the case of certain group structures considered inappropriate for carrying on banking activities, in particular because such structures could not be supervised effectively; whereas in this

respect the competent authorities have the powers mentioned in Article 8(1)(c) of the first Council Directive 77/780/EEC of 17 December 1977 on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions<sup>(1)</sup>, and in Articles 5 and 11 of the second Council Directive 89/646/EEC of 15 December 1989 on the co-ordination 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<sup>(2)</sup>, in order to ensure the sound and prudent management of credit institutions;

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

Whereas supervision on a consolidated basis must take in all activities defined in the Annex to Directive 89/646/EEC; whereas all undertakings principally engaged in such activities must therefore be included in supervision on a consolidated basis; whereas in consequence the definition of financial institution given in Directive 83/350/EEC must be widened to cover such activities;

Whereas regarding the consolidation of financial institutions involved in activities principally subject to market risks and subject to particular rules of supervision, the co-ordination of the methods for the consolidated supervision of market risks is possible in the framework of Community harmonization of capital adequacy of investment

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(1) OJ L 322 of 17.12.1977, p. 30.

(2) OJ L 386 of 30.12.1989, p. 1.



firms and credit institutions, for which the Commission has introduced a proposal for a Directive (COM(90) 141)<sup>(1)</sup>; whereas such harmonization concerns inter alia the conditions which must be applied when offsetting opposing positions in the group, and the case where these financial institutions are subject to specific supervisory rules regarding their financial stability; whereas this implies that, pending entry into force of the Directive on capital adequacy to cover market risks, the competent authorities shall include in consolidated supervision financial institutions which are principally exposed to market risks in accordance with methods determined by those authorities in the light of the particular nature of the risks involved;

Whereas, following the adoption of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions<sup>(2)</sup>, which establishes the rules applicable to consolidated accounts published by credit institutions, together with the provisions of Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts<sup>(3)</sup> it is now possible to define more precisely the methods to be used in prudential supervision exercised on a consolidated basis;

Whereas this Directive is fully in keeping with the 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; whereas this Directive is, in particular, necessary for the correct application of Council Directive 89/299/EEC of 17 April 1989 on the own funds of credit institutions<sup>(4)</sup>;

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- (1) OJ C 152 of 21.6.1990, p. 6.  
(2) OJ L 372 of 31.12.1986, p. 1.  
(3) OJ L 193 of 18.7.1983, p. 1.  
(4) OJ L 124 of 5. 5.1989, p. 16.

Whereas supervision of credit institutions on a consolidated basis must be aimed at protection of the depositors of the credit institutions;

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 practical exercise of consolidated supervision over the largest possible geographical area;

Whereas the amendments to be made to Directive 83/350/EEC are so considerable that it is preferable that it be wholly replaced by this Directive,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purposes of this Directive:

- "credit institution" shall mean a credit institution within the meaning of the first indent of Article 1 of Directive 77/780/EEC; or any private or public undertaking which corresponds to the definition in the first indent of Article 1 of Directive 77/780/EEC and has been authorized in a third country;
- "financial institution" shall mean an undertaking other than a credit institution, the principal activity of which is to acquire holdings or to carry on one or more of the activities listed in points 2 to 12 of the Annex to Directive 89/646/EEC;
- "financial holding company" shall mean a financial institution the subsidiary undertakings of which are either exclusively or mainly credit institutions or financial institutions, one at least of such subsidiaries being a credit institution;
- "mixed-activity holding company" shall mean a parent undertaking, other than a financial holding company or a credit institution, the subsidiaries of which include at least one credit institution;
- "ancillary banking services undertaking" shall mean an undertaking the principal activity of which consists in owning or managing property, managing data-processing services, or any other similar activity which is ancillary to the principal activity of one or more credit institutions;

- "participation" shall mean the ownership, direct or indirect, of 20% or more of the voting rights or capital of an undertaking;
- "parent undertaking" shall mean a parent undertaking within the meaning of Article 1(1) of Council Directive 83/349/EEC and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;
- "subsidiary" shall mean 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 ultimate parent;
- "competent authorities" shall mean the national authorities which are empowered by law or regulation to supervise credit institutions;

Article 2

**Scope**

This Directive shall apply to credit institutions that have obtained the authorization referred to in Article 3 of Directive 77/780/EEC, financial holding companies and mixed-activity holding companies which have their head offices in the Community.

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

Article 3

Supervision on a consolidated basis of credit institutions

1. Every credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such institutions shall be subject, to the extent and in the manner prescribed in Article 5, to supervision on the basis of its consolidated financial situation. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6.
2. Every credit institution the parent undertaking of which is a financial holding company shall be subject, to the extent and in the manner prescribed in Article 5, to supervision on the basis of the consolidated financial situation of that financial holding company. Such supervision shall be exercised at least in the areas referred to in paragraphs 5 and 6. The consolidation of the financial situation of the financial holding company shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the financial holding company standing alone.
3. The Member States or the competent authorities responsible for exercising supervision on a consolidated basis pursuant to Article 4 may decide in individual cases that a credit institution, financial institution or auxiliary banking services undertaking which is a subsidiary or in which a participation is held need not be included in the consolidation:
  - 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 objectives of monitoring credit institutions and in all cases if the balance sheet total of the undertaking that should be included is less than the smaller of the following two amounts: ECU 10 million or 1% of the balance sheet total of the parent undertaking or the undertaking that holds the participation; if two or more undertakings meet the above criteria; they must nevertheless be included in the consolidation where collectively they are of non-negligible interest with respect to the aforementioned objective;
- if, in the opinion of the competent authorities responsible for exercising supervision on a consolidated basis, the consolidation of the financial situation of the undertaking that should be included would be inappropriate or misleading as far as the objectives of the supervision of credit institutions are concerned.

4. Where the first indent of Article 3(1) is applied, the competent authorities shall nevertheless obtain any information the transfer of which is authorized and inform the Commission of the limits set by a specified non-member country.

When the competent authorities of a Member State do not include a credit institution subsidiary in supervision on a consolidated basis under one of the cases provided for in the second and third indents of paragraph 3, the competent authorities of the Member State in which that credit institution subsidiary is situated may ask the parent undertaking for information which may facilitate their supervision of that credit institution.

5. Supervision of solvency, and of the adequacy of own funds to cover market risks and control of large exposures, as governed by the relevant Community acts in force, shall be exercised on a

consolidated basis in accordance with this Directive. The Member States shall adopt any measures necessary, where appropriate, to include financial holding companies in consolidated supervision, in accordance with paragraph 2.

Compliance with the limits set in Article 12(1) and (2) of Directive 89/646/EEC shall be supervised and controlled on the basis of the consolidated or sub-consolidated financial situation of the credit institution.

Supervision on a consolidated basis shall also include all figures and facts, e.g. the economic and financial performance of the group the knowledge of which could be judged as useful with regard to the quality of supervision on a consolidated basis. This concerns not only financial information but also organization of the business, influence exercised by undertaking within a group on other undertakings and the existence of adequate information flows.

6. The competent authorities shall ensure that, in all the undertakings included in the scope of the supervision on a consolidated basis that is exercised over a credit institution in implementation of paragraphs 1 and 2 above, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of supervision on a consolidated basis.
7. Without prejudice to specific provisions contained in other Directives, the Member States may waive application on an individual or subconsolidated basis of the rules laid down in paragraph 5 to a credit institution that, as a parent undertaking, is subject to supervision on a consolidated basis, and to any subsidiary of such a credit institution which is subject to their authorization and supervision and is included in the supervision on



a consolidated basis of the credit institution which is the parent company. The same exemption option shall be allowed where the parent undertaking is a financial holding company which has its head office in the same Member State as the credit institution, provided that it is subject to the same supervision as that exercised over credit institutions, and in particular the standards laid down in paragraph 5.

In both cases, steps must be taken to ensure that capital is distributed adequately within the banking group.

8. Where a credit institution the parent of which is a credit institution has been authorized and is situated in another Member State, the competent authorities which granted that authorization shall apply the rules laid down in paragraph 5 to that institution on an individual or, when appropriate, a subconsolidated basis.
9. Notwithstanding paragraph 8, the competent authorities responsible for authorizing the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, delegate their responsibility for supervision to the competent authorities which authorized and supervise the parent undertaking. The Commission must 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.
10. The Member States shall provide that their competent authorities responsible for exercising supervision on a consolidated basis may ask the subsidiaries of a credit institution or a financial holding company which are not included within the scope of supervision on a consolidated basis for the data and information referred to in Article 6. In such a case, the procedures for transmitting and verifying the information laid down in that Article shall apply.

Article 4

**Competent authorities responsible for exercising supervision  
on a consolidated basis**

1. Where a parent undertaking is a credit institution, supervision on a consolidated basis shall be exercised by the competent authorities that authorized it under Article 3 of Directive 77/780/EEC.
  
2. Where the parent of a credit institution is a financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities which authorized that credit institution under Article 3 of Directive 77/780/EEC.

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

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

3. The competent authorities concerned may by common agreement waive the rules laid down 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 procedures for co-operation and for the transmission of information such that the objectives of this Directive may be achieved.
5. Where Member States have more than one competent authority for the prudential supervision of credit institutions and financial institutions, Member States shall take the requisite measures to organize co-ordination between such authorities.

14-18-

Article 5

Form and extent of consolidation

1. The competent authorities responsible for exercising supervision on a consolidated basis must, for the purposes of supervision, require full consolidation of all the credit institutions and financial institutions which are subsidiaries of a parent undertaking.

However, proportional consolidation may be prescribed where, in the opinion of the competent authorities, the liability of a parent undertaking holding a share of the capital is limited to that share of the capital because of the liability of other shareholders or members whose solvency is satisfactory. The liability of the other shareholders and members must be clearly established, if necessary by means of formal, signed commitments.

2. The competent authorities responsible for carrying out supervision on a consolidated basis must, in order to do so, require the 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 those undertakings' liability is limited to the share of the capital they hold.
3. In the case of participations or capital ties other than those referred to in paragraphs 1 and 2, the competent authorities shall determine whether and how consolidation is to be carried out. They may permit or require use of the equity method where the risk to

which the shareholder is exposed is limited to his investment. That method shall not, however, constitute inclusion of the undertakings concerned in supervision on a consolidated basis.

4. Without prejudice to paragraphs 1 to 3, the competent authorities shall determine whether and how consolidation is to be carried out in the following cases:

- where, in the opinion of the competent authorities, a credit institution exercises a significant influence over one or more credit institutions or financial institutions, but without holding a participation or other capital ties in these institutions;

- where two or more credit institutions or financial institutions are placed under single management other than pursuant to a contract or clauses of their memorandums or articles of association;

- where two or more credit institutions or financial institutions have administrative, management or supervisory bodies with the same persons constituting a majority.

In particular, the competent authorities may permit or require use of the method provided for in Article 12 of Directive 83/349/EEC. That method shall not, however, constitute inclusion of the undertakings concerned in consolidated supervision.

5. Where consolidated supervision is required pursuant to Article 3(1) and (2), ancillary banking services undertakings shall be included in consolidations in the cases and in accordance with the methods laid down in paragraphs 1, 2, 3 and 4 of this Article.

Article 6

Information to be supplied by mixed-activity holding companies  
and their subsidiaries

1. Pending further co-ordination of consolidation methods, the Member States shall provide that, where the parent undertaking of one or more credit institutions is a mixed-activity holding company, the competent authorities responsible for the authorization and supervision of those credit institutions shall, by approaching the mixed-activity holding company and its subsidiaries either directly or via credit institution subsidiaries, require them to supply any data or information which would be relevant for the purposes of supervising the credit institution subsidiaries.
  
2. The Member States shall provide that their competent authorities may carry out, or have carried out by external inspectors, on-the-spot inspections to verify data received from mixed-activity holding companies and their subsidiaries. If the mixed-activity holding company or one of its subsidiaries is an insurance undertaking or a firm providing investment services, the procedure laid down in Article 7(4) may also be used. If a mixed-activity holding company or one of its subsidiaries is situated in a Member State other than that in which the credit institution subsidiary is situated, on-the-spot verification of information shall be carried out in accordance with the procedure laid down in Article 7(7).

Article 7

Measures to facilitate the application  
of this Directive

1. The Member States shall take the necessary steps to ensure that there are no legal impediments preventing the undertakings included within the scope of supervision on a consolidated basis, mixed-activity holding companies and their subsidiaries, or subsidiaries of the kind covered in Article 3(10), from exchanging amongst themselves any data and information which would be relevant for the purposes of supervision in accordance with this Directive.
2. Where a parent undertaking and any of its subsidiaries that are credit institutions are situated in different Member States, the competent authorities of each Member State shall communicate to each other all relevant data and information which may allow or aid the exercise of supervision on a consolidated basis.

Where the competent authorities of the Member State in which a parent undertaking is situated do not themselves exercise supervision on a consolidated basis pursuant to Article 4, they may be invited by the competent authorities responsible for exercising such supervision to ask the parent undertaking for any data and information which would be relevant for the purposes of supervision on a consolidated basis and to transmit them to those authorities.

3. The Member States shall permit the exchange between their competent authorities of the information referred to in paragraph 2, on the understanding that, in the case of financial holding companies, financial institutions or ancillary banking services undertakings, the collection or possession of information shall not in any way imply that the competent authorities are required to play a supervisory role in relation to those institutions standing alone.

Similarly, the Member States shall authorize their competent authorities to exchange the information referred to in Article 6 on the understanding that the collection or possession of information does not in any way imply that the competent authorities play a supervisory role in relation to the mixed-activity holding company and those of its subsidiaries which are not credit institutions, or to subsidiaries of the kind covered in Article 3(10).

4. Where a credit institution, financial holding company or a mixed activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorization, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall co-operate closely. Without prejudice to their respective responsibilities, 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 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 12 of Directive 77/780/EEC.
6. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies referred to in Article 3(2). Those lists shall be communicated to the other competent authorities and to the Commission.



7. Where, in applying this Directive, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary banking services undertaking, a mixed-activity holding company, a subsidiary of the kind covered in Article 6 or a subsidiary of the kind covered in Article 3(10), 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 have received 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.
  
8. Without prejudice to the provisions of criminal law, the Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on financial holding companies and mixed-activity holding companies, or their effective managers, that infringe laws, regulations or administrative provisions enacted to implement this Directive. In certain cases such measures may require the intervention of the courts. The competent authorities shall co-operate closely to ensure that the abovementioned penalties or measures produce the desired results, especially when the central administration or main establishment of a financial holding company or of a mixed-activity holding company is not located at its head office.

Article 8

Third countries

1. The Commission may submit proposals to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or more third countries with the aim of establishing means of exercising supervision on a consolidated basis over:

- credit institutions with parent undertakings in third countries and

- credit institutions situated in third countries the parent undertakings of which, whether credit institutions or financial holding companies, have their head offices in the Community.

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

- that the competent authorities of the Member States are able to obtain the information necessary for the supervision, on the basis of their consolidated financial situations, of credit institutions or financial holding companies situated in the Community and which have as subsidiaries credit institutions or financial institutions situated outside the Community, or which hold participations in such institutions;

- that the competent authorities of third countries are able to obtain the information necessary for the supervision of parent undertakings the head offices of which are situated within their territories and which have as subsidiaries credit institutions or financial institutions situated in one or more Member States, or which hold participations in such institutions.

3. The Commission and the Advisory Committee set up under Article 11 of Directive 77/780/EEC shall examine the outcome of those negotiations and the resulting situation.

Article 9

Final provisions

1. Member States shall implement the laws, regulations and administrative provisions necessary to comply with the provisions of the present Directive 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.

2. Notwithstanding the provisions of Article 3(5) and pending entry into force of the Directive on capital adequacy of investment firms and credit institutions, the competent authorities shall include in consolidated supervision financial institutions which are principally exposed to market risks in accordance with methods to be determined by those authorities in the light of the particular nature of the risks involved.
3. Member States shall communicate to the Commission the texts of the main provisions laid down by law, regulation or administrative action which they adopt in the field governed by this Directive.

Article 10

1. Council Directive 83/350/EEC is hereby repealed with effect from 1 January 1993.
2. In the following provisions, the words "Directive 83/350/EEC" shall be replaced by "Directive .../.../EEC":
  - Article 5 of Directive 89/299/EEC;
  - Article 12(6), Article 13(3), Article 15(2) and the fifth indent of the first subparagraph of Article 18(2) of Directive 89/646/EEC;
  - Article 3(3) of Directive 89/647/EEC.
3. In Article 1(5) of Directive 89/646/EEC and the first indent of Article 2(1) of Directive 89/647/EEC, the definition of competent authorities shall be replaced by the following:

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

Article 11

This Directive is addressed to the Member States.

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