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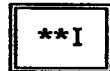
EUROPEAN PARLIAMENT

SESSION DOCUMENTS

English Edition

31 October 1991

A3- 0290/91



R E P O R T

of the Committee of Legal Affairs and Citizens' Rights

on the Commission proposal for a Council directive
relating to the supervision of credit institutions on a
consolidated basis
(COM(90)0451 fin - C3-0002/91 - SYN 306)

Rapporteur : M. Freddy BLAK


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
A Series: Reports - B series: Motions for Resolutions, Oral Questions.

- C Series: Documents received from other Institutions (e.g. Consultations)

 = Consultation procedure requiring a single reading

 = Cooperation procedure (second reading) which requires the votes of the majority of the Members of Parliament

 = Cooperation procedure (first reading)

 = Parliamentary assent which requires the votes of the majority of the current Members of Parliament

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By letter of 12 December 1990 the Council consulted the European Parliament, pursuant to Article 57 (2) of the EEC Treaty, on the Commission proposal for a Council directive relating to the supervision of credit institutions on a consolidated basis.

At the sitting of 21 January 1991 the President of Parliament announced that he had referred this proposal to the Committee on Legal Affairs and Citizens' Rights as the committee responsible and to the Committee on Economic and Monetary Affairs and Industrial Policy for its opinion.

At its meeting of 19 September 1990 the Committee on Legal Affairs and Citizens' Rights had appointed Mr BLAK rapporteur.

At its meeting of 6 February 1991 it considered the Commission proposal and working document. At its meetings of 27-28 June 1991, 25-26 September 1991, 15-16 October 1991 and 29-30-31 October 1991, the Committee considered the proposal from the Commission and the draft report.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following took part in the vote: Graf STAUFFENBERG (P), VAYSSADE (VP), BLAK, rapporteur, BRU PURON, FALCONER, GARCIA AMIGO, GRUND, HOON, Lord INGLEWOOD, MEDINA ORTEGA, NAPOLETANO (for BONTEMPI), SALEMA and ZAVVOS.

The opinion of the Committee on Economic and Monetary Affairs and Industrial Policy is attached.

The report was tabled on 31 October 1991.

The deadline for tabling amendments will appear on the draft agenda for the part-session at which the report is to be considered.

A

Commission proposal for a Council directive
on the supervision of credit institutions on a consolidated basis
(COM(90) 0451 - SYN 306)

Commission text 1

Amendments

(Amendment N° 1)

Fourth recital a (new)

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 organised and the relative independence of the management of the credit institutions involved;

(Amendment N° 2)

Eight recital

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 ;

Deleted

(Amendment N° 3)

Ninth recital

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 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 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 establishing rules (2 words deleted) applicable to consolidated accounts published by credit institutions, together with the dispositions of Council Directive 83/349/EEC on consolidated accounts it is possible to define more precisely the methods to be used in prudential supervision conducted on a consolidated basis.

1 OJ C 315, 14.12.1990, p. 15

Commission text

Amendments

(Amendment N° 4)
Ninth recital a (new)

Whereas consolidation is a measure to ensure insight into the strength of a group of companies of which one or more credit institutions are part, but that national supervision on credit institutions on a non consolidated basis, will not be replaced.

(Amendment N° 5)
Tenth recital a (new)

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

(Amendment N° 6)
Article 1, second indent

- "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 institution" means an undertaking other than a credit institution, the principal activity of which is to acquire and hold holdings or to carry on one or more of the activities listed in points 2 to 12 in the Annex to Directive 89/646/EEC;

(Amendment N° 7)
Article 3(3), fourth indent

- 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.

Deleted

(Amendment N° 8)
Article 3, paragraph 3a (new)

In the case of application of the first indent of the third paragraph, the competent authorities will nevertheless gather the information which transfer is allowed; and inform the Commission about the limits set by a specified non-member country.

(Amendment N° 9)
Article 3, paragraph 5

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.

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.

The supervision shall include the submission to the limits set in Article 12(1) and (2) of Directive 89/646/EEC which must also be supervised and controlled on a consolidated basis.

(Amendment N° 10)
Article 3, paragraph 5a(new)

Supervision on a consolidated basis will also include all figures and facts of which knowledge can be judged as useful for the aim of the quality of supervision on a consolidated basis, e.g. the economic and financial performance of the group. This concerns not only financial information but also organisation of the business, influence exercised by undertakings within a group on other undertakings and the existence of adequate information flows.

(Amendment N° 11)
Article 3, paragraph 7

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.

7. Member States may not forgo supervision on an individual basis of credit institutions that, as parent undertakings, are subject to supervision on a consolidated basis.

(Amendment N° 12)
Article 5, paragraph 3

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.

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 how consolidation is to be carried out. They may permit that the equity method be used where the risk to which the shareholder is exposed is limited to his investment.

(Amendment N° 13)

Article 8, first paragraph

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.

The Commission may submit proposals for agreements with one or more third countries with the goal of establishing means of applying supervision on a consolidated basis, by way of reciprocity:

- 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.

(Amendment N° 14)

Article 8

Add a fourth paragraph (new)

The Commission shall, on the basis of information received from the Member States, from the competent authorities or from the credit institutions, financial holding companies or mixed activity holding companies, examine, with the Advisory Committee, the possibility of negotiating with one or more third country the lifting of the legal impediments mentioned in Article 3, paragraph 3, first indent. The Commission may, thereafter, submit proposals subject to the procedures of the first paragraph

(Amendment N° 15)

Article 8

Add a fifth paragraph (new)

The Commission shall, every three years, draw up a report on the application of this directive.

DRAFT LEGISLATIVE RESOLUTION

embodying the opinion of the European Parliament on the Commission proposal for a Council directive relating to the supervision of credit institutions on a consolidated basis

The European Parliament

- having regard to the Commission proposal to the Council (COM(90) 451 final - SYN 306)(1) ,
 - having been consulted by the Council pursuant to Article 57(2) of the EEC Treaty (C3-0002/91),
 - having regard to the report of the Committee on Legal Affairs and Citizens' Rights and the opinion of the Committee on Economic and Monetary Affairs and Industrial Policy (A3-0290/91)
1. Approves the Commission proposal in accordance with the vote thereon;
 2. Calls on the Commission to amend its proposal accordingly, pursuant to Article 149(3) of the EEC Treaty;
 3. Asks to be consulted again should the Council intend to make substantial modifications to the Commission proposal;
 4. Calls on the Council to incorporate Parliament's amendments in the common position that it adopts in accordance with Article 149(2) (a) of the EEC Treaty;
 5. Instructs its President to forward this opinion to the Council and Commission.

(1) OJ No. C 315, 14.12.1990, p. 15

1. Introduction

The European common financial market is an essential part of the frontier-free single European market, and encompasses not only the free movement of money and capital for all citizens but also freedom of establishment and the freedom to provide services. At the end of the long road to the achievement of this goal, the result will be that Community citizens will be free to invest their money, open bankaccounts and take out loans and insurance policies as and where they choose, and banks and insurance companies will be free to offer their financial 'products' without restriction; securities may be quoted on all stock exchanges and issued in all Community countries. A bigger market, which can stand comparison with the financial markets of Japan and the United States, more competition and less cost are examples of the direct advantages of a financial common market.

The Commission proposal for a directive relating to the supervision of credit institutions on a consolidated basis replaces Directive 83/350/EEC on the supervision of credit institutions on a consolidated basis¹. Compared with that Directive, the present proposal:

- a. extends supervision on a consolidated basis when the parent undertaking is not a credit institution;
- b. specifies the aims of supervision on a consolidated basis;
- c. specifies the consolidation methods.

It must be remembered that the Basle Committee on Banking Supervision also deals with banking supervision in Europe. In September 1990 this Committee published a report on international developments in banking supervision, of which Chapter VI deals with the implementation of the Basle Concordat of 1975 replaced by the 1983 Concordat ("Principles for the supervision of banks foreign establishments"). Nevertheless, because of certain difficulties which are also encountered in the proposed directive, the Basle Committee was unable to reach an acceptable solution up to the present date.

The Commission proposal is welcome, but it must in any case be made certain that the stability of the sector and the protection of consumers cannot in any way be compromised. The majority of clients of credit institutions are ordinary wage-earners who save money which is deposited in banks and financial institutions which are ever more international (constituting an extra currency risk), and who invest a large proportion of their savings, through their pension-insurances companies. Therefore the question of risks must be dealt with so that it is possible even for non-experts to judge the risks involved in specific investments.

In the opinion of the rapporteur, this will in the end be profitable for the credit institutions, because the creation of a sound financial system and the guarantee to all clients and providers of capital will lead to lower funding costs. This will more than offset the increased costs in complying with the more stringent obligations, and more stringent capital requirements.

At first sight it is clear that the proposed Directive is too complicated. The link-up with other directives is far from clear, and it appears to apply to companies which are then excluded from real consolidation, or for which the supervising authorities have the possibility to bring them under consolidation requirements, partly or wholly, or can exempt them from consolidation.

Extension of the obligation to consolidate

Under Directive 83/350/EEC, only credit institutions which had a participation (25% or more of the capital) in another credit or financial institution were in principle subject to supervision of their consolidated financial situation. Where a credit institution had a participation of more than 50%, the Member State or the competent authorities (determined by the holding company) were obliged to require either full or proportional consolidation. For a participation of 50% or less, the Member States could determine the method of consolidation or (within limits) decide that consolidation was not required.

The present proposal extends the scope of the directive :

- a) where the parent undertaking is a financial holding company (see definition in Article 1 and Article 3 third indent) or a mixed-activity holding company with at least one credit institution as subsidiary. For mixed activity holdings, Article 6 provides for supplying information, but there is no consolidation requested (see Article 1, fourth indent);
- b) where the participations are of 20% or more of the voting rights or capital;
and
- c) by limiting certain of the present exemptions.

The extension of the scope of the directive does, however, not mean that the obligation to provide information on a consolidated basis to the authorities is extended in the same way. Consolidation (full consolidation or a proportional consolidation in the case of a limited risk) will only be obligatory for holdings which are credit institutions or financial institutions, concerning credit and financial institutions which are subsidiaries over which the holding exercises a dominant influence (Article 5, first paragraph).

Where only significant influence is exercised, the authorities will be free to determine whether or how consolidation is required. (See paragraph 2.3.1. of the opinion of the Economic and Social Committee). Also, in the opinion of the rapporteur, parts of the proposal create a false impression. The Commission should improve the text of the proposed directive, and limit the choices for the Member States or the Member States' authorities. The problem concerning the position of insurance companies should be dealt with within the framework of supervision of insurance companies.

Position of the trading book

On pages 5 and 6 of the explanatory memorandum, the Commission stresses that 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". This reasoning can be accepted. Nevertheless, the proposal allows the competent authorities to exclude from consolidation specialist financial institutions whose activities expose them principally to market risks (Article 3(3), fourth indent, first part). These specialist financial institutions seem to be a common practice in the United Kingdom, whereas continental banking groups often include the comparable activities within their balance sheet.

This situation has been recognised by the Commission, which, in Article 3(3), fourth indent, second part, includes a clause which allows credit institutions with the agreement of the competent authorities, to exclude the trading book from consolidation, provided that this is subject to special rules of supervision, in this case the capital adequacy directive (C.A.D.).

With the Economic and Social Committee, the rapporteur deems such an approach unrealistic and, from a prudential point of view, unreasonable. Consolidation should enable an overall view of all the risks and not exclude the more dangerous (market) risks. The technical problems invoked by the Commission do not seem to be convincing.

It is of major importance for the stability of the financial system, the competitive position of the European banks and for the guarantees to be given to private customers, that an acceptable solution be found to this problem. The Commission is invited to propose a separate directive which should come in force before 1 January 1993.

Determining consolidation methods

For the consolidation methods reference is made to Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions, which directive refers also to Directive 83/349/EEC on consolidated accounts. The methods of consolidation are however not defined.

During discussions in the Committee on Legal Affairs and Citizens' Rights, the Commission, on request of the rapporteur, agreed to make use of one term for pro-rata consolidation and proportional consolidation.

It is useful to remember that consolidation will result in information from distinct legal entities being included in one figure, and that the resulting figures may show the risks less precisely than the information on the individual parts of the group. It must be made clear that the supervision on consolidated accounts will not affect the supervision of the separate holding company, subsidiary or sister company, which companies will remain responsible for their own activities. The supervision on a non-consolidated basis must remain for stability of the sector and for the protection of the clients. This also applies for the holding company, (see Article 3, (7) as amended).

The directive in relation to other directives in the field of credit institutions

In itself, the proposed directive, which requires a consolidation in more cases than the Directive 83/356/EEC, is a relatively technical matter. It was mentioned before that supervision on a consolidated basis does not replace national supervision on solo companies.

The impact of the proposed directive must be seen mainly in relation to :

- the directive on solvency ratios for credit institutions 89/647/EEC OJ L 384 of 30.12.1989 p. 14,
- the directive on the own funds of credit institutions 89/299/EEC, OJ L 124 of 5.5.1989 p. 162,
- the proposal for a Directive on capital adequacy for investment firms and credit institutions COM(90) 141 final - SYN 257.

Definition of "financial institution"

The definition of financial institution in the Directive (Art. 1, second indent) differs slightly from that used in Article 1, paragraph 6, of the Second Banking Directive. This seems unnecessary, since the supervision on a consolidated basis is related to influence. The word "participation" can thus be replaced by "holding" as in the Second Banking Directive.

Specification of supervision

The directive as proposed is not directed to a real "bookkeeping" consolidation as intended by Directives 86/635/EEC and 86/349/EEC (which could in principle lead to consolidated accounts that can be published) but it will only lead to supervision on some consolidated figures and data. This means that figures concerning subsidiaries have to be added only for some items of supervision.

The nature of the supervision, set out mainly in Article 3, (5) and (6) concerns :

- a. solvency
- b. large exposures
- c. limits of Article 12(1) and (2) of Directive 89/646/EEC (limits to holdings in companies other than credit and financial institutions)
- d. internal control mechanisms.

This, however, is fairly limited: the usual control on the management and financial and economic performances are not expressly mentioned and the term "internal control mechanisms" is quite vague. It seems necessary to adjust these points (see Amendment 10).

Legal aspects of the Commission proposal

The Commission has chosen Article 57(2), first and third sentences of the EEC Treaty as the legal basis for the Directive. Article 57(2) was also used as legal basis for the 1983-Directive on supervision on a consolidated basis, the directive on the own funds of credit institutions, the directive on solvency ratios and the Second Banking Directive. The fact that Directive 83/350/EEC is expressly repealed with effect from 1 January 1993 (Article 10 of the proposed directive) must be welcomed for clarity.

Nevertheless, it must be said that the directive, with its many references to other directives concerning credit institutions, is a part of a whole series of measures which should be consolidated.

As in Directive 83/350/EEC, the proposed directive will only be applicable for institutions within the Community. Under Directive 83/350/EEC, institutions in third countries could be made subject to consolidation by way of bilateral agreements (Article 6). It is important to know which agreements exist. Furthermore, attention must be drawn to the fact that concerning the 1983 Directive an amendment was adopted by Parliament which expressly asked the Commission to publish a standard text of such an agreement. This has never been done.

In its explanatory statement of the provision which became Article 6 of the 1983 Directive, the Commission suggested that bilateral agreements could be replaced by agreements between the Community and third countries, which is now proposed in Article 8.

The text of this article, however, leaves open the question of the legal basis on which the authority of the Commission to start negotiations will depend. Article 57 of the EEC Treaty, used as the legal basis in the proposal for an EEC/Switzerland Agreement on direct insurance other than life assurance(1), could also serve as the legal basis for these agreements. One result of application of Article 57 would be that Articles 113/116 or 223 EEC Treaty and the procedures foreseen by these articles will not be applicable, and that the cooperation procedure should continue to apply to such agreements. This clarification could also serve to include the notion of reciprocity in the exchange of information, which the proposed text leaves open.
(see Amendment nr. 13)

Conclusions

The Commission proposal can be considered as a step towards harmonisation in the financial sector, but it must be made certain that the protection of clients' interests is not made secondary to the competitiveness of the sector in the limited sense of short-term profit. In a long term perspective, the stability of the sector, for which a thorough supervision is necessary, will lead to better results for the companies as well as for the clients.

Apart from the amendments proposed, there are a number of subjects which need to be covered by a directive and for which the Commission is invited to submit proposals :

1. Consolidation of "trading book" valuables and equal treatment of subsidiary companies which deal in or hold securities and independent investment firms;
2. Codification of the different Community measures which are mainly directed to the financial sectors.

(1) see Documents C3-145/89, C3-146/89 and C3-147/89

O P I N I O N

(Rule 120 of the Rules of Procedure)

of the Committee on Economic and Monetary Affairs and Industrial Policy
for the Committee on Legal Affairs and Citizens' Rights

Draftsman: Mr HERMAN

At its meeting of 30 January 1991, the Committee on Economic and Monetary Affairs and Industrial Policy appointed Mr HERMAN draftsman.

At its meetings of 27-28 February and 1 March 1991, 18-20 March 1991 and 24-25 April 1991 it considered the draft opinion.

At the last meeting it adopted the amendments annexed to this opinion unopposed with 2 abstentions.

The following were present for the vote: Mr BEUMER, chairman; Mr HERMAN, rapporteur; Mr BARTON, Mr BEAZLEY Peter, Mr BERNARD-REYMOND, Mr CASSIDY, Mr COONEY (for Mr MERZ), Mr de DONNEA, Mr DE PICCOLLI, Mr HOPPENSTEDT, Mrs LULLING, Mr MAHER (for Mr PUNSET I CASALS), Mr MARTINEZ (for Mr MEGRET), Mr METTEN, Mrs NIELSEN (for Mr VISENTINI), Mr PAPAYANNAKIS, Mr PATTERSON, Mr PINXTEN, Mr PORTO (for Mr COX), Mr RISKÆR PEDERSEN, Mr ROTHLEY (for Mr FORD), Mr SARIDAKIS (for Mr GALLENZI), Mr SISO CRUELLAS, Mrs TONGUE, Mrs VAN HEMELDONCK (for Mr MIHR), Mr WETTIG and Mr von WOGAU.

A. Introduction

This Commission proposal replaces Directive 83/350/EEC(1) with effect from 1.1.1993 (Art. 10) and aims at "monitoring effectively credit institutions that form part of a group".

The proposed Directive calls for an extension and reinforcement of the provisions of the repealed Directive. Hence, in addition, the following shall be subjected to supervision on a consolidated basis:

- a) banking groups whose parent undertaking is a "financial holding company" (Art. 1, third indent).

That is to say that an enterprise whose subsidiaries are exclusively or, mainly, one or more credit or financial institutions.

- b) a 'mixed-activity holding company' (Article 1, fourth indent).

That is to say that the parent undertaking of a banking group is neither a credit institution nor a financial holding company but it is a 'mixed activity'.

For an efficient reinforcement, the Commission has proposed two improvements with respect to Directive 83/350/EEC:

- i) supervision on a consolidated basis has been enriched by introducing specific supervisory standards (Article 4). There are limits for large-scale risks and limits on non-financial holdings held by a credit institution and its subsidiaries;
- ii) the consolidation methods of Directive 86/635/EEC(2) on the annual accounts and consolidated amounts of banks and other financial institutions become the relevant rules upon which supervision and control are based. Such methods are: full consolidation, proportional consolidation and the equity method (Article 5). The status of such consolidation methods is mandatory or optional depending on the case.

B. Content of the proposal

As far as the Economic Committee is concerned, the proposal in question could be assessed upon one simple criterion: Does the proposal enhance competition between economic operators which provide similar services?

One way of answering this question is to probe into the meaning of Article 3. As far as paragraphs 1 and 2 are concerned, one finds them acceptable because the former is the same as in the Directive 83/350/EEC while the latter improves the repealed Directive by introducing an innovation: a financial holding company shall be supervised on the basis of its consolidated financial position. This is consistent with current practices in ten Member States. France and Portugal follow the USA practice of 'individual supervision'. They will have to change their financial regulations, if this proposal is adopted.

Paragraph 3, fourth indent, raises a number of problems. First, it excludes from consolidation financial institutions whose activities expose them to

(1) OJ L 193, 18.7.1983, p. 18

(2) OJ L 372, 31.12.1986, p. 1

"market risks". Second, it excludes from consolidation the "trading books" of credit or financial institutions in which there is participation and are subject to special rules of supervision.

As to the first case of exemption, one has to await agreement on the capital requirements relating to market risks (i.e. Directive on capital adequacy of investment firms and credit institutions - COM(90) 141 - SYN 257) before taking a position. This exemption, however, would create the following situation.

If a 'financial institution' (defined as an undertaking other than a credit institution whose principal activity is to acquire and hold participations or to exercise activities such as lending, financial leasing, money transmission services, portfolio management and advice, etc.) deals with securities that are exposed to "market risks", this financial institution will be subject to particular rules of supervision and will not be subjected to consolidation. This is the case of the Anglo-Saxon system which separates commercial banks from investment firms where the latter are subsidiaries of commercial banks and supervised separately; investment firms are not consolidated with the parent company.

If a commercial bank deals with securities in its own right, despite the market risks involved in securities, this bank will be subjected to consolidation. This is the case of continental Europe with a system consisting of universal banks or security houses which are consolidated subsidiaries of banks.

Such a dual system would result in credit establishments diversifying their portfolio in order to avoid consolidation and thus jeopardizing the universal banking system.

The potential for creating distortions of competition is also present because unconsolidated subsidiaries such as investment firms are subjected to less stringent rules. This has to do with the proposed directive on the capital adequacy of investment firms and credit institutions which requires these institutions to hold own funds in order to cover market risks but are much less than the Council Directive 89/299/EEC(1) on own funds of credit institutions. In the first case, the Commission proposal would authorise subordinated loans as own funds up to 250% of core capital while the Directive 89/299 allows loans up to 50%.

As to the second case of exemption provided for in Article 3(3) fourth indent, second part, there is a clause which allows credit or financial institutions to exclude from consolidation their 'trading book'. This is a 'free-meal' to the continental banking system provided that those trading books are subject to special rules of supervision.

Such an exemption is equally inappropriate because it does not guarantee the prevention of distortions of competition or preventions of errors in bank supervision. Excluding the risks connected with the trading book, which account for a large portion, would jeopardize the whole idea of supervision on a consolidated basis.

Both potential distortions of competition are partially remedied if amendment No. 4 is accepted. Then, investment undertakings would be subjected to consolidation; trading books will not be excluded from consolidation. An amendment of this kind does not deal with the complexity of the problem

(1) OJ L 124, 5.5.1989, p. 16

connected with the consolidation of market risks where no international agreement exists at present. But this position is supported by the Basle Committee which studies ways and means in order to deal with the consolidation of market risks. One way of dealing with market risks is to set the appropriate level of own funds requirement under the Commission Directive on capital adequacy.

Article 4 assigns responsibility to competent authorities for exercising supervision on a consolidated basis. The criteria seem to be clear except in the case where a financial holding company established in a Member State has its subsidiary credit institutions established in several other Member States. Mutual agreement between the competent authorities of all these Member States concerned would have to be found. Failing an agreement, paragraph 2 of this article provides for subsidiary criteria for assigning responsibility.

The methods of consolidation are not clearly defined; only a method of assessment of the balance sheet for shareholdings in paragraph 2 is stated in Article 5. Neither is it made explicit under what conditions full or partial consolidation should take place. It might be appropriate to delete the reference made to the "equity method" in paragraph 3 because the equity method limits the consolidated supervision of risky assets of the parent company and not of its subsidiaries. Amendment No. 7 seeks to rectify this anomaly and to prevent distortions of competition that could arise out of different methods used for consolidation.

Mixed-activity holding companies shall not be subjected to consolidated supervision (see Article 6). They shall be required to supply any data or information judged to be relevant for the purposes of supervising credit institutions which are subsidiaries of mixed-activity holding companies. This provision might not be very convincing for preserving fair competition and possibly supervision of such companies could be exercised on criteria relevant to performance: management, financial and economic.

C. Amendments

The proposed amendments are intended to improve the proposal by preventing distortions of competition and by clarifying certain aspects relevant to supervision on a consolidated basis.

Amendment No. 1 concerning the definition of "participation" seeks to reinstate the percentage of 25% for the inclusion of minority shareholdings in consolidated supervision.

This is consistent with the Commission proposal on the European company which lays down voting rights. A follow up of this logic makes amendment No. 6 necessary.

Amendment No. 2 is definitional and makes the scope of the directive more specific and links it to the operations listed in the Annex of the second banking directive.

Amendment No. 3 reinstates the percentage i.e. 2% allowed under the Directive 83/350/EEC. The competent authorities could exclude from consolidation enterprises if their total balance sheet of the credit or financial institution in which there is a participation represents less than 2% of the total balance sheet or less than ECU 10 million.

Amendment No. 4 is important and the first part of section B of this explanatory statement provides its justification.

Amendment No. 5 corrects a mis-judgement. Article 3(7) allows Member States the possibility of two supervisions. Parent firms are subject to supervision on a consolidated or even on an individual basis but their subsidiaries are supervised on an individual basis.

Amendment No. 7 takes account of the comments connected with Article 5 of the proposal.

Commission text

Amendments

(Amendment No. 1)
Article 1, 6th indent

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

"participation" means the ownership, direct or indirect, of 25% or more of the voting rights or capital of an undertaking;

(Amendment No. 2)
Article 2

Scope

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

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.

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 provided that they exercise one or more of the operations included in numbers 2 to 12 of the Annex to Directive 89/646/EEC.

(Amendment No. 3)
Article 3(3), second indent

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| <p>- 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</p> | <p>- 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: <u>2%</u> 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</p> |
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(Amendment No. 4)
Article 3(3), fourth indent

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| <p>- 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.</p> | <p><u>delete</u></p> |
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(Amendment No. 5)
Article 3(7)

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.

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.

(Amendment No. 6)
Article 5(1)

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.

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, shared commitments.

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, shared commitments.

Fully consolidation shall not apply in cases of minority participation, i.e. of less than 25%.

(Amendment No. 7)
Article 5(3)

3. In case 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.

3. In case of participations other than in credit and financial institutions or where a significant influence is exercised in fact, the competent authorities shall determine whether and how consolidation is to be carried out.

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

