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REPORT

on the proposal for a European Parliament and Council directive on the supplementary supervision of credit institution, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and the Council
(COM(2001) 213 – C5-0159/2001 – 2001/0095(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Alain Lipietz

Symbols for procedures

*	Consultation procedure *majority of the votes cast*
**I	Cooperation procedure (first reading) *majority of the votes cast*
**II	Cooperation procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***	Assent procedure *majority of Parliament's component Members except in cases covered by Articles 105, 107, 161 and 300 of the EC Treaty and Article 7 of the EU Treaty*
***I	Codecision procedure (first reading) *majority of the votes cast*
***II	Codecision procedure (second reading) *majority of the votes cast, to approve the common position* *majority of Parliament's component Members, to reject or amend the common position*
***III	Codecision procedure (third reading) *majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 24 April 2001 the Commission submitted to Parliament, pursuant to Article 251(2) and Article 47(2) of the EC Treaty, the proposal for a European Parliament and Council directive on the supplementary supervision of credit institution, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and the Council (COM(2001) 213 - 2001/0095 (COD)).

At the sitting of 2 May 2001 the President of Parliament announced that she had referred this proposal to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on Legal Affairs and the Internal Market for its opinion (C5-0159/2001).

The Committee on Economic and Monetary Affairs appointed Alain Lipietz rapporteur at its meeting of 6 November 2000.

It considered the Commission proposal and draft report at its meetings of 11 July 2001, 5 November 2001, 19 December 2001, 19 February 2002, and 25 February 2002.

At the last meeting it adopted the draft legislative resolution by 31 votes with 2 abstentions.

The following were present for the vote: Christa Randzio-Plath, chairman; Philippe A.R. Herzog and John Purvis, vice-chairmen; Alain Lipietz, rapporteur; Generoso Andria, Pervenche Berès, Hans Blokland, Hans Udo Bullmann, Niels Busk (for Karin Riis-Jørgensen, pursuant to Rule 153(2)), Richard Corbett (for Mary Honeyball), Harald Ettl (for Fernando Pérez Royo), Robert Goebbels, Lisbeth Grönfeldt Bergman, Christopher Huhne, Othmar Karas, Piia-Noora Kauppi, Christoph Werner Konrad, Bernd Lange (for Bernhard Rapkay, pursuant to Rule 153(2)), Werner Langen (for Ingo Friedrich), Astrid Lulling, Jules Maaten (for Carles-Alfred Gasòliba i Böhm, pursuant to Rule 153(2)), Thomas Mann (for Hans-Peter Mayer), Ioannis Marinos, Helmuth Markov (for Armonia Bordes), Miquel Mayol i Raynal, Alexander Radwan, Olle Schmidt, Peter William Skinner, Charles Tannock (for Jonathan Evans), Bruno Trentin, Jaime Valdivielso de Cué (for José Manuel García-Margallo y Marfil), Ieke van den Burg (for Giorgos Katiforis), Theresa Villiers.

Committee on Legal Affairs and the Internal Market decided on 26 June 2001 not to deliver an opinion.

The report was tabled on 27 February 2002.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council directive on the supplementary supervision of credit institution, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and the Council (COM(2001) 213 – C5-0159/2001 – 2001/0095(COD))

The proposal is amended as follows:

Text proposed by the Commission [1]	Amendments by Parliament

Amendment 1
Recital 6

(6) The competent authorities should be able to assess at a group-wide level the financial situation of credit institutions, insurance undertakings and investment firms that are part of a financial conglomerate, in particular as regards solvency, including the elimination of multiple gearing of own funds instruments, risk concentration and intra-group transaction.	(6) The competent authorities should be able to assess at a group-wide level the financial situation of credit institutions, insurance undertakings and investment firms that are part of a financial conglomerate, in particular as regards solvency, including the elimination of multiple gearing of own funds instruments, risk concentration and intra-group transaction. ***The capital adequacy requirements at the level of the financial conglomerate are calculated using a calculation method assessed for appropriateness and equivalence, selected by the financial conglomerate .***

Justification

With a view to a greater degree of flexibility financial conglomerates should be free to choose one of the calculation methods provided for in Annex 1, which the committee for financial conglomerates has assessed for their appropriateness and equivalence.

Amendment 2
Recital 13a (new)

	The resolution of the European Parliament on the implementation of financial services legislation of 4 February 2002[1] also endorsed the Committee of Wise Men's report, on the basis of the solemn

[1] OJ C 213 E, 31.7.2001, p. 227

declaration delivered in plenary session the same day by the European Commission and the letter of 2 October 2001 addressed by the Internal Market Commissioner to the chair of the Committee on Economic and Monetary Affairs with regard to the safeguards for the European Parliament's role in this process [1]

[1] Minutes of the sitting of 4.2.2002.

Justification

This is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation.

Amendment 3
Recital 14a (new)

Technical guidance and implementing measures to the rules laid down in this Directive may from time to time be necessary to take account of new developments on financial markets; the Commission should accordingly be empowered to adopt implementing measures, provided that these do not modify the essential elements of this Directive

Justification

This is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation.

Amendment 4
Article 2 (11)

11. group means ***two or more natural or legal persons between whom there are close links****;*	11. group means**, *in relation to any undertaking:*** ***(a) any subsidiary undertaking or parent undertaking of that undertaking or any subsidiary undertaking of such a parent undertaking;*** ***(b) any undertaking in which that undertaking or any undertaking referred to in (a) holds a participation;***

Justification

The text of the current definition is inappropriately broad. In particular:

- *it would automatically include within the definition investors who hold a participation in a group, even where they do not have control or a dominant influence;*
- *it would automatically include within the definition entities linked by management within the meaning of Article 12(1) of Directive 83/349/EEC.*

The inclusion of these entities within the scope of supervision should be a matter for supervisory discretion under Article 4(4) in the same way as under the existing banking sectoral rules.

Amendment 5
Article 2, point 12

12. close links means close links within the meaning of Article 1(l) of Directive 92/49/EEC, Article 1(m) of Directive 92/96/EEC, Article 1(15) of Directive 93/22/EEC or Article 1(26) of Directive of 2000/12/EC, as well as : ***(a) a situation in which in the opinion of the competent authorities one or more persons effectively exercise a dominant influence over another person;*** ***(b) a situation in which persons are linked by a participation within the meaning of Article 17, first sentence, of Council Directive 78/660/EEC;*** ***(c) or a situation in which persons are linked by a relationship within the meaning of Article 12 (1) of Directive 83/349/EEC;***	***deleted***

Justification

See justification for amendment to Article 2(11).

Amendment 6
Article 2, paragraph 13(d)(a) (new)

	(d)(a). at least one undertaking under subparagraph (b) or (c) owns a market share of over 1% in a Member State – in terms of the balance sheet total in the banking sector and the contribution receipts in the insurance sector.

Justification

The directive should intervene where the stability of the international financial markets is in jeopardy. Such a risk does not exist in the case of small, national – and in some cases only regional – financial groups. These should therefore be excluded from the scope of the directive. The market share of undertakings in a Member State could be used as a criterion in this connection. For example, if no undertaking of a group in a given sector has a market share of over 1%, systematic repercussions for the stability of the financial markets can be ruled out. The provisions of the directive should not therefore apply in such cases.

Amendment 7
Article 3 (1)

For the purposes of determining whether the activities of a group consist mainly in providing financial services within the meaning of Article 2 (13) (a) , the ratio of the consolidated and/or aggregated balance sheet total of the regulated and non regulated financial sector entities in the group to the consolidated and/or aggregated balance sheet total of the group as a whole, calculated on the basis of the annual accounts, should exceed ***50%.***	For the purpose of determining whether the activities of a group consist mainly in providing financial services within the meaning of Article 2 (13) (a), the ratio of the consolidated and/or aggregated balance sheet total of the regulated and non regulated financial sector entities in the group to the consolidated and/or aggregated balance sheet total of the group as a whole, calculated on the basis of the annual accounts should exceed ***40%.***

Justification

The lowering of the threshold should prevent financial conglomerates from "hiding" inside large non-financial groups and would more likely encompass systemic effects.

Amendment 8
Article 3, paragraph 2, first subparagraph

For the purposes of determining whether activities in different financial sectors are significant within the meaning of Article 2 (13) (d), the average of the ratio of the balance sheet total of the smallest financial sector to the consolidated and/or aggregated balance sheet total of the financial sector entities in the group, calculated on the basis of the annual accounts, and the ratio of the solvency requirements of the smallest financial sector to the total solvency requirements of the financial sector entities in the group, should exceed 10%.	For the purposes of determining whether activities in different financial sectors are significant within the meaning of Article 2 (13) (d), the ***progressive*** average ***to be calculated over a three-year period*** of the ratio of the balance sheet total of the smallest financial sector to the consolidated and/or aggregated balance sheet total of the financial sector entities in the group, calculated on the basis of the annual accounts, and the ratio of the solvency requirements of the smallest financial sector to the total solvency requirements of the financial sector entities in the group, should exceed 10%.

Justification

Only by assessing the situation over a longer period can the stable application of the directive be guaranteed. An annual assessment runs the risk of encountering abrupt changes of regime.

NB. should both this amendment and Amendment B be adopted, the change proposed in this amendment should also be included in Amendment B.

Amendment 9
Article 3, paragraph 2, subparagraph 2 a (new)

	3a. In the case of groups headed by a regulated entity or a mixed financial holding company with their head office outside the Community, cross-sectoral activities shall also be regarded as

significant within the meaning of Article 2(13)(d) if the threshold value is below the percentage of subparagraph 1 but the consolidated and/or aggregated balance sheet total of the smallest financial sector exceeds the amount of €3 000 million.

Justification

With the current provisions on the scope of application, there would be large financial groups, with important activities in both banking/investment services and insurance, which were not covered by the supplementary supervision introduced in the proposal. This would jeopardise the main goal of the legislative initiative, which is to ensure that all groups with significant cross-sector activities and creating potentially systemic risks are properly supervised. The amount of 3 000 million euros represents 1 per 1000 of total EU insurance undertakings investments.

Amendment 10
Article 3 (3)

3. For the application of paragraphs 1 and 2, the competent authorities concerned may by common agreement decide:

(a) that in the cases referred to in Article 5 (4) an entity need not be included for the calculation of the ratios;

(b) to lower the ratios in order to avoid sudden regime shifts, in particular in the case of groups that are on the borderline of exclusion from the definition of a financial conglomerate;

(c) in a particular case, to replace the criterion based on balance sheet total with one or more of the following parameters or to add one or more of these parameters, if they are of the opinion that these parameters are of particular relevance: income structure, off-balance sheet activities.

3. For the application of paragraphs 1 and 2, the competent authorities concerned may by common agreement decide that in the cases referred to in Article 5 (4) an entity need not be included for the calculation of the ratios;

Justification

The provision should be amended as above, since allowing a broad margin of discretion for the competent authorities concerned would run counter to the objective of ensuring uniform application of the directive under the various systems.

Amendment 11
Article 4.2 (c)

(c) every regulated entity in a financial conglomerate linked by a relationship within the meaning of Article 12 (1) of Directive 83/349/EEC.	***deleted***

Justification

The text of the current definition is inappropriately broad. In particular:

- *it would automatically include within the definition investors who hold a participation in a group, even where they do not have control or a dominant influence;*
- *it would automatically include within the definition entities linked by management within the meaning of Article 12(1) of Directive 83/349/EEC.*

The inclusion of these entities within the scope of supervision should be a matter for supervisory discretion under Article 4(4) in the same way as under the existing banking sectoral rules.

Amendment 12
Article 4, paragraph 4, subparagraph 1

Where persons hold participations or capital ties in one or more regulated entities or exercise significant influence over such entities without holding a participation or capital ties, other than in the cases referred to in paragraphs 2 and 3, the competent authorities concerned shall determine whether and to what extent these entities together with other entities ***constitute*** a financial conglomerate and supplementary supervision is to be carried out to the regulated entities.	Where persons hold participations or capital ties in one or more regulated entities or exercise significant influence over such entities without holding a participation or capital ties, ***or persons are linked to one or more regulated entities by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC,*** other than in the cases referred to in paragraphs 2 and 3, the competent authorities concerned shall determine whether and to what extent these entities together with other entities ***shall be treated as if they were*** a financial conglomerate and supplementary

supervision is to be carried out to the regulated entities.

Justification

See justification for amendment to Article 2(11).

Amendment 13
Article 5, paragraph 2 a (new)

2a. Financial conglomerates shall be free to choose one of the methods laid down in Annex I for the calculation of the capital adequacy requirements at the level of the financial conglomerate.

The competent authorities may ask for verification, applying one or both of the alternative methods.

The single co-ordinator may oppose repetitive changes of methods, if they are deemed abusive.

Justification

The Commission's proposal is unclear about whether the choice of the calculation method is left to the financial conglomerate or to the competent authority. Financial conglomerates should be free to opt for one of the methods provided in Annex I of the Directive. This allows for more flexibility.

However, the single co-ordinator should be entitled to oppose repetitive changes of methods if they are intended to abuse market participants or supervisors.

Amendment 14
Article 5, paragraph 2 a (new)

2a. Financial conglomerates shall be free to choose one of the three methods laid down in Annex I for the calculation of the capital adequacy requirements at the level of the financial conglomerate. The competent authorities may ask for

verification, applying one or both of the alternative methods.

Justification

The obligation to make public the choice of the method to assess capital adequacy at the level of the conglomerate could have several disturbing effects without generating significant benefits in terms of transparency. The vital point is to ensure that the supervisor has the ability to verify if the outcome of alternative methods is equivalent. In addition, this kind of provision is not laid down in sectoral directives.

Amendment 15
Article 5, paragraph 3 a (new)

3a. For the test on the supplementary capital adequacy with regard to a financial conglomerate, the own funds and the solvency requirements of the entities in the group shall be calculated by applying the corresponding sectoral rules on the form and extent of consolidation as laid down in particular in Article 54 and Chapter 2, Section 1 of Directive 2000/12/EC and Annex 1(1), B, of Directive 98/78/EC. Minority interest shall be included in the capital.

Justification

The objective is to achieve clarification, but also to lay down one of the core principles of this directive in Article 5, which is not subject to comitology.

The reference to Chapter 2, Section 1 of Directive 2000/12/EC is also intended by the Commission proposal. In order to achieve sufficient clarification on this very important issue, the wording should be amended. The reference to minority interest also aims at clarification. Furthermore, the modifications make clear that for the purposes of the capital adequacy test, the sectoral directives remain unchanged. In particular it is made clear that 'full consolidation' will not be excluded in any of the three calculation methods. Important questions like the use of subordinated debts are not in doubt.

Amendment 16
Article 5, paragraph 3 b (new)

3b. Pending further harmonisation of sectoral rules, the solvency requirements

for each different financial sector represented in a financial conglomerate shall be covered by own funds elements in accordance with the corresponding sectoral rules; all own funds elements that are eligible according to either of the sectoral rules shall qualify for the verification of the compliance with solvency requirements at the financial conglomerate level as to be calculated according to the methods in Annex I.

Justification

This amendment also aims at clarification and at the same time at introducing another core principle of the proposal into Article 5, which is not subject to comitology.

Amendment 17
Article 5(4a)(new)

The competent authorities must take into account the public financial commitments of "co-operative conglomerates" which do not meet the definitions of this directive, with respect to other financial entities . The level of the proportional share will be determined by the expected liabilities to which the relationship between these undertakings could give rise

Justification

Cooperative or mutual entities, not covered by the definitions of this directive due to the lack of financial participations should not escape its objective. The competent authorities must therefore take into account public financial committments taken by these entities with respect to other financial undertakings.

Amendment 18
Article 6, paragraph 6 a(new)

The co-ordinators will closely monitor the

application of rules on intra-group transactions and risk concentration within financial conglomerates and report on its experience on a regular basis to the Financial Conglomerates Committee. Three years after the adoption of this directive, the Commission will present an evaluation report which will address the appropriateness of introducing quantitative thresholds and limits for intra-group transactions and risk concentration for financial conglomerates which would require the parallel adaptation of the insurance directives .

Justification

While quantitative limits already exist for intra-group transactions and risk concentration in the banking and investment sector, there are no such rules for insurance. By introducing them for financial conglomerates, insurance undertakings in a financial conglomerate would be disadvantaged with respect to insurance undertakings being part of an insurance group. In order to establish a quantitative approach in the financial conglomerates directive, the sectoral insurance directives would have to be adapted at the same time.

Amendment 19
Article 7, paragraph 1

1. In order to ensure a proper supplementary supervision of the regulated entities in a financial conglomerate, the competent authorities concerned shall appoint amongst them a co-ordinator, where necessary composed of more than one competent authority, responsible for co-ordination and exercise of the supplementary supervision.

1. In order to ensure a proper supplementary supervision of the regulated entities in a financial conglomerate, the competent authorities ***of the Member States*** concerned, ***including those of the Member State in which the mixed financial holding company is set up***, shall appoint amongst them a ***single*** co-ordinator, responsible for co-ordination and exercise of the supplementary supervision***. The single co-ordinator shall be so appointed, and the coordinator's identity notified to the relevant regulated entities, without delay and before the due transposition date of this Directive in the Member States.***

Justification

It is essential that the appointment takes place and is communicated to the relevant regulated entities as soon as possible. Complying with the various requirements under the proposed Directive will take some time. Therefore, the financial conglomerate should know the identity of the single coordinator sufficiently in advance so that it can discuss with him/her the relevant organisational and prudential issues and adapt its relevant structures on time.

Amendment 20
Article 7, paragraph 2

2. ***The competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company is set up, shall seek agreement as to who amongst them shall exercise the role of co-ordinator.*** ***In the absence of an immediate agreement, the role of the co-ordinator shall be exercised by the competent authority or authorities identified on the basis of*** the following criteria:	2. ***The appointment shall be based on*** the following criteria:

Justification

This corresponds to Amendment 8 to Article 7(1) which incorporates the provisions of the original Commission text of this article.

Amendment 21
Article 7 a (new)

	Article 7 a ***Before making such an appointment, the relevant competent authorities shall give the regulated entities the opportunity to state their opinion concerning the appointment of the single coordinator.***

Justification

The regulated entities should be formally consulted prior to the appointment of the single coordinator. This would allow the regulated entities to give their (non-binding) opinion and – at the same time – help the relevant competent authorities to take an informed decision.

Amendment 22
Article 7 (2a) (new)

	In exceptional cases, the competent authorities may by common agreement waiver the above-mentioned criteria, if their application would be inappropriate

Justification

There may be cases when a formal procedure based on pre-established criteria may lead to unsatisfactory results. For this rason a margin for flexibility will be needed

Amendment 23
Article 8, paragraph 1, point (d) a (new)

	(da) the prevention of duplication of reporting.

Justification

One of the main tasks of the co-ordinator is to avoid duplication of reporting. The Commission shares this view. Yet this is not made explicit in the proposed Directive. Hence the proposal.

Amendment 24
Article 9, paragraph 1, last subparagraph

A competent authority may in exceptional circumstances decide not to exchange particular information or to consult, if this is considered to be inappropriate under these exceptional circumstances.	***deleted***

Justification

The exchange of information between the control authorities concerned by a conglomerate is an essential condition for effective prudential supervision. So it is undesirable to give control authorities the opportunity to evade the requirement to exchange information. The

'exceptional circumstances' mentioned in this subparagraph are precisely the times when it is essential to circulate information.

Amendment 25
Article 9, paragraph 2, subparagraph 2

Where the information referred to in Article 11 (2) has already been given to a competent authority in accordance with sectoral rules, the competent authorities responsible for exercising supplementary supervision ***may*** address themselves to the former authority for obtaining the information.	Where the information referred to in Article 11 (2) has already been given to a competent authority in accordance with sectoral rules, the competent authorities responsible for exercising supplementary supervision ***shall*** address themselves to the former authority for obtaining the information.

Justification

In accordance with the rationale of a 'single information authority', care must be taken to avoid the same information being repeatedly communicated to different authorities. It must therefore be compulsory (rather than optional) for an authority to address the authority already in position of the desired information.

Amendment 26
Article 14(3)

3. Member States ***may*** allow their competent authorities to apply other methods that ensure an appropriate supplementary supervision of the regulated entities in a financial conglomerate. Those methods must be agreed upon at least by the competent authorities responsible for the sectoral group-wide supervision of the regulated entities in the financial conglomerate, and where relevant by other competent authorities concerned. Competent authorities may in particular require the establishment of a mixed financial holding company that has its head office in the Community, and apply to the regulated entities in the financial conglomerate headed by this holding the provisions of this Directive. The methods must achieve the objectives of the	3. Member States ***shall*** allow their competent authorities to apply other methods that ensure an appropriate supplementary supervision of the regulated entities in a financial conglomerate. Those methods must be agreed upon at least by the competent authorities responsible for the sectoral group-wide supervision of the regulated entities in the financial conglomerate, and where relevant by other competent authorities concerned. Competent authorities may in particular require the establishment of a mixed financial holding company that has its head office in the Community, and apply to the regulated entities in the financial conglomerate headed by this holding the provisions of this Directive. The methods must achieve the

supplementary supervision as defined in this Directive and must be notified to the other Member States and the Commission, ***whereupon the procedure set out in paragraph 1 shall apply.***

objectives of the supplementary supervision as defined in this Directive and must be notified to the other Member States and the Commission.

Justification

There is a strong principled case for consolidated supervision of third country groups in order to ensure that risks to financial stability are addressed as these are not limited by EU boundaries. This objective should be achieved by greater co-operation and co-ordination between competent authorities both within and outside the EU. The directive needs to deliver these objectives in a practical and proportionate way; and needs to focus on outcomes rather than on the detailed methods of supervision in third countries. It is not yet clear however, how the detailed mechanisms (in Articles 14 and 25.9) will operate.

The first amendment would ensure that all competent authorities are given powers to apply alternative methods. The second amendment will ensure that 'alternative measures', where a third country supervisor is deemed non-equivalent, are not subject to a 'second' challenge procedure similar to that established for the general equivalence decisions.

Amendment 27
Article 16, first paragraph, introduction

The Commission shall adopt, in accordance with the procedure referred to in Article 17(2), ***the technical adaptations to be made to this Directive in the following areas:***

In order to take account of technical developments on financial markets and to ensure uniform application in the Community of this Directive, the Commission shall**,** in accordance with the procedure referred to in Article 17(2), ***adopt implementing measures concerning;***

Justification

This is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation.

Amendment 28
Article 16, subparagraphs (a) and (b)

a) ***clarification*** of the definitions referred to in Article***s*** 2 ***and 3***, in order to

a) ***a more precise definition*** of the definitions referred to in Article 2, in order

take into account in the application of this Directive developments on financial markets;	to take into account in the application of this Directive developments on financial markets;
b) ***the clarification*** of the definitions referred to in Article***s*** 2 ***and 3***, in order to ensure uniform application of this directive in the Community;	b) ***a more precise definition*** of the definitions referred to in Article 2, in order to ensure uniform application of this directive in the Community;

Justification

Determining the threshold (Article 3) is a key issue and cannot therefore be decided by the comitology procedure, but should continue to be subject to parliamentary co-decision. The term 'clarification' in (a) and (b) gives the comitology procedure a very free hand and should therefore be replaced by 'a more precise rendition'. Re (d): it should not be possible to change the principles of capital adequacy requirements (a key issue from Parliament's point of view) in the comitology procedure; it should only be possible to change the methods of calculation.

Amendment 29
Article 16, paragraph (d)

(d) ***clarification and adaptation of the capital adequacy requirements set out in Article 5 and of the technical principles*** set out in Annex I, in order to take account of developments on financial markets and prudential techniques.	(d) ***A more precise definition (14 words deleted) of the calculation methods*** set out in Annex I, in order to take account of developments on financial markets and prudential techniques.

Justification

Determining the threshold (Article 3) is a key issue and cannot therefore be decided by the comitology procedure, but should continue to be subject to parliamentary co-decision. The term 'clarification' in (a) and (b) gives the comitology procedure a very free hand and should therefore be replaced by 'a more precise definition'. Re (d): it should not be possible to change the principles of capital adequacy requirements (a key issue from Parliament's point of view) in the comitology procedure; it should only be possible to change the methods of calculation.

Amendment 30
Article 16, paragraph 1a (new)

Without prejudice to the implementing measures already adopted, on the expiry of a four-year period following its entry into force the application of the provisions of this directive stipulating the adoption of technical rules and decisions in accordance with the procedure referred to in [Article 16 paragraph 1] shall be suspended. On a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the EC Treaty and, to that end, they shall review them prior to the expiry of the period referred to above

Justification

This is necessary to take into account the agreement between the Commission and Parliament on the implementation of financial services legislation

Amendment 31
Article 16, point (d a) (new)

3a. The Commission shall inform the public of any proposal presented according to Article 16 and will formally consult the relevant European industry representative bodies prior to submitting to the Financial Conglomerates Committee the draft of the measures to be taken. The Financial Conglomerates Committee shall consult the relevant European financial services industry representative bodies prior to delivering its opinion.

Justification

The use of comitology runs the risk of important decisions being discussed and taken behind closed doors. Market participants must be consulted to maximise feasibility and consistency.

Amendment 32
ARTICLE 19 (3)
Article 18(4) (Directive 79/267/EC)

4. The solvency margin shall be reduced by holdings in other insurance undertakings, reinsurance undertakings, credit institutions and financial institutions, within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council*, amounting to more than 10% of their capital, as well as subordinated claims and instruments referred to in this paragraph, in Article 16 (1), second subparagraph, 7th and 8th indent, of Directive 73/239/EEC, and in Articles 35 and 36 (3) of Directive 2000/12/EC, which an insurance undertaking holds in respect of insurance undertakings, reinsurance undertakings, credit institutions and financial institutions in which it has holdings exceeding 10% of the capital in each case.	4. The solvency margin shall be reduced by holdings in other insurance undertakings, reinsurance undertakings, credit institutions and financial institutions, within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council*, amounting to more than 10% of their capital, as well as subordinated claims and instruments referred to in this paragraph, in Article 16 (1), second subparagraph, 7th and 8th indent, of Directive 73/239/EEC, and in Articles 35 and 36 (3) of Directive 2000/12/EC, which an insurance undertaking holds in respect of insurance undertakings, reinsurance undertakings, credit institutions and financial institutions in which it has holdings exceeding 10% of the capital in each case.
	The deduction will be limited to the proportional share of the solvency requirements of the latter entities. Proportional share means the proportional percentage of subscribed capital held in these entities, except where the holding entity has higher liabilities
Where shares in another credit institution, financial institution, insurance or reinsurance undertaking are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive this provision. Nevertheless, Member States may provide that for the calculation of the solvency margin on a stand alone basis, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC** or Directive 2001/…/EC of the European Parliament and of the Council need not deduct the aforementioned holdings,	Where shares in another credit institution, financial institution, insurance or reinsurance undertaking are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive this provision. Nevertheless, Member States may provide that for the calculation of the solvency margin on a stand alone basis, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC** or Directive 2001/…/EC of the European Parliament and of the Council need not deduct the

subordinated claims and instruments in entities which are included in the supplementary supervision.

aforementioned holdings, subordinated claims and instruments in entities which are included in the supplementary supervision.

Justification

When groups are consolidating, they already meet the requirements of Annex 1, if they are not, prudential rules will apply only to participations of more than 10% and the provision will be linked to what is proposed here. However, contrary to the banking and investment sector, there is no obligation to deduct participations for insurance undertakings being part of a financial group, not considered a financial conglomerate according to the definition in article 2. The prudential rules should therefore be mitigated limiting the deduction to the solvency requirements instead of the full participation. This would meet the objective of the directive, i.e. to prevent double gearing of prudential capital. At the same time it would meet the concerns with respect to the different nature of risk in the banking and insurance sector, which is taken into account in the sectoral solvency requirements. Although the directive does not encompass the less diversified financial groups, (i.e. which do not meet the 10% threshold in article 3, defining financial conglomerates) convergence should be ensured between these groups and financial conglomerates.

Amendment 33
ARTICLE 18, POINT 3
Article 16, paragraph 1 (Directive 73/239/EEC)

The solvency margin shall be reduced by holdings in other insurance undertakings, reinsurance undertakings, credit institutions and financial institutions, within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council*, amounting to more than 10% of their capital, as well as subordinated claims and instruments referred to in this paragraph, in Article 18, second subparagraph, point 1, 5th and 6th indent, of Directive 79/267/EEC and in Articles 35 and 36 (3) of Directive 2000/12/EC, which an insurance undertaking holds in respect of insurance undertakings, reinsurance undertakings, credit institutions and financial institutions, in which it has holdings exceeding 10% of the capital in each case**.**

The solvency margin shall be reduced by holdings in other insurance undertakings, reinsurance undertakings, credit institutions and financial institutions, within the meaning of Article 1(1) and (5) of Directive 2000/12/EC of the European Parliament and of the Council*, amounting to more than 10% of their capital, as well as subordinated claims and instruments referred to in this paragraph, in Article 18, second subparagraph, point 1, 5th and 6th indent, of Directive 79/267/EEC and in Articles 35 and 36 (3) of Directive 2000/12/EC, which an insurance undertaking holds in respect of insurance undertakings, reinsurance undertakings, credit institutions and financial institutions, in which it has holdings exceeding 10% of the capital in each case**.**
Deduction of participations from

prudential capital, will be limited to the proportional share of the solvency requirements of the latter entities. Proportional share means the proportional percentage of subscribed capital held in these entities, except where the holding entity has higher liabilities

Where shares in another credit institution, financial institution, insurance or reinsurance undertaking are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive this provision. Nevertheless, Member States may provide that for the calculation of the solvency margin on a stand alone basis, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC** or Directive 2001/…/EC of the European Parliament and of the Council need not deduct the aforementioned holdings, subordinated claims and instruments in entities which are included in the supplementary supervision.

Where shares in another credit institution, financial institution, insurance or reinsurance undertaking are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive this provision. Nevertheless, Member States may provide that for the calculation of the solvency margin on a stand alone basis, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC** or Directive 2001/…/EC of the European Parliament and of the Council need not deduct the aforementioned holdings, subordinated claims and instruments in entities which are included in the supplementary supervision.

Justification

When groups are consolidating, they already meet the requirements of Annex 1, if they are not, prudential rules will apply only to participations of more than 10% and the provision will be linked to what is proposed here. However, contrary to the banking and investment sector, there is no obligation to deduct participations for insurance undertakings being part of a financial group, not considered a financial conglomerate according to the definition in article 2. The prudential rules should therefore be mitigated limiting the deduction to the solvency requirements instead of the full participation. This would meet the objective of the directive, i.e. to prevent double gearing of prudential capital. At the same time it would meet the concerns with respect to the different nature of risk in the banking and insurance sector, which is taken into account in the sectoral solvency requirements. Although the directive does not encompass the less diversified financial groups, (i.e. which do not meet the 10% threshold in article 3, defining financial conglomerates) convergence should be ensured between these groups and financial conglomerates.

Amendment 34
ARTICLE 25, POINT 5

Article 34(2), first subparagraph, point (13) (Directive 2000/12/EC)

holdings in other credit institutions, financial institutions, insurance and reinsurance undertakings of up to 10% of their capital, as well as subordinated claims, instruments referred to in Article 35, and instruments referred to in Article 16(1), second subparagraph, 7th and 8th indent, of Directive 73/239/EEC and Article 18, second subparagraph, point 1, 5th and 6th indent, of Directive 79/267/EEC, which a credit institution holds in respect of credit institutions, financial institutions, insurance and reinsurance undertakings, other than those referred to in point (12), in respect of the amount of the total of such holdings, subordinated claims and instruments which exceed 10% of that credit institution's own funds calculated before the deduction of items in point (12) and this point.	holdings in other credit institutions, financial institutions, insurance and reinsurance undertakings of up to 10% of their capital, as well as subordinated claims, instruments referred to in Article 35, and instruments referred to in Article 16(1), second subparagraph, 7th and 8th indent, of Directive 73/239/EEC and Article 18, second subparagraph, point 1, 5th and 6th indent, of Directive 79/267/EEC, which a credit institution holds in respect of credit institutions, financial institutions, insurance and reinsurance undertakings, other than those referred to in point (12), in respect of the amount of the total of such holdings, subordinated claims and instruments which exceed 10% of that credit institution's own funds calculated before the deduction of items in point (12) and this point. ***For participations in insurance undertakings the deduction will be limited to the proportional share of the solvency requirements of the latter entities. Proportional share means the proportional percentage of subscribed capital held in these entities, except where the holding entity has higher liabilities*** ***Within one year after the agreement at an international level on the rules on eliminating the double gearing of own funds in financial groups, the Commission will examine how to bring the European Union's' legislation in line with these international agreements.***

Justification

When groups are consolidating, they already meet the requirements of Annex 1, if they are not, prudential rules will apply only to participations of more than 10% and the provision will be linked to what is proposed here. For participations between banks and investment firms, appropriate rules providing the full deduction of participations are already in place. In order not to water down the solvency which would be contradictory to the existing Basel agreement,

the limitation of capital deductions to the solvency requirements of the subsidiary should be confined to participation in insurance undertakings. In order to achieve a higher degree of coherence with respect to solvency requirements in the different sectoral directives the Commission should come forward with proposals after the definite conclusion of the Basel negotiations

Amendment 35
ARTICLE 25, POINT 8
Article 56(7) (Directive 2000/12/EC)

Where the competent authority who made the request does not carry out the verification itself, it may ask to participate in the verification.	Where the competent authority who made the request does not carry out the verification itself, it ***(3 words deleted) will participate on request*** in the verification.

Justification

It should be clear, that the competent authority can participate on its own right in the verification

Amendment 36
Article 26, paragraph 2 a (new)

	The Member States shall ensure that the provisions referred to in this article are implemented no earlier than the time of supervision of the annual accounts for the accounting year beginning in the calendar year in which the competent authorities reach agreement on which competent authority should be appointed as coordinator responsible for the coordination of supplementary supervision pursuant to Article 7.

Justification

With a view to ensuring legal certainty and avoiding the multiplication of (supplementary) supervision, it should be made clear before the provisions are implemented which authority is to be appointed as coordinator.

Amendment 37
Annex I, point I, paragraph 2, point (ii), subparagraph 1

(ii) pending further harmonisation of sectoral rules, the solvency requirements for each different financial sector represented in a financial conglomerate shall be covered by own funds elements in accordance with the corresponding sectoral rules; only own funds elements that are eligible according to each of the sectoral rules ('cross-sector capital') shall qualify for the verification of the compliance with additional solvency requirements at the financial conglomerate level;	***deleted***

Justification

Amendment 52 transposes the provisions (in an amended form) from Annex I to Article 5 of the Directive.

Amendment 38
Annex I, last paragraph

Competent authorities ***may apply*** a combination of methods 1, 2 and 3, or a combination of two of these methods.	Competent authorities ***shall permit the use of*** a combination of methods 1, 2 and 3, or a combination of two of these methods.

Justification

Given the similarity of the methods proposed, each conglomerate should be free to use the method or combination of methods to be used based on their individual structures.

Amendment 39
Annex I, point I, paragraph 1, subparagraphs 1 and 2

When calculating the supplementary capital adequacy with regard to a financial conglomerate by applying method 1 ('Accounting consolidation'), the own	***deleted***

funds and the solvency requirements of the entities in the group shall be calculated by applying the corresponding sectoral rules on the form and extent of consolidation as laid down in particular in Article 54 of Directive 2000/12/EC and Annex 1(1), B, of Directive 98/78/EC.

When applying methods 2 or 3 ('Deduction and aggregation', 'Requirement deduction'), the calculation shall take account of the proportional share held by the parent undertaking or undertaking which holds a participation in another entity of the group. 'Proportional share' means the proportion of the subscribed capital that is held, directly or indirectly, by that undertaking.

Justification

Amendment 51 transposes the provisions (in an amended form) from Annex I to Article 5 of the Directive.

Amendment 40
Annex II, paragraph 1

The co-ordinator, the competent authorities responsible for the sectoral group-wide supervision of the regulated entities in a financial conglomerate and where relevant other competent authorities concerned shall identify and agree with each other on the type of transactions and risks regulated entities in a particular financial conglomerate shall report in accordance with the provisions of Article 6(3) on the reporting of intra-group transactions and risk concentration. When defining the type of transactions and risks, the relevant competent authorities shall take into account the specific group and risk management structure of the financial conglomerate. In order to identify significant intra-group transactions and significant risk concentration to be reported in accordance with the provisions of Article 6, the relevant competent authorities shall define

The co-ordinator, the competent authorities responsible for the sectoral group-wide supervision of the regulated entities in a financial conglomerate and where relevant other competent authorities concerned shall identify and agree with each other on the type of transactions and risks regulated entities in a particular financial conglomerate shall report in accordance with the provisions of Article 6(3) on the reporting of intra-group transactions and risk concentration. When defining the type of transactions and risks, the relevant competent authorities shall take into account the specific group and risk management structure of the financial conglomerate. In order to identify significant intra-group transactions and significant risk concentration to be reported in accordance with the provisions of Article 6, the relevant competent authorities shall ***consult the***

appropriate thresholds based on regulatory own funds and/or technical provisions.	***financial conglomerate and may*** define appropriate thresholds based on regulatory own funds and/or technical provisions.

Justification

What is meant by 'significant' for the purposes of intra-group transactions and risk concentration reporting should be decided on a case-by-case basis between the relevant competent authorities and the financial conglomerate, having regard to the policies, procedures, practices and other relevant characteristics of the latter. Hence, a prior dialogue between the relevant competent authorities and the financial conglomerate for the purpose of determining the exact scope of the reporting requirements is necessary.

As for the definition of reporting thresholds, this should be left to the discretion of the relevant competent authorities, as there may be criteria more appropriate than regulatory own funds and/or technical provisions.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on the supplementary supervision of credit institution, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and the Council (COM(2001) 213 – C5-0159/2001 – 2001/0095(COD))

(Codecision procedure: first reading)

The European Parliament,

– having regard to the Commission proposal to Parliament and the Council (COM(2001) 213[1]),

– having regard to Article 251(2) of the EC Treaty and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0159/2001),

– having regard to Rule 67 of its Rules of Procedure,

– having regard to the report of the Committee on Economic and Monetary Affairs (A5-0060/2001),

1. Approves the Commission proposal as amended;

2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;

3. Instructs its President to forward its position to the Council and Commission.

[1] OJ C 213 E, 31.7.2001, p. 227

EXPLANATORY STATEMENT

1. Introduction

The introduction of the Euro and the globalisation of financial markets have highlighted the need for modernising financial services markets in Europe in order to ensure their international competitiveness, based on their safety vis-à-vis systemic risks.

Year 2001 has witnessed the risks of investment industry (see the crack of e-economy bubble, particularly of the contingent value of UMTS licences) as well as of insurance industry (attacks of the 11th of September, explosion of the AZF factory in Toulouse). The French storms of 1999 (known as being reproducible with increasing greenhouse effects) are still to be paid for. We are entering a " civilisation of risk" where investment and insurance activities are endangering the safety of savings.

Therefore, it is the interest of the European Union to become the safest area in financial activities. By improving the rating, a reputation of being safe becomes a major argument for financial competitiveness. Since safety has a cost, it is in the interest of the Union that its own prudential rules are presented as an international standard in the Basel negotiation.

The challenge for policy makers is to provide for appropriate rules, which allow financial markets to develop. Financial regulators and supervisors are therefore faced with the challenge to ensure financial stability by adapting the regulatory and supervisory framework to these new structures.

The European Union has taken up this challenge by adopting the Financial Services Action Plan in 1999, of which the present proposal is an important element, aimed at introducing supplementary capital requirements and supervision for financial groups and conglomerates, combining insurance companies, banks and investment firms. It is based on the recommendation of the G 10 Joint Forum on Financial Conglomerates, i.e. its general approach has been agreed at international level. The need for such initiative has been underlined by the Economic and Finance Committee in its report on Financial Stability (Brouwer Report), endorsed by the ECOFIN Council in May 2000.

The directive proposal provides that where credit institutions, insurance undertakings and investment firms, having their head office in the EU, are part of a financial conglomerate, they are submitted to supplementary prudential supervision.

Main elements

- Introduction of specific prudential legislation for financial conglomerates, as certain groups of financial institutions are not covered by existing sectoral rules (this implies the elimination of some major inconsistencies between existing sectoral rules).
- Adequate prudential capital requirements for financial conglomerates by avoiding "multiple gearing" of prudential capital
- Improvement of the supervision on risk concentration and intra-group transactions.
- Intensification of co-operation and co-ordination (including the exchange of information)

between the competent supervisory authorities at cross-sector and cross-border level.

2. Your rapporteurs approach

Your rapporteur shares in principle the general approach taken by the directive proposal, as it provides the increasingly liberalised and integrated financial services markets in Europe with an adequate framework for the pursuance of financial stability. It is not an isolated initiative, taken at Community level, its principles have been internationally agreed within the G 10 Joint Forum. Parallel initiatives to implement the recommendations of the Joint Forum are presently under way in countries like Australia, the US and Switzerland.

It is sometimes suggested that the EU should not go ahead with regulating financial conglomerates before equivalent rules have been put in place in non-EU countries, as this would create major competitive disadvantages for the European financial industry. In the view of your rapporteur, this is not a valid argument for the following reasons:

- A number of countries (e.g. Switzerland, Australia) are presently adapting their legislation which is expected to enter into force at the same time as EU legislation. Switzerland is even more advanced, as it has put in place a provisional regime in order to meet the prudential concerns with respect to financial conglomerates.
- In the US, bank holding companies are already subject to full consolidation, legislation will further evolve with the creation of financial conglomerates which were legally prohibited until a few years ago.
- The lack of identical rules in third countries should not be used as a pretext to delay community legislation, as long as they ensure equivalent prudential standards, which in many countries is already the case.
- High prudential standards should not be considered anti-competitive, but an asset for European financial markets, given that the globalisation and increasing inter-dependence of financial brings along new types of systemic risk, partially due to the creation of large (cross-border) financial conglomerates.

The Belgian Presidency has given high priority to this directive and the incoming Spanish Presidency is equally committed to ensure its timely adoption. As the Joint Forum Reports puts it ("*Risk management practices and regulatory capital- cross sectoral comparison*" p.52-53) the capital of financial entities usually exceeds by 30% to 100% the minimum required by the current prudential legislation, in order to improve their rating. The proposal of directive does not increase this minimum for conglomerates.

Thus, the ambitious rules of supervision proposed by the Commission are both adequate and timely. The rapporteur believes that overall the proposal should be accepted by the Parliament and the Council, without much delay of conciliation, although he has minor reservations on a few points.

- **Definition of financial conglomerates**

Your rapporteur suggests to modify the definition of financial conglomerates by lowering the threshold of consolidated or aggregated balance sheet total of financial sector entities within a group from 50 to 40% in order to ensure that financial entities with significant activities which are part of a large group with mixed activities are covered by the directive.

- **Free choice of calculation method**

It is generally understood that the competent supervisory authority should decide which of the 3 methods for the calculation of the supplementary capital adequacy of the regulated entities in a financial conglomerate (Annex1) method should be applied. However, the directive is not clear on this behalf. I would instead suggest leaving the choice to the financial conglomerates that would be obliged to communicate it to the public. This would not only give companies more flexibility but also a higher degree of continuity as it would prevent them from being obliged to change their method, if the competent supervisory authority should change. However, in order to avoid a weakening of prudential standards, supervisory authorities should be free to check whether the conglomerates meets the standards of any of the other methods and to inform the public in case of failure. This will ensure fair competition, as institutional and private investors will thus be able to review their judgement and subsequently their investment decisions.

- **Intra group transactions and risk concentration**

Intra group transactions and risk concentrations within a financial conglomerate are particularly sensitive for the financial stability of a group. The directive therefore sets up a number of rules for supplementary supervision, aimed at ensuring a maximum of transparency and adequate risk management and control-mechanisms for intra-group transactions and risk concentration. It does not however provide for quantitative limits and thresholds. Their introduction is left to the discretion of Member States. In the interest of improving financial stability, your rapporteur would welcome quantitative limits for financial conglomerates at community level. However, they only exist so far in the banking sector but not for insurance. Their introduction in the financial conglomerate directive, which I personally advocate, would require a fundamental change of the sectoral insurance directives. For this reason, it cannot be a short-term objective, Based on the experience with the application of the existing rules, the Commission should come forward with an evaluation report three years after the directive has entered into force, which should identify possible ways towards the introduction of quantitative rules for intra-group transactions and risk-concentration within financial groups and conglomerates in general

- **The identification of the competent co-ordinator**

The procedure laid down for the identification of the co-ordinator does not offer sufficient legal certainty, as it leaves the decision to the discretion of the competent authorities. It will therefore be suggested, that the identification of the co-ordinator should follow the criteria established by the directive in case that competent authorities fail to reach agreement amongst them. Member States should be allowed to waiver these criteria, if their application in specific cases is inappropriate.

- **Deduction of participations**
- The directive obliges mixed non- financial groups, which are not conglomerates, to deduct participations in other financial institutions from their prudential capital. While this is already the case in the sectoral directives for participations of banks and investment firms in other banks and investment firms, it has given raise for concern with respect to participations in insurance undertakings or held by insurance companies. These concerns

seem justified to a certain extent, given the different nature of risk of banking and insurance and within the insurance sector between life and non-life insurance. I will therefore suggest, in case of insurance, to limit the deduction to the proportional share of solvency requirements of these entities. As noted in the Joint Forum Report, the actual capital of large insurance companies is usually two to four times bigger than their prudential requirements. After the agreement on new prudential capital rules within the Basel II process, the Commission should come forward with proposals which would ensure a higher degree of convergence of sectoral prudential capital rules.

- **Co-operative conglomerates**

Co-operative financial institutions (mutuelles) usually do not hold financial participations in other financial entities. For this reason, they do not fall under the scope of the directive. However, they should be made subject to supplementary supervision if they engage in financial commitments towards other financial institutions. For this reason, the directive should be amended accordingly.