

Directive 98/78/EC of the European Parliament and of the
Council of 27 October 1998 on the supplementary supervision
of insurance undertakings in an insurance group (repealed)

DIRECTIVE 98/78/EC OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL

of 27 October 1998

on the supplementary supervision of insurance
undertakings in an insurance group (repealed)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee⁽²⁾,

Acting in accordance with the procedure laid down in Article 189b of the Treaty⁽³⁾,

- (1) Whereas the first Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance⁽⁴⁾ and the first Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance⁽⁵⁾ require insurance undertakings to have solvency margins;
- (2) Whereas, under Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC⁽⁶⁾ and Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC⁽⁷⁾ the taking up and the pursuit of the business of insurance are subject to the granting of a single official authorisation issued by the authorities of the Member State in which an insurance undertaking has its registered office (home Member State); whereas such authorisation allows an undertaking to carry on business throughout the Community, under either the right of establishment or the freedom to provide services; whereas the competent authorities of home Member States are responsible for monitoring the financial health of insurance undertakings, including their solvency;
- (3) Whereas measures concerning the supplementary supervision of insurance undertakings in an insurance group should enable the authorities supervising an insurance undertaking to form a more soundly based judgment of its financial situation; whereas such supplementary supervision should take into account certain undertakings which are not at present subject to supervision under Community Directives; whereas

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this Directive does not in any way imply that Member States are required to undertake supervision of those undertakings considered individually;

- (4) Whereas insurance undertakings in a common insurance market engage in direct competition with each other and the rules concerning capital requirements must therefore be equivalent; whereas, to that end, the criteria applied to determine supplementary supervision must not be left solely to the discretion of Member States; whereas the adoption of common basic rules will be in the best interests of the Community in that it will prevent distortions of competition; whereas it is necessary to eliminate certain divergences between the laws of the Member States as regards the prudential rules to which insurance undertakings that are part of an insurance group are subject;
- (5) Whereas the approach adopted consists in bringing about such harmonisation as is essential, necessary and sufficient to achieve the mutual recognition of prudential control systems in this field; whereas the aim of this Directive is in particular to protect the interests of insured persons;
- (6) Whereas certain provisions of this Directive define minimum standards; whereas a home Member State may lay down stricter rules for insurance undertakings authorised by its own competent authorities;
- (7) Whereas this Directive provides for the supplementary supervision of any insurance company which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking or non-member-country insurance undertaking and, under different rules, for the supplementary supervision of any insurance company whose parent undertaking is an insurance holding company, a reinsurance undertaking, a non-member-country insurance undertaking or a mixed-activity insurance holding company; whereas the supervision of individual insurance undertakings by the competent authorities remains the essential principle of insurance supervision;
- (8) Whereas it is necessary to calculate an adjusted solvency situation for insurance undertakings forming part of an insurance group; whereas different methods are applied by the competent authorities in the Community to take into account the effects on the financial situation of an insurance undertaking attributable to the fact that it belongs to an insurance group; whereas this Directive lays down three methods to effect that calculation; whereas the principle is accepted that these methods are prudentially equivalent;
- (9) Whereas the solvency of a related subsidiary insurance undertaking of an insurance holding company, reinsurance undertaking or non-member-country insurance undertaking may be affected by the financial resources of the group of which it is a part and by the distribution of financial resources within that group; whereas the competent authorities should be provided with the means of exercising supplementary supervision and of taking appropriate measures at the level of the insurance undertaking where its solvency is or may be jeopardised;
- (10) Whereas the competent authorities should have access to all the information relevant to the exercise of supplementary supervision; whereas cooperation between the authorities

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responsible for the supervision of insurance undertakings as well as between those authorities and the authorities responsible for the supervision of other financial sectors should be established;

- (11) Whereas intra-group transactions can affect the financial position of an insurance undertaking; whereas the competent authorities should be in a position to exercise general supervision over certain types of such intra-group operations and take appropriate measures at the level of the insurance undertaking where its solvency is or may be jeopardised,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Definitions

For the purposes of this Directive:

- (a) *insurance undertaking* means an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;
- (b) *non-member-country insurance undertaking* means an undertaking which would require authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC if it had its registered office in the Community;
- (c) *reinsurance undertaking* means an undertaking, other than an insurance undertaking or a non-member-country insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, a non-member-country insurance undertaking or other reinsurance undertakings;
- (d) *parent undertaking* means a parent undertaking within the meaning of Article 1 of Directive 83/349/EEC⁽⁸⁾ and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;
- (e) *subsidiary undertaking* means a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the parent undertaking which is at the head of those undertakings;
- (f) *participation* means participation within the meaning of Article 17, first sentence, of Directive 78/660/EEC⁽⁹⁾ or the holding, directly or indirectly, of 20 % or more of the voting rights or capital of an undertaking;
- (g) *[^{F1}participating undertaking* shall mean an undertaking which is either a parent undertaking or other undertaking which holds a participation, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
- (h) *related undertaking* shall mean either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

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- (i) *insurance holding company* shall mean a parent undertaking, the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings, reinsurance undertakings, or non-member-country insurance undertakings, at least one of such subsidiary undertakings being an insurance undertaking, and which is not a mixed financial holding company within the meaning of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate⁽¹⁰⁾;
- (j) *mixed-activity insurance holding company* shall mean a parent undertaking, other than an insurance undertaking, a non-member country insurance undertaking, a reinsurance undertaking, an insurance holding company or a mixed financial holding company within the meaning of Directive 2002/87/EC, which includes at least one insurance undertaking among its subsidiary undertakings;]
- (k) *competent authorities* means the national authorities which are empowered by law or regulation to supervise insurance undertakings.

Textual Amendments

- F1** Substituted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, 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 of the Council.

Article 2

Cases of application of supplementary supervision of insurance undertakings

1 In addition to the provisions of Directives 73/239/EEC and 79/267/EEC which lay down the rules for the supervision of insurance undertakings, Member States shall provide supervision of any insurance undertaking which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, or non-member-country insurance undertaking shall be supplemented in the manner prescribed in Articles 5, 6, 8 and 9.

2 Every insurance undertaking the parent undertaking of which is an insurance holding company, a reinsurance undertaking or a non-member-country insurance undertaking shall be subject to supplementary supervision in the manner prescribed in Articles 5(2), 6, 8 and 10.

3 Every insurance undertaking the parent undertaking of which is a mixed-activity insurance holding company shall be subject to supplementary supervision in the manner prescribed in Articles 5(2), 6 and 8.

Article 3

Scope of supplementary supervision

1 The exercise of supplementary supervision in accordance with Article 2 shall in no way imply that the competent authorities are required to play a supervisory role in relation to

the non-member-country insurance undertaking, insurance holding company or mixed-activity insurance holding company or reinsurance undertaking taken individually.

- 2 The supplementary supervision shall take into account:
- related undertakings of the insurance undertaking,
 - participating undertakings in the insurance undertaking,
 - related undertakings of a participating undertaking in the insurance undertaking,

referred to in Articles 5, 6, 8, 9 and 10.

- 3 Member States may decide not to take into account in the supplementary supervision referred to in Article 2 undertakings having their registered office in a non-member country where there are legal impediments to the transfer of the necessary information, without prejudice to the provisions of Annex I, point 2.5, and of Annex II, point 4.

Furthermore, the competent authorities responsible for exercising supplementary supervision may in the cases listed below decide on a case-by-case basis not to take an undertaking into account in the supplementary supervision referred to in Article 2:

- if the undertaking which should be included is of negligible interest with respect to the objectives of the supplementary supervision of insurance undertakings,
- if the inclusion of the financial situation of the undertaking would be inappropriate or misleading with respect to the objectives of the supplementary supervision of insurance undertakings.

Article 4

Competent authorities for exercising supplementary supervision

- 1 Supplementary supervision shall be exercised by the competent authorities of the Member State in which the insurance undertaking has received official authorisation under Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC.

- 2 Where insurance undertakings authorised in two or more Member States have as their parent undertaking the same insurance holding company, reinsurance undertaking, non-member-country insurance undertaking or mixed-activity insurance holding company, the competent authorities of the Member States concerned may reach agreement as to which of them will be responsible for exercising supplementary supervision.

- 3 Where a Member State has more than one competent authority for the prudential supervision of insurance undertakings and reinsurance undertakings, such Member State shall take the requisite measures to organise coordination between those authorities.

Article 5

Availability and quality of information

- 1 Member States shall prescribe that the competent authorities shall require that every insurance undertaking subject to supplementary supervision shall have adequate internal control mechanisms in place for the production of any data and information relevant for the purposes of such supplementary supervision.

- 2 Member States shall take the appropriate steps to ensure that there are no legal impediments within their jurisdiction preventing the undertakings that are subject to the

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supplementary supervision and their related undertakings and participating undertakings from exchanging among themselves any information relevant for the purposes of such supplementary supervision.

Article 6

Access to information

1 Member States shall provide that their competent authorities responsible for exercising supplementary supervision shall have access to any information which would be relevant for the purpose of supervision of an insurance undertaking subject to such supplementary supervision. The competent authorities may address themselves directly to the relevant undertakings referred to in Article 3(2) to obtain the necessary information only if such information has been requested from the insurance undertaking and has not been supplied by it.

2 Member States shall provide that their competent authorities may carry out within their territory, themselves or through the intermediary of persons whom they appoint for that purpose, on-the-spot verification of the information referred to in paragraph 1 at:

- the insurance undertaking subject to supplementary supervision,
- subsidiary undertakings of that insurance undertaking,
- parent undertakings of that insurance undertaking,
- subsidiary undertakings of a parent undertaking of that insurance undertaking.

3 Where, in applying this Article, the competent authorities of one Member State wish in specific cases to verify important information concerning an undertaking situated in another Member State which is a related insurance undertaking, a subsidiary undertaking, a parent undertaking or a subsidiary of a parent undertaking of the insurance undertaking subject to supplementary supervision, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request must act on it within the limits of their jurisdiction by carrying out the verification themselves, by allowing the authorities making the request to carry it out or by allowing an auditor or expert to carry it out.^[F2] The competent authority which made the request may, if it so wishes, participate in the verification when it does not carry out the verification itself.]

Textual Amendments

- F2** Inserted by [Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, 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 of the Council.](#)

Article 7

Cooperation between competent authorities

1 Where insurance undertakings established in different Member States are directly or indirectly related or have a common participating undertaking, the competent authorities of each Member State shall communicate to one another on request all relevant information which may allow or facilitate the exercise of supervision pursuant to this Directive and shall communicate

on their own initiative any information which appears to them to be essential for the other competent authorities.

2 Where an insurance undertaking and either a credit institution as defined in Directive 77/780/EEC⁽¹¹⁾ or an investment firm as defined in Directive 93/22/EEC⁽¹²⁾, or both, are directly or indirectly related or have a common participating undertaking, the competent authorities and the authorities with public responsibility for the supervision of those other undertakings shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular within the framework of this Directive.

3 Information received pursuant to this Directive and, in particular, any exchange of information between competent authorities which is provided for in this Directive shall be subject to the obligation of professional secrecy defined in Article 16 of Directive 92/49/EEC and Article 15 of Directive 92/96/EEC.

Article 8

Intra-group transactions

1 Member States shall provide that the competent authorities exercise general supervision over transactions between:

- a an insurance undertaking and:
 - (i) a related undertaking of the insurance undertaking;
 - (ii) a participating undertaking in the insurance undertaking;
 - (iii) a related undertaking of a participating undertaking in the insurance undertaking;
- b an insurance undertaking and a natural person who holds a participation in:
 - (i) the insurance undertaking or any of its related undertakings;
 - (ii) a participating undertaking in the insurance undertaking;
 - (iii) a related undertaking of a participating undertaking in the insurance undertaking.

These transactions concern in particular:

- loans,
- guarantees and off-balance-sheet transactions,
- elements eligible for the solvency margin,
- investments,
- reinsurance operations,
- agreements to share costs.

2 ^[F1]Member States shall require insurance undertakings to have in place adequate risk management processes and internal control mechanisms, including sound reporting and accounting procedures, in order to identify, measure, monitor and control transactions as provided for in paragraph 1 appropriately. Member States shall also require at least annual reporting by insurance undertakings to the competent authorities of significant transactions. These processes and mechanisms shall be subject to overview by the competent authorities.]

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If, on the basis of this information, it appears that the solvency of the insurance undertaking is, or may be, jeopardised, the competent authority shall take appropriate measures at the level of the insurance undertaking.

Textual Amendments

- F1** Substituted by [Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, 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 of the Council.](#)

Article 9

Adjusted solvency requirement

- 1 In the case referred to in Article 2(1), Member States shall require that an adjusted solvency calculation be carried out in accordance with Annex I.
- 2 Any related undertaking, participating undertaking or related undertaking of a participating undertaking shall be included in the calculation referred to in paragraph 1.
- 3 If the calculation referred to in paragraph 1 demonstrates that the adjusted solvency is negative, the competent authorities shall take appropriate measures at the level of the insurance undertaking in question.

Article 10

Reinsurance undertakings, insurance holding companies and non-member-country insurance undertakings

- 1 In the case referred to in Article 2(2), Member States shall require the method of supplementary supervision to be applied in accordance with Annex II.
- 2 In the case referred to in Article 2(2), the calculation shall include all related undertakings of the insurance holding company, the reinsurance undertaking or the non-member-country insurance undertaking, in the manner provided for in Annex II.
- 3 If, on the basis of this calculation, the competent authorities conclude that the solvency of a subsidiary insurance undertaking of the insurance holding company, the reinsurance undertaking or the non-member-country insurance undertaking is, or may be, jeopardised, they shall take appropriate measures at the level of that insurance undertaking.

^{F2}Article 10a

Cooperation with third countries' competent authorities

- 1 The Commission may submit proposals to the Council, either at the request of a Member State or on its own initiative, for the negotiation of agreements with one or more third countries regarding the means of exercising supplementary supervision over:
 - a insurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 2 which have their head office situated in a third country; and

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- b non-member country insurance undertakings which have, as participating undertakings, undertakings within the meaning of Article 2 which have their head office in the Community.
- 2 The agreements referred to in paragraph 1 shall in particular seek to ensure both:
- a that the competent authorities of the Member States are able to obtain the information necessary for the supplementary supervision of insurance undertakings which have their head office in the Community and which have subsidiaries or hold participations in undertakings outside the Community; and
 - b that the competent authorities of third countries are able to obtain the information necessary for the supplementary supervision of insurance undertakings which have their head office in their territories and which have subsidiaries or hold participations in undertakings in one or more Member States.

[^{F3} Without prejudice to Article 300(1) and (2) of the Treaty, the Commission shall, with the assistance of the European Insurance and Occupational Pensions Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.]

Textual Amendments

- F2** Inserted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, 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 of the Council.
- F3** Substituted by Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees (Text with EEA relevance).

Article 10b

The Member States shall require that persons who effectively direct the business of an insurance holding company are of sufficiently good repute and have sufficient experience to perform these duties.]

Textual Amendments

- F2** Inserted by Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, 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 of the Council.

Article 11

Implementation

1 Member States shall adopt not later than 5 June 2000 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

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2 Member States shall provide that the provisions referred to in paragraph 1 shall first apply to the supervision of accounts for financial years beginning on 1 January 2001 or during that calendar year.

3 When Member States adopt the measures referred to in paragraph 1, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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

[^{F35} Not later than 1 January 2006 the Commission shall issue a report on the application of this Directive and, if necessary, on the need for further harmonisation.]

Textual Amendments

F3 Substituted by [Directive 2005/1/EC of the European Parliament and of the Council of 9 March 2005 amending Council Directives 73/239/EEC, 85/611/EEC, 91/675/EEC, 92/49/EEC and 93/6/EEC and Directives 94/19/EC, 98/78/EC, 2000/12/EC, 2001/34/EC, 2002/83/EC and 2002/87/EC in order to establish a new organisational structure for financial services committees \(Text with EEA relevance\).](#)

Article 12

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 13

Addressees

This Directive is addressed to the Member States.

ANNEX I

CALCULATION OF THE ADJUSTED SOLVENCY OF INSURANCE UNDERTAKINGS

1. CHOICE OF CALCULATION METHOD AND GENERAL PRINCIPLES

A. Member States shall provide that the calculation of the adjusted solvency of insurance undertakings referred to in Article 2(1) shall be carried out according to one of the methods described in point 3. A Member State may, however, provide for the competent authorities to authorise or impose the application of a method set out in point 3 other than that chosen by the Member State.

B. Proportionality

The calculation of the adjusted solvency of an insurance undertaking shall take account of the proportional share held by the participating undertaking in its related undertakings.

‘Proportional share’ means either, where method 1 or method 2 described in point 3 is used, the proportion of the subscribed capital that is held, directly or indirectly, by the participating undertaking or, where method 3 described in point 3 is used, the percentages used for the establishment of the consolidated accounts.

However, whichever method is used, when the related undertaking is a subsidiary undertaking and has a solvency deficit, the total solvency deficit of the subsidiary has to be taken into account.

However, where, in the opinion of the competent authorities, the responsibility of the parent undertaking owning a share of the capital is limited strictly and unambiguously to that share of the capital, such competent authorities may give permission for the solvency deficit of the subsidiary undertaking to be taken into account on a proportional basis.

[^{F2}Where there are no capital ties between some of the undertakings in an insurance group, the competent authority shall determine which proportional share will have to be taken account of.]

C. Elimination of double use of solvency margin elements

C.1. General treatment of solvency margin elements

Regardless of the method used for the calculation of the adjusted solvency of an insurance undertaking, the double use of elements eligible for the solvency margin among the different insurance undertakings taken into account in that calculation must be eliminated.

For this purpose, when calculating the adjusted solvency of an insurance undertaking and where the methods described in point 3 do not provide for it, the following amounts shall be eliminated:

- the value of any asset of that insurance undertaking which represents the financing of elements eligible for the solvency margin of one of its related insurance undertakings,
- the value of any asset of a related insurance undertaking of that insurance undertaking which represents the financing of elements eligible for the solvency margin of that insurance undertaking,
- the value of any asset of a related insurance undertaking of that insurance undertaking which represents the financing of elements eligible for the solvency margin of any other related insurance undertaking of that insurance undertaking.

C.2. Treatment of certain elements

Without prejudice to the provisions of section C.1:

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- profit reserves and future profits arising in a related life assurance undertaking of the insurance undertaking for which the adjusted solvency is calculated, and
- any subscribed but not paid-up capital of a related insurance undertaking of the insurance undertaking for which the adjusted solvency is calculated,

may only be included in the calculation in so far as they are eligible for covering the solvency margin requirement of that related undertaking. However, any subscribed but not paid-up capital which represents a potential obligation on the part of the participating undertaking shall be entirely excluded from the calculation.

Any subscribed but not paid-up capital of the participating insurance undertaking which represents a potential obligation on the part of a related insurance undertaking shall also be excluded from the calculation.

Any subscribed but not paid-up capital of a related insurance undertaking which represents a potential obligation on the part of another related insurance undertaking of the same participating insurance undertaking shall be excluded from the calculation.

C.3. Transferability

If the competent authorities consider that certain elements eligible for the solvency margin of a related insurance undertaking other than those referred to in section C.2 cannot effectively be made available to cover the solvency margin requirement of the participating insurance undertaking for which the adjusted solvency is calculated, those elements may be included in the calculation only in so far as they are eligible for covering the solvency margin requirement of the related undertaking.

- C.4. The sum of the elements referred to in sections C.2 and C.3 may not exceed the solvency margin requirement of the related insurance undertaking.

D. Elimination of the intra-group creation of capital

When calculating adjusted solvency, no account shall be taken of any element eligible for the solvency margin arising out of reciprocal financing between the insurance undertaking and:

- a related undertaking,
- a participating undertaking,
- another related undertaking of any of its participating undertakings.

Furthermore, no account shall be taken of any element eligible for the solvency margin of a related insurance undertaking of the insurance undertaking for which the adjusted solvency is calculated when the element in question arises out of reciprocal financing with any other related undertaking of that insurance undertaking.

In particular, reciprocal financing exists when an insurance undertaking, or any of its related undertakings, holds shares in, or makes loans to, another undertaking which, directly or indirectly, holds an element eligible for the solvency margin of the first undertaking.

- E. The competent authorities shall ensure that the adjusted solvency is calculated with the same frequency as that laid down by Directives 73/239/EEC and 79/267/EEC for calculating the solvency margin of insurance undertakings. The value of the assets and liabilities shall be assessed according to the relevant provisions of Directives 73/239/EEC, 79/267/EEC and 91/674/EEC⁽¹³⁾.

2. APPLICATION OF THE CALCULATION METHODS

2.1. Related insurance undertakings

The adjusted solvency calculation shall be carried out in accordance with the general principles and methods set out in this Annex.

In the case of all methods, where the insurance undertaking has more than one related insurance undertaking, the adjusted solvency calculation shall be carried out by integrating each of these related insurance undertakings.

In cases of successive participations (for example, where an insurance undertaking is a participating undertaking in another insurance undertaking which is also a participating undertaking in an insurance undertaking), the adjusted solvency calculation shall be carried out at the level of each participating insurance undertaking which has at least one related insurance undertaking.

Member States may waive calculation of the adjusted solvency of an insurance undertaking:

- if the undertaking is a related undertaking of another insurance undertaking authorised in the same Member State, and that related undertaking is taken into account in the calculation of the adjusted solvency of the participating insurance undertaking, or
- if the insurance undertaking is a related undertaking either of an insurance holding company or of a reinsurance undertaking which has its registered office in the same Member State as the insurance undertaking, and both the holding insurance company or the reinsurance undertaking and the related insurance undertaking are taken into account in the calculation carried out.

Member States may also waive calculation of the adjusted solvency of an insurance undertaking if it is a related insurance undertaking of another insurance undertaking, a reinsurance undertaking or an insurance holding company which has its registered office in another Member State, and if the competent authorities of the Member States concerned have agreed to grant exercise of the supplementary supervision to the competent authority of the latter Member State.

In each case, the waiver may be granted only if the competent authorities are satisfied that the elements eligible for the solvency margins of the insurance undertakings included in the calculation are adequately distributed between those undertakings.

Member States may provide that where the related insurance undertaking has its registered office in a Member State other than that of the insurance undertaking for which the adjusted solvency calculation is carried out, the calculation shall take account, in respect of the related undertaking, of the solvency situation as assessed by the competent authorities of that other Member State.

2.2. Related reinsurance undertakings

When calculating the adjusted solvency of an insurance undertaking which is a participating undertaking in a reinsurance undertaking, this related reinsurance undertaking shall be treated, solely for the purposes of the calculation, by analogy with a related insurance undertaking, applying the general principles and methods described in this Annex.

To this end, a notional solvency requirement shall be established for each related reinsurance undertaking on the basis of the same rules as are laid down in Article 16(2) to (5) of Directive 73/239/EEC or Article 19 of Directive 79/267/EEC. However, in the event of significant difficulty in applying these rules, the competent authorities may permit the notional life solvency requirement to be calculated on the basis of the first result as set out in Article 16(3) of Directive 73/239/EEC. The same elements as are found in Article 16(1) of Directive 73/239/EEC and in Article 18 of Directive 79/267/EEC shall be recognised as eligible for the notional solvency margin. The value of the assets and liabilities shall be assessed according to the same rules as are laid down in those Directives and in Directive 91/674/EEC.

2.3. Intermediate insurance holding companies

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When calculating the adjusted solvency of an insurance undertaking which holds a participation in an insurance undertaking, a related reinsurance undertaking, or an insurance undertaking in a non-member country through an insurance holding company, the situation of the intermediate insurance holding company is taken into account. For the sole purpose of this calculation, to be undertaken in accordance with the general principles and methods described in this Annex, this insurance holding company shall be treated as if it were an insurance undertaking subject to a zero solvency requirement and were subject to the same conditions as are laid down in Article 16(1) of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC in respect of elements eligible for the solvency margin.

2.4. Related insurance or reinsurance undertakings having their registered office in non-member countries

A. Related non-member country insurance undertakings

When calculating the adjusted solvency of an insurance undertaking which is a participating undertaking in a non-member-country insurance undertaking, the latter shall be treated solely for the purposes of the calculation, by analogy with a related insurance undertaking, by applying the general principles and methods described in this Annex.

However, where the non-member-country in which that undertaking has its registered office makes it subject to authorisation and imposes on it a solvency requirement at least comparable to that laid down in Directives 73/239/EEC or 79/267/EEC, taking into account the elements of cover of that requirement, Member States may provide that the calculation shall take into account, as regards that undertaking, the solvency requirement and the elements eligible to satisfy that requirement as laid down by the non-member country in question.

B. Related non-member-country reinsurance undertakings

Notwithstanding section 2.2, when calculating the adjusted solvency of an insurance undertaking which is a participating undertaking in a reinsurance undertaking with its registered office in a non-member country, and subject to the same conditions as those set out in point A above, Member States may provide that the calculation shall take account, as regards the latter undertaking, of the own-funds requirement and the elements eligible to satisfy that requirement as laid down by the non-member country in question. Where only the insurance undertakings of that non-member country are subject to such provisions, the notional own-funds requirement on the related reinsurance undertaking and the elements eligible to satisfy that notional requirement may be calculated as if the undertaking in question were a related insurance undertaking of that non-member country.

[^{F2}2.4a. Related credit institutions, investment firms and financial institutions

When calculating the adjusted solvency of an insurance undertaking which is a participating undertaking in a credit institution, investment firm or financial institution, the rules laid down in Article 16(1) of Directive 73/239/EEC and in Article 18 of Directive 79/267/EEC on the deduction of such participations shall apply *mutatis mutandis*, as well as the provisions on the ability of Member States under certain conditions to allow alternative methods and to allow such participations not to be deducted.]

2.5. Non-availability of the necessary information

Where information necessary for calculating the adjusted solvency of an insurance undertaking, concerning a related undertaking with its registered office in a Member State or a non-member country, is not available to the competent authorities, for whatever reason, the book value of that undertaking in the participating insurance undertaking shall be deducted from the elements

eligible for the adjusted solvency margin. In that case, the unrealised gains connected with such participation shall not be allowed as an element eligible for the adjusted solvency margin.

3. CALCULATION METHODS

Method Deduction and aggregation method

1:

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

- (i) the sum of:
 - (a) the elements eligible for the solvency margin of the participating insurance undertaking, and
 - b) the proportional share of the participating insurance undertaking in the elements eligible for the solvency margin of the related insurance undertakingand
- (ii) the sum of:
 - (a) the book value in the participating insurance undertaking of the related insurance undertaking, and
 - (b) the solvency requirement of the participating insurance undertaking, and
 - (c) the proportional share of the solvency requirement of the related insurance undertaking.

Where the participation in the related insurance undertaking consists, wholly or in part, of an indirect ownership, then item (ii)(a) shall incorporate the value of such indirect ownership, taking into account the relevant successive interests; and items (i)(b) and (ii)(c) shall include the corresponding proportional shares of the elements eligible for the solvency margin of the related insurance undertaking and of the solvency requirement of the related insurance undertaking, respectively.

Method Requirement deduction method

2:

The adjusted solvency of the participating insurance undertaking is the difference between:

- (i) the sum of the elements eligible for the solvency margin of the participating insurance undertaking
- and
- (ii) the sum of:
 - (a) the solvency requirement of the participating insurance undertaking, and
 - (b) the proportional share of the solvency requirement of the related insurance undertaking.

When valuing the elements eligible for the solvency margin, participations within the meaning of this Directive are valued by the equity method, in accordance with the option set out in Article 59(2)(b) of Directive 78/660/EEC.

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Method Accounting consolidation-based method

3:

The calculation of the adjusted solvency of the participating insurance undertaking shall be carried out on the basis of the consolidated accounts. The adjusted solvency of the participating insurance undertaking is the difference between:

the elements eligible for the solvency margin calculated on the basis of consolidated data, and

- (a) either the sum of the solvency requirement of the participating insurance undertaking and of the proportional shares of the solvency requirements of the related insurance undertakings, based on the percentages used for the establishment of the consolidated accounts,
- (b) or the solvency requirement calculated on the basis of consolidated data.

The provisions of Directives 73/239/EEC, 79/267/EEC and 91/674/EEC shall apply for the calculation of the elements eligible for the solvency margin and of the solvency requirement based on consolidated data.

ANNEX II

SUPPLEMENTARY SUPERVISION FOR INSURANCE UNDERTAKINGS THAT ARE SUBSIDIARIES OF AN INSURANCE HOLDING COMPANY, A REINSURANCE UNDERTAKING OR A NON-MEMBER-COUNTRY INSURANCE UNDERTAKING

1. In the case of two or more insurance undertakings referred to in Article 2(2) which are the subsidiaries of an insurance holding company, a reinsurance undertaking or a non-member-country insurance undertaking and which are established in different Member States, the competent authorities shall ensure that the method described in this Annex is applied in a consistent manner.

The competent authorities shall exercise the supplementary supervision with the same frequency as that laid down by Directives 73/239/EEC and 79/267/EEC for calculating the solvency margin of insurance undertakings.

2. Member States may waive the calculation provided for in this Annex with regard to an insurance undertaking:
 - if that insurance undertaking is a related undertaking of another insurance undertaking and if it is taken into account in the calculation provided for in this Annex carried out for that other undertaking,
 - if that insurance undertaking and one or more other insurance undertakings authorised in the same Member State have as their parent undertaking the same insurance holding company, reinsurance undertaking or non-member-country insurance undertaking, and the insurance undertaking is taken into account in the calculation provided for in this Annex carried out for one of these other undertakings,
 - if that insurance undertaking and one or more other insurance undertakings authorised in other Member States have as their parent undertaking the same insurance holding company, reinsurance undertaking or non-member-country insurance undertaking, and an agreement granting exercise of the supplementary supervision covered by this Annex to the supervisory authority of another Member State has been concluded in accordance with Article 4(2).

In the case of successive participations (for example: an insurance holding company or a reinsurance undertaking which is itself owned by another insurance holding company, a reinsurance undertaking or a non-member-country insurance undertaking), Member States may apply the calculations provided for in this Annex only at the level of the ultimate parent undertaking of the insurance undertaking which is an insurance holding company, a reinsurance undertaking or a non-member-country insurance undertaking.

3. The competent authorities shall ensure that calculations analogous to those described in Annex I are carried out at the level of the insurance holding company, reinsurance undertaking or non-member-country insurance undertaking.

The analogy shall consist in applying the general principles and methods described in Annex I at the level of the insurance holding company, reinsurance undertaking or non-member-country insurance undertaking.

For the sole purpose of this calculation, the parent undertaking shall be treated as if it were an insurance undertaking subject to:

- a zero solvency requirement where it is an insurance holding company,
- a notional solvency requirement as provided for in section 2.2 of Annex I where it is a reinsurance undertaking, or as provided for in section 2.4(B) of Annex I where it is a reinsurance undertaking with its registered office in a non-member country,
- a solvency requirement determined according to the principles of section 2.4(A) of Annex I, where it is a non-member-country insurance undertaking,

and is subject to the same conditions as laid down in Article 16(1) of Directive 73/239/EEC or in Article 18 of Directive 79/267/EEC as regards the elements eligible for the solvency margin.

4. Non-availability of the necessary information

Where information necessary for the calculation provided for in this Annex, concerning a related undertaking with its registered office in a Member State or a non-member country, is not available to the competent authorities, for whatever reason, the book value of that undertaking in the participating undertaking shall be deducted from the elements eligible for the calculation provided for in this Annex. In that case, the unrealised gains connected with such participation shall not be allowed as an element eligible for the calculation.

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- (1) [OJ C 341, 19.12.1995, p. 16](#), and [OJ C 108, 7.4.1998, p. 48](#).
- (2) [OJ C 174, 17.6.1996, p. 16](#).
- (3) Opinion of the European Parliament of 23 October 1997 ([OJ C 339, 10.11.1997, p. 136](#)), Council common position of 30 March 1998 ([OJ C 204, 30.6.1998, p. 1](#)), Decision of the European Parliament of 16 September 1998 ([OJ C 313, 12.10.1998](#)) and Council Decision of 13 October 1998.
- (4) [OJ L 228, 16.8.1973, p. 3](#). Directive as last amended by Directive 95/26/EC ([OJ L 168, 18.7.1995, p. 7](#)).
- (5) [OJ L 63, 13.3.1979, p. 1](#). Directive as last amended by Directive 95/26/EC.
- (6) [OJ L 228, 11.8.1992, p. 1](#). Directive as amended by Directive 95/26/EC.
- (7) [OJ L 360, 9.12.1992, p. 1](#). Directive as amended by Directive 95/26/EC.
- (8) Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts ([OJ L 193, 18.7.1983, p. 1](#)). Directive as last amended by the 1994 Act of Accession.
- (9) Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies ([OJ L 222, 14.8.1978, p. 11](#)). Directive as last amended by the 1994 Act of Accession.
- (10) [^{F1}[OJ L 35, 11.2.2003](#).]
- (11) First Council Directive 77/780/EEC of 12 December 1977 on the coordination of the laws, regulations and administrative provisions relating to the taking up and pursuit of the business of credit institutions ([OJ L 322, 17.12.1977, p. 30](#)). Directive as last amended by Directive 96/13/EC ([OJ L 66, 16.3.1996, p. 15](#)).
- (12) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field ([OJ L 141, 11.6.1993, p. 27](#)). Directive as last amended by Directive 97/9/EC ([OJ L 84, 26.3.1997, p. 22](#)).
- (13) Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings ([OJ L 374, 31.12.1991, p. 7](#)).

Textual Amendments

- F1** Substituted by [Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, 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 of the Council](#).