

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

## CHAPTER IV

### AMENDMENTS TO EXISTING DIRECTIVES

#### <sup>F1</sup>Article 22

#### [<sup>F1</sup>Amendments to Directive 73/239/EEC]

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**Textual Amendments**

- F1** Deleted by [Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance \(Solvency II\) \(recast\)](#) (Text with EEA relevance).

#### Article 23

#### Amendments to Directive 79/267/EEC

Directive 79/267/EC is amended as follows:

1. the following Article shall be inserted:

*Article 12a*
1. The competent authorities of the other Member State involved shall be consulted prior to the granting of an authorisation to a life assurance undertaking, which is:
  - a a subsidiary of an insurance undertaking authorised in another Member State; or
  - b a subsidiary of the parent undertaking of an insurance undertaking authorised in another Member State; or
  - c controlled by the same person, whether natural or legal, who controls an insurance undertaking authorised in another Member State.
2. The competent authority of a Member State involved, responsible for the supervision of credit institutions or investment firms, shall be consulted prior to the granting of an authorisation to a life assurance undertaking, which is:
  - a a subsidiary of a credit institution or investment firm authorised in the Community; or
  - b a subsidiary of the parent undertaking of a credit institution or investment firm authorised in the Community; or

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- c controlled by the same person, whether natural or legal, who controls a credit institution or investment firm authorised in the Community.

3 The relevant competent authorities referred to in paragraphs 1 and 2 shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall inform each other of any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

2. the following subparagraphs shall be added to Article 18(2):

The available solvency margin shall also be reduced by the following items:

- (a) participations which the assurance undertaking holds, in
  - insurance undertakings within the meaning of Article 6 of this Directive, Article 6 of Directive 73/239/EEC<sup>(1)</sup>, or Article 1(b) of Directive 98/78/EC of the European Parliament and of the Council<sup>(2)</sup>,
  - reinsurance undertakings within the meaning of Article 1(c) of Directive 98/78/EC,
  - insurance holding companies within the meaning of Article 1(i) of Directive 98/78/EC,
  - 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<sup>(3)</sup>,
  - investment firms and financial institutions within the meaning of Article 1(2) of Directive 93/22/EEC<sup>(4)</sup> and of Articles 2(4) and 2(7) of Directive 93/6/EEC<sup>(5)</sup>;
- (b) each of the following items which the assurance undertaking holds in respect of the entities defined in (a) in which it holds a participation:
  - instruments referred to in paragraph 3,
  - instruments referred to in Article 16(3) of Directive 73/239/EEC,
  - subordinated claims and instruments referred to in Article 35 and Article 36(3) of Directive 2000/12/EC.

Where shares in another credit institution, investment firm, financial institution, insurance or reinsurance undertaking or insurance holding company are held temporarily for the purposes of a financial assistance operation designed to reorganise and save that entity, the competent authority may waive the provisions on deduction referred to under (a) and (b) of the third subparagraph.

As an alternative to the deduction of the items referred to in (a) and (b) of the third subparagraph which the insurance undertaking holds in credit institutions, investment firms and financial institutions, Member States may allow their insurance undertakings to apply *mutatis mutandis* methods 1, 2, or 3 of Annex I to 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<sup>(6)</sup>. Method 1 (Accounting consolidation) shall only be applied if the competent authority is confident about the level of integrated management and internal control regarding

the entities which would be included in the scope of consolidation. The method chosen shall be applied in a consistent manner over time.

Member States may provide that, for the calculation of the solvency margin as provided for by this Directive, insurance undertakings subject to supplementary supervision in accordance with Directive 98/78/EC or to supplementary supervision in accordance with Directive 2002/87/EC, need not deduct the items referred to in (a) and (b) of the third subparagraph which are held in credit institutions, investment firms, financial institutions, insurance or reinsurance undertakings or insurance holding companies which are included in the supplementary supervision.

For the purposes of the deduction of participations referred to in this paragraph, participation shall mean a participation within the meaning of Article 1(f) of Directive 98/78/EC.

#### *<sup>F1</sup>Article 24*

### **[<sup>F1</sup>Amendments to Directive 92/49/EEC]**

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#### **Textual Amendments**

- F1** Deleted by [Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance \(Solvency II\) \(recast\) \(Text with EEA relevance\)](#).

#### *Article 25*

### **Amendments to Directive 92/96/EEC**

Directive 92/96/EEC is amended as follows:

1. the following paragraph shall be inserted in Article 14:
  - 1a. If the acquirer of the holdings referred to in paragraph 1 is an insurance undertaking, a credit institution or an investment firm authorised in another Member State, or the parent undertaking of such an entity, or a natural or legal person controlling such an entity, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to hold a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be subject to the prior consultation referred to in Article 12a of Directive 79/267/EEC.
2. Article 15(5c) shall be replaced by the following:
  - 5c. This Article shall not prevent a competent authority from transmitting
    - to central banks and other bodies with a similar function in their capacity as monetary authorities,
    - where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such

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information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

#### *Article 26*

#### **Amendments to Directive 93/6/EEC**

In Article 7(3) of Directive 93/6/EEC the first and the second indents shall be replaced by the following:

- “financial holding company” shall mean a financial institution, the subsidiary undertakings of which are either exclusively or mainly investment firms or other financial institutions, at least one of which is an investment firm, 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<sup>(7)</sup>,
- “mixed-activity holding company” shall mean a parent undertaking, other than a financial holding company or an investment firm or a mixed financial holding company within the meaning of Directive 2002/87/EC, the subsidiaries of which include at least one investment firm.

#### *Article 27*

#### **Amendments to Directive 93/22/EEC**

Directive 93/22/EEC is amended as follows:

1. in Article 6 the following paragraphs shall be added:

The competent authority of a Member State involved, responsible for the supervision of credit institutions or insurance undertakings, shall be consulted prior to the granting of an authorisation to an investment firm which is:

- (a) a subsidiary of a credit institution or insurance undertaking authorised in the Community; or
- (b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in the Community; or
- (c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in the Community.

The relevant competent authorities referred to in the first and second paragraphs shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall inform each other of any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

2. Article 9(2) shall be replaced by the following:

2. If the acquirer of the holding referred to in paragraph 1 is an investment firm, a credit institution or an insurance undertaking authorised in another Member State, or the parent undertaking of an investment firm, credit institution or insurance undertaking authorised in another Member State, or a natural or legal person controlling an investment firm, credit institution or insurance undertaking authorised in another Member State, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to acquire a holding would become the acquirer's subsidiary or come under his control, the assessment of the acquisition must be subject to the prior consultation provided for in Article 6.

*<sup>F1</sup>Article 28*

**[<sup>F1</sup>Amendments to Directive 98/78/EC]**

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**Textual Amendments**

- F1** Deleted by [Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance \(Solvency II\) \(recast\)](#) (Text with EEA relevance).

*Article 29*

**Amendments to Directive 2000/12/EC**

Directive 2000/12/EC is amended as follows:

1. [<sup>F2</sup>.....
2. ....]
3. Article 16(2) shall be replaced by the following:
2. If the acquirer of the holdings referred to in paragraph 1 is a credit institution, insurance undertaking or investment firm authorised in another Member State or the parent undertaking of a credit institution, insurance undertaking or investment firm authorised in another Member State or a natural or legal person controlling a credit institution, insurance undertaking or investment firm authorised in another Member State, and if, as a result of that acquisition, the institution in which the acquirer proposes to hold a holding would become a subsidiary or subject to the control of the acquirer, the assessment of the acquisition must be subject to the prior consultation referred to in Article 12.
4. [<sup>F2</sup>.....
5. ....
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#### **Textual Amendments**

- F2** Deleted by [Directive 2006/48/EC](#) of the European Parliament and of the council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) (Text with EEA relevance).

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- (1) [OJ L 228, 16.8.1973, p. 3](#). Directive as last amended by Directive 2002/13/EC of the European Parliament and of the Council ([OJ L 77, 20.3.2002, p. 17](#)).
- (2) [OJ L 330, 5.12.1998, p. 1](#).
- (3) [OJ L 126, 26.5.2000, p. 1](#). Directive as last amended by Directive 2000/28/EC ([OJ L 275, 27.10.2000, p. 37](#)).
- (4) [OJ L 141, 11.6.1993, p. 27](#). Directive as last amended by Directive 2000/64/EC of the European Parliament and of the Council ([OJ L 290, 17.11.2000, p. 27](#)).
- (5) [OJ L 141, 11.6.1993, p. 1](#). Directive as last amended by Directive 98/33/EC of the European Parliament and of the Council ([OJ L 204, 21.7.1998, p. 29](#)).
- (6) [OJ L 35, 11.2.2003.](#)'
- (7) [OJ L 35, 11.2.2003.](#)'