DIRECTIVES

DIRECTIVE 2011/89/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 16 November 2011

amending Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Central Bank [1],

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) 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 [3] provides competent authorities in the financial sector with supplementary powers and tools for the supervision of groups composed of many regulated entities, which are active in different sectors of the financial markets. Such groups (financial conglomerates), are exposed to risks (group risks) which include: the risks of contagion, where risks spread from one end of the group to another; risk concentration, where the same type of risk materialises in various parts of the group at the same time; the complexity of managing many different legal entities; potential conflicts of interest; and the challenge of allocating regulatory capital to all the regulated entities which are part of the financial conglomerate, thereby avoiding the multiple use of capital. Financial conglomerates should therefore be subject to supervision supplementary to supervision on a stand alone, consolidated or group basis, without duplicating or affecting the group and regardless of the legal structure of the group.

(2) It is appropriate to ensure consistency between the aims of Directive 2002/87/EC, on the one hand, and Council Directives 73/239/EEC [4] and 92/49/EEC [5] and Directives 98/78/EC [6], 2002/83/EC [7], 2004/39/EC [8], 2005/68/EC [9], 2006/48/EC [10], 2006/49/EC [11], 2009/65/EC [12], 2009/138/EC [13] and 2011/61/EU [14] of the European Parliament and of the Council, on the other, in order to enable appropriate supplementary supervision of insurance and banking groups, including where they are part of a mixed financial holding structure.

[1] OJ C 62, 26.2.2011, p. 1.
[2] Position of the European Parliament of 5 July 2011 (not yet published in the Official Journal) and decision of the Council of 8 November 2011.
[3] OJ L 35, 11.2.2003, p. 1.
[4] 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 (OJ L 228, 16.8.1973, p. 3).
[5] 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 (third non-life insurance Directive) (OJ L 228, 11.8.1992, p. 1).
[6] Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance and reinsurance undertakings in an insurance or reinsurance group (OJ L 330, 5.12.1998, p. 1).
[7] Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.12.2002, p. 1).
[8] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004. p. 1).
[9] Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ L 323, 9.12.2005, p. 1).
[10] 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 (OJ L 177, 30.6.2006, p. 1).
[11] Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (OJ L 177, 30.6.2006, p. 201).
[12] Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).
[13] 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) (OJ L 335, 17.12.2009, p. 1).
[14] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p. 1).

(3) It is necessary that financial conglomerates are identified throughout the Union according to the extent to which they are exposed to group risks, on the basis of common guidelines to be issued by the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council [1] (EBA), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council [2] (EIOPA) and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council [3] (ESMA) in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, through the Joint Committee of the European Supervisory Authorities (Joint Committee). It is also important that the requirements regarding the waiving of the application of supplementary supervision are applied in a risk-based manner in accordance with those guidelines. This is of particular importance in the case of the larger, internationally operating financial conglomerates.

(4) The comprehensive and adequate monitoring of group risks in large, complex, internationally operating financial conglomerates, as well as the supervision of the group-wide capital policies of such groups, is only possible when competent authorities gather supervisory information and plan supervisory measures beyond the national scope of their mandate. It is therefore necessary that competent authorities coordinate supplementary supervision on internationally operating financial conglomerates among the competent authorities which are regarded as most relevant for the supplementary supervision of a financial conglomerate. The colleges of financial conglomerates' relevant competent authorities should act in accordance with the supplementary nature of Directive 2002/87/EC, and as such should not duplicate or replace but should, rather, add value to the activities of existing colleges relevant to the banking and insurance subgroups within those financial conglomerates. A college should be set up for a financial conglomerate only where neither a banking nor an insurance sectoral college is in place.

(5) In order to ensure appropriate regulatory oversight, it is necessary that the legal structure and the governance and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches of banks, insurance undertakings and financial conglomerates with cross-border activities, are monitored by EBA, EIOPA, ESMA (hereinafter collectively referred to as 'the ESAs') and the Joint Committee, as appropriate, and that information is made available to the relevant competent authorities.

(6) In order to ensure effective supplementary supervision of regulated entities in a financial conglomerate, in particular where the head office of one of its subsidiaries is in a third country, the undertakings to which this Directive applies should include any undertaking, in particular any credit institution which has its registered office in a third country and which would require authorisation if its registered office were in the Union.

(7) The supplementary supervision of large, complex, internationally operating financial conglomerates requires coordination throughout the Union, in order to contribute to the stability of the internal market for financial services. To that end, competent authorities need to agree upon the supervisory approaches to be applied to those financial conglomerates. The ESAs should issue, in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, through the Joint Committee, common guidelines for those common supervisory approaches, thus ensuring a comprehensive prudential framework of the supervisory tools and powers available in the banking, insurance, securities and financial conglomerates directives. The guidelines provided for in Directive 2002/87/EC should reflect the supplementary nature of supervision thereunder, and complement the sector-specific supervision as provided for by Directives 73/239/EEC, 92/49/EEC, 98/78/EC, 2002/83/EC, 2004/39/EC, 2006/48/EC, 2006/49/EC, 2009/138/EC and 2011/61/EU.

(8) There is a genuine need to monitor and control potential group risks, posed to the financial conglomerate, arising from participations in other companies. For those cases where the specific supervisory powers provided for by Directive 2002/87/EC appear to be insufficient, the supervisory community should develop alternative methods to address and appropriately take into account these risks, preferably by work conducted by the ESAs through the Joint Committee. If a participation is the only element of identification of a financial conglomerate, supervisors should be allowed to assess whether the group is exposed to group risks and waive the need for supplementary supervision, if appropriate.

(9) With regard to certain group structures, supervisors have been left without powers in the current crisis since the regimes provided for in the relevant directives have forced them to choose either sector-specific or supplementary supervision. While a complete review of Directive 2002/87/EC should be undertaken in the context of the G20 work on financial conglomerates, the necessary supervisory powers should be provided for as soon as possible.

(10) It is appropriate to ensure consistency between the aims of Directive 2002/87/EC and Directive 98/78/EC. Directive 98/78/EC should therefore be amended to define and include mixed financial holding companies. In

[1] OJ L 331, 15.12.2010, p. 12.
[2] OJ L 331, 15.12.2010, p. 48.
[3] OJ L 331, 15.12.2010, p. 84.

order to ensure timely coherent supervision, Directive 98/78/EC should be amended, notwithstanding the imminent application of Directive 2009/138/EC, which should be amended to the same effect.

(11) While stress testing should occur regularly for the banking and insurance subgroups of a financial conglomerate, it is the role of the coordinator appointed in accordance with Directive 2002/87/EC to decide the appropriateness, parameters and timing of a stress test for an individual financial conglomerate as a whole. For Union-wide stress tests, carried out by the ESAs in a sector-specific context, the role of the Joint Committee should be to ensure that such stress tests occur in a consistent manner across sectors. For these reasons, the ESAs, through the Joint Committee, should be able to develop supplementary parameters for Union-wide stress tests, capturing the specific group risks that typically materialise in financial conglomerates and should be able to publish the results of those tests, where permitted by sectoral legislation. Experience from previous Union-wide stress tests should be taken into account. For example, stress tests should take account of liquidity and solvency risks of financial conglomerates.

(12) The Commission should further develop a coherent and conclusive system of supervision of financial conglomerates. The upcoming complete review of Directive 2002/87/EC should cover non-regulated entities, in particular special purpose vehicles, and should develop a risk-based application of the waivers available to supervisors in determining a financial conglomerate while limiting the use of such waivers. Having regard to the sectoral Directives, the review should also consider systemically relevant financial conglomerates, the size, inter-connectedness or complexity of which make them particularly vulnerable. Such conglomerates should be identified by analogy with the evolving standards of the Financial Stability Board and of the Basel Committee on Banking Supervision. The Commission should consider proposing regulatory action in this field.

(13) It is appropriate to ensure consistency between the aims of Directive 2002/87/EC and Directive 2006/48/EC. Directive 2006/48/EC should therefore be amended to define and include mixed financial holding companies.

(14) The restored availability of powers at the mixed financial holding company level implies that certain provisions of Directives 98/78/EC, 2002/87/EC, 2006/48/EC or 2009/138/EC apply simultaneously at that level. Those provisions may be equivalent to each other, especially as regards the qualitative elements of the supervisory review processes. For example, identical fit and proper requirements for the management of holding companies are provided for by Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC. To avoid an overlap between those provisions and to ensure the effectiveness of top-level supervision, supervisors should be able to apply a particular provision only once, while complying with the equivalent provision in all other applicable directives. Where provisions do not have identical wording, they should be regarded as equivalent if they are similar in substance, in particular in terms of risk-based supervision. When assessing equivalence, supervisors should check, within colleges, whether, in regard to each applicable directive, the scope is covered and the objectives are achieved, without lowering supervisory standards. It should be possible for equivalence assessments to evolve in the course of changing supervisory frameworks and practices. Equivalence assessments should therefore be subject to an open, evolutionary process. That process should allow for case-by-case solutions so that all the relevant features of a particular group are taken into account. To ensure consistency within the supervisory framework for a particular group and to obtain a level playing field among all financial conglomerates within the Union, appropriate supervisory cooperation is necessary. To that end, the ESAs, through the Joint Committee, should develop guidelines aimed at the convergence of equivalence assessments and work towards issuing binding technical standards.

(15) In order to improve the supplementary supervision of financial entities in a financial conglomerate, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of technical adaptations to be made to Directive 2002/87/EC as regards the definitions, the alignment of terminology and the calculation methods set out in that Directive. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(16) Since the objective of this Directive, namely improving the supplementary supervision of financial entities in a financial conglomerate, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

(17) Directives 98/78/EC, 2002/87/EC, 2006/48/EC and 2009/138/EC should therefore be amended,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 98/78/EC

Directive 98/78/EC is amended as follows:

(1) Article 1 is amended as follows:

(a) point (j) is replaced by the following:

'(j) "mixed-activity insurance holding company" means a parent undertaking, other than an insurance undertaking, a non-member-country insurance undertaking, a reinsurance undertaking, a non-member-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance undertaking or a reinsurance undertaking among its subsidiary undertakings;';

(b) the following point is added:

'(m) "mixed financial holding company" means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;';

(2) Article 2(2) is replaced by the following:

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

(3) the following Article is inserted:

'Article 2a

Level of application with regard to mixed financial holding companies

1. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the competent authority responsible for exercising supplementary supervision may, after consulting the other competent authorities concerned, apply only the relevant provision of Directive 2002/87/EC to that mixed financial holding company.

2. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the competent authority responsible for exercising supplementary supervision may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provision of the directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

3. The competent authority responsible for exercising supplementary supervision shall inform the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*) (EBA), and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (**) (EIOPA) of the decisions taken under paragraphs 1 and 2. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (***) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of those guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

(*) OJ L 331, 15.12.2010, p. 12.
(**) OJ L 331, 15.12.2010, p. 48.
(***) OJ L 331, 15.12.2010, p. 84.';

(4) Article 3(1) is replaced by the following:

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

(5) Article 4(2) is replaced by the following:

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

(6) Article 10 is replaced by the following:

'Article 10

Insurance holding companies, mixed financial holding companies, non-member-country insurance undertakings and non-member-country reinsurance undertakings

1. In relation to Article 2(2), Member States shall require the method of supplementary supervision to be applied in accordance with Annex II. The calculation shall include all related undertakings of the insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking.

2. If, on the basis of the calculation referred to in paragraph 1, the competent authorities conclude that the solvency of a subsidiary insurance or reinsurance undertaking of the insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking is, or may be, jeopardised, they shall take appropriate measures at the level of that insurance or reinsurance undertaking.';

(7) Annexes I and II are amended in accordance with Annex I to this Directive.

Article 2

Amendments to Directive 2002/87/EC

Directive 2002/87/EC is amended as follows:

(1) Articles 1 and 2 are replaced by the following:

'Article 1

Subject matter

This Directive lays down rules for supplementary supervision of regulated entities which have obtained an authorisation in accordance with Article 6 of Directive 73/239/EEC, Article 4 of Directive 2002/83/EC (*), Article 5 of Directive 2004/39/EC (**), Article 3 of Directive 2005/68/EC (***), Article 6 of Directive 2006/48/EC (****), Article 5 of Directive 2009/65/EC (*****), Article 14 of Directive 2009/138/EC (******) or Articles 6 to 11 of Directive 2011/61/EU (*******), and which are part of a financial conglomerate.

This Directive also amends the relevant sectoral rules which apply to entities regulated by those Directives.

Article 2

Definitions

For the purposes of this Directive:

(1) "credit institution" means a credit institution within the meaning of Article 4(1) of Directive 2006/48/EC;

(2) "insurance undertaking" means an insurance undertaking within the meaning of Article 13(1), (2) or (3) of Directive 2009/138/EC;

(3) "investment firm" means an investment firm within the meaning of point 1 of Article 4(1) of Directive 2004/39/EC, including the undertakings referred to in Article 3(1)(d) of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (********) or an undertaking the registered office of which is in a third country and which would require authorisation under Directive 2004/39/EC if its registered office were in the Union;

(4) "regulated entity" means a credit institution, an insurance undertaking, a reinsurance undertaking, an investment firm, an asset management company or an alternative investment fund manager;

(5) "asset management company" means a management company within the meaning of Article 2(1)(b) of Directive 2009/65/EC or an undertaking the registered office of which is in a third country and which would require authorisation under that Directive if its registered office were within the Union;

(5a) "alternative investment fund manager" means a manager of alternative investment funds within the meaning of Article 4(1)(b), (l) and (ab) of Directive 2011/61/EU or an undertaking the registered office of which is in a third country and which would require authorisation under that Directive if its registered office were within the Union;

(6) "reinsurance undertaking" means a reinsurance undertaking within the meaning of Article 13(4), (5) or (6) of Directive 2009/138/EC or a special purpose vehicle within the meaning of Article 13(26) of Directive 2009/138/EC;

(7) "sectoral rules" means Union legislation relating to the prudential supervision of regulated entities, in particular Directives 2004/39/EC, 2006/48/EC, 2006/49/EC and 2009/138/EC;

(8) "financial sector" means a sector composed of one or more of the following entities:

(a) a credit institution, a financial institution or an ancillary services undertaking within the meaning of Article 4(1), (5) or (21) of Directive 2006/48/EC (hereinafter referred to collectively as "the banking sector");

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company within the meaning of Article 13(1), (2), (4) or (5) or of Article 212(1)(f) of Directive 2009/138/EC (hereinafter referred to collectively as "the insurance sector");

(c) an investment firm within the meaning of Article 3(1)(b) of Directive 2006/49/EC (hereinafter referred to collectively as "the investment services sector");

(9) "parent undertaking" means a parent undertaking as defined in Article 1 of Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts (*********) or any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;

(10) "subsidiary undertaking" means a subsidiary undertaking as defined in Article 1 of Directive 83/349/EEC or any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence or all subsidiaries of such subsidiary undertakings;

(11) "participation" means a participation within the meaning of the first sentence of Article 17 of Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies (**********), or the direct or indirect ownership of 20 % or more of the voting rights or capital of an undertaking;

(12) "group" means a group of undertakings which consists of a parent undertaking, its subsidiaries and the entities in which the parent undertaking or its subsidiaries hold a participation, or undertakings linked to each other by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC, including any subgroup thereof;

(12a) "control" means the relationship between a parent undertaking and a subsidiary undertaking as set out in Article 1 of Directive 83/349/EEC, or a similar relationship between a natural or legal person and an undertaking;

(13) "close links" means a situation in which two or more natural or legal persons are linked by control or participation, or a situation in which two or more natural or legal persons are permanently linked to the same person by a control relationship;

(14) "financial conglomerate" means a group or subgroup, where a regulated entity is at the head of the group or subgroup, or where at least one of the subsidiaries in that group or subgroup is a regulated entity, and which meets the following conditions:

(a) where there is a regulated entity at the head of the group or subgroup:

(i) that entity is a parent undertaking of an entity in the financial sector, an entity which holds a participation in an entity in the financial sector, or an entity linked with an entity in the financial sector by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

(ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and

(iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3) of this Directive; or

(b) where there is no regulated entity at the head of the group or subgroup:

(i) the group's or subgroup's activities occur mainly in the financial sector within the meaning of Article 3(1) of this Directive;

(ii) at least one of the entities in the group or subgroup is within the insurance sector and at least one is within the banking or investment services sector; and

(iii) the consolidated or aggregated activities of the entities in the group or subgroup within the insurance sector and of the entities within the banking and investment services sector are both significant within the meaning of Article 3(2) or (3) of this Directive;

(15) "mixed financial holding company" means a parent undertaking, other than a regulated entity, which, together with its subsidiaries — at least one of which is a regulated entity which has its registered office in the Union — and other entities, constitutes a financial conglomerate;

(16) "competent authorities" means the national authorities of the Member States which are empowered by law or regulation to supervise credit institutions, insurance undertakings, reinsurance undertakings, investment firms, asset management companies or alternative investment fund managers whether on an individual or group-wide basis;

(17) "relevant competent authorities" means:

(a) Member States' competent authorities responsible for the sectoral group-wide supervision of any of the regulated entities in a financial conglomerate, in particular of the ultimate parent undertaking of a sector;

(b) the coordinator appointed in accordance with Article 10 if different from the authorities referred to in point (a);

(c) where appropriate, other competent authorities relevant to the opinion of the authorities referred to in points (a) and (b);

(18) "intra-group transactions" means all transactions by which regulated entities within a financial conglomerate rely directly or indirectly on other undertakings within the same group or on any natural or legal person linked to the undertakings within that group by close links, for the fulfilment of an obligation, whether or not contractual, and whether or not for payment;

(19) "risk concentration" means all risk exposures with a loss potential which is large enough to threaten the solvency or the financial position in general of the regulated entities in a financial conglomerate, whether such exposures are caused by counterparty risk/credit risk, investment risk, insurance risk, market risk, other risks, or a combination or interaction of such risks.

Until the entry into force of any regulatory technical standards adopted in accordance with Article 21a(1)(b), the opinion referred to in point (17)(c) shall, in particular, take into account the market share of the regulated entities of the financial conglomerate in other Member States, in particular if it exceeds 5 %, and the importance in the financial conglomerate of any regulated entity established in another Member State.

(*) Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life insurance (OJ L 345, 19.12.2002, p. 1).

(**) Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ L 145, 30.4.2004, p. 1).

(***) Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance (OJ L 323, 9.12.2005, p. 1).

(****) 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 (OJ L 177, 30.6.2006, p. 1).

(*****) Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).

(******) 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) (OJ L 335, 17.12.2009, p. 1).

(*******) Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers (OJ L 174, 1.7.2011, p. 1).

(********) OJ L 177, 30.6.2006, p. 201.

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

(**********) OJ L 222, 14.8.1978, p. 11.';

(2) Article 3 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

'1. For the purposes of determining whether the activities of a group mainly occur in the financial sector, within the meaning of Article 2(14)(b)(i), the ratio of the balance sheet total of the regulated and non-regulated financial sector entities in the group to the balance sheet total of the group as a whole should exceed 40 %.

2. For the purposes of determining whether activities in different financial sectors are significant within the meaning of Article 2(14)(a)(iii) or (14)(b)(iii), for each financial sector the average of the ratio of the balance sheet total of that financial sector to the balance sheet total of the financial sector entities in the group and the ratio of the solvency requirements of the same financial sector to the total solvency requirements of the financial sector entities in the group should exceed 10 %.

For the purposes of this Directive, the smallest financial sector in a financial conglomerate is the sector with the smallest average and the most important financial sector in a financial conglomerate is the sector with the highest average. For the purposes of calculating the average and for the measurement of the smallest and the most important financial sectors, the banking sector and the investment services sector shall be considered together.

Asset management companies shall be added to the sector to which they belong within the group. If they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

Alternative investment fund managers shall be added to the sector to which they belong within the group. If they do not belong exclusively to one sector within the group, they shall be added to the smallest financial sector.

3. Cross-sectoral activities shall also be presumed to be significant within the meaning of Article 2(14)(a)(iii) or (14)(b)(iii) if the balance sheet total of the smallest financial sector in the group exceeds EUR 6 billion.

If the group does not reach the threshold referred to in paragraph 2 of this Article, the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate. They may also decide not to apply the provisions of Article 7, 8, or 9, if they are of the opinion that the inclusion of the group in the scope of this Directive or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

Decisions taken in accordance with this paragraph shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.

3a. If the group reaches the threshold referred to in paragraph 2 of this Article, but the smallest sector does not exceed EUR 6 billion, the relevant competent authorities may decide by common agreement not to regard the group as a financial conglomerate. They may also decide not to apply the provisions of Article 7, 8, or 9, if they are of the opinion that the inclusion of the group in the scope of this Directive or the application of such provisions is not necessary or would be inappropriate or misleading with respect to the objectives of supplementary supervision.

Decisions taken in accordance with this paragraph shall be notified to the other competent authorities and shall, save in exceptional circumstances, be made public by the competent authorities.';

(b) paragraph 4 is amended as follows:

(i) point (a) is replaced by the following:

'(a) exclude an entity when calculating the ratios, in the cases referred to in Article 6(5), unless the entity moved from a Member State to a third country and there is evidence that the entity changed its location in order to avoid regulation.';

(ii) the following point is added:

'(c) exclude one or more participations in the smaller sector if such participations are decisive for the identification of a financial conglomerate, and are collectively of negligible interest with respect to the objectives of supplementary supervision.';

(c) paragraph 5 is replaced by the following:

'5. For the application of paragraphs 1 and 2, the relevant competent authorities may, in exceptional cases and by common agreement, replace the criterion based on balance sheet total with one or more of the following parameters or add one or more of these parameters, if they are of the opinion that those parameters are of particular relevance for the purpose of supplementary supervision under this Directive: income structure, off-balance sheet activities, total assets under management.';

(d) the following paragraphs are added:

'8. The European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*) (EBA), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (**) (EIOPA) and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (***) (ESMA) (hereinafter collectively referred to as "the ESA") shall, through the Joint Committee of the ESA (Joint Committee), issue common guidelines aimed at the convergence of supervisory practices with regard to the application of paragraphs 2, 3, 3a, 4 and 5 of this Article.

9. The competent authorities shall, on an annual basis, reassess waivers of the application of supplementary supervision and shall review the quantitative indicators set out in this Article and risk-based assessments applied to financial groups.

(*) OJ L 331, 15.12.2010, p. 12.
(**) OJ L 331, 15.12.2010, p. 48.
(***) OJ L 331, 15.12.2010, p. 84.';

(3) Article 4 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

'For that purpose:

— competent authorities which have authorised regulated entities in the group shall cooperate closely,

— if a competent authority is of the opinion that a regulated entity authorised by that competent authority is a member of a group which may be a financial conglomerate and which has not already been identified in accordance with this Directive, the competent authority shall communicate its view to the other competent authorities concerned and to the Joint Committee.';

(b) in paragraph 2, the second subparagraph is replaced by the following:

'The coordinator shall also inform the competent authorities which have authorised regulated entities in the group, the competent authorities of the Member State in which the mixed financial holding company has its head office and the Joint Committee.';

(c) paragraph 3 is replaced by the following:

'3. The Joint Committee shall publish and keep up-to-date on its website the list of financial conglomerates defined in accordance with Article 2(14). That information shall be available by hyperlink on each of the ESA's websites.

The name of each regulated entity referred to in Article 1 which is part of a financial conglomerate shall be entered on a list, which the Joint Committee shall publish and keep up-to-date on its website.';

(4) Article 5 is amended as follows:

(a) in paragraph 2, point (b) is replaced by the following:

'(b) every regulated entity, the parent undertaking of which is a mixed financial holding company which has its head office in the Union;';

(b) paragraph 3 is replaced by the following:

'3. Every regulated entity which is not subject to supplementary supervision in accordance with paragraph 2, the parent undertaking of which is a regulated entity or a mixed financial holding company which has its head office in a third country, shall be subject to supplementary supervision at the level of the financial conglomerate to the extent and in the manner prescribed in Article 18.';

(c) in paragraph 4, the second subparagraph is replaced by the following:

'In order to apply such supplementary supervision, at least one of the entities must be a regulated entity as referred to in Article 1 and the conditions set out in Article 2(14)(a)(ii) or (14)(b)(ii) and Article 2(14)(a)(iii) or (14)(b)(iii) must be met. The relevant competent authorities shall take their decision, taking into account the objectives of the supplementary supervision as provided for by this Directive.';

(5) in Article 6, paragraphs 3 and 4 are replaced by the following:

'3. For the purposes of calculating the capital adequacy requirements referred to in the first subparagraph of paragraph 2, the following entities shall be included in the scope of supplementary supervision in accordance with Annex I:

(a) a credit institution, a financial institution or an ancillary services undertaking;

(b) an insurance undertaking, a reinsurance undertaking or an insurance holding company;

(c) an investment firm;

(d) a mixed financial holding company.

4. When calculating the supplementary capital adequacy requirements with regard to a financial conglomerate by applying method 1 (Accounting consolidation) referred to in Annex I to this Directive, 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 Articles 133 and 134 of Directive 2006/48/EC and Article 221 of Directive 2009/138/EC.

When applying method 2 (Deduction and aggregation) referred to in Annex I, the calculation shall take account of the proportion of the subscribed capital which is directly or indirectly held by the parent undertaking or undertaking which holds a participation in another entity of the group.';

(6) Article 7 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Pending further coordination of Union legislation, Member States may set quantitative limits, allow their competent authorities to set quantitative limits, or adopt other supervisory measures which would achieve the objectives of supplementary supervision, with regard to any risk concentration at the level of a financial conglomerate.';

(b) the following paragraph is added:

'5. The ESA shall, through the Joint Committee, issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of risk concentration as provided for in paragraphs 1 to 4 of this Article. In order to avoid duplication, the guidelines shall ensure that the application of the supervisory tools as provided for in this Article is aligned to the application of Articles 106 to 118 of Directive 2006/48/EC and of Article 244 of Directive 2009/138/EC. They shall issue specific common guidelines on the application of paragraphs 1 to 4 of this Article to participations of the financial conglomerate in cases where national company law provisions obstruct the application of Article 14(2) of this Directive.';

(7) Article 8 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Pending further coordination of Union legislation, Member States may set quantitative limits and qualitative requirements, allow their competent authorities to set quantitative limits or qualitative requirements, or take other supervisory measures that would achieve the objectives of supplementary supervision, with regard to intra-group transactions of regulated entities within a financial conglomerate.';

(b) the following paragraph is added:

'5. The ESA shall, through the Joint Committee, issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of intra-group transactions as provided for in paragraphs 1 to 4 of this Article. In order to avoid duplication, the guidelines shall ensure that the application of the supervisory tools, as provided for in this Article, is aligned to the application of Article 245 of Directive 2009/138/EC. They shall issue specific common guidelines on the application of paragraphs 1 to 4 of this Article to participations of the financial conglomerate in cases where national company law provisions obstruct the application of Article 14(2) of this Directive.';

(8) Article 9 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. The Member States shall ensure that, in all undertakings included in the scope of supplementary supervision pursuant to Article 5, there are adequate internal control mechanisms for the production of any data and information which would be relevant for the purposes of the supplementary supervision.

The Member States shall require the regulated entities, at the level of the financial conglomerate, to regularly provide their competent authority with details on their legal structure and governance and organisational structure including all regulated entities, non-regulated subsidiaries and significant branches.

The Member States shall require the regulated entities to disclose publicly, at the level of the financial conglomerate, on an annual basis, either in full or by way of references to equivalent information, a description of their legal structure and governance and organisational structure.';

(b) the following paragraph is added:

'6. Competent authorities shall align the application of the supplementary supervision of internal control mechanisms and risk management processes as provided for in this Article with the supervisory review processes as provided for by Article 124 of Directive 2006/48/EC and Article 248 of Directive 2009/138/EC. To this end, the ESA shall, through the Joint Committee, issue common guidelines aimed at the convergence of supervisory practices with regard to the application of supplementary supervision of internal control mechanisms and risk management processes as provided for in this Article, as well as on the consistency with the supervisory review processes as provided for by Article 124 of Directive 2006/48/EC and Article 248 of Directive 2009/138/EC. They shall issue specific common guidelines for the application of this Article to participations of the financial conglomerate, in cases where national company law provisions obstruct the application of Article 14(2) of this Directive.';

(9) the following Article is inserted:

'Article 9b

Stress testing

1. Member States may require that the coordinator ensure appropriate and regular stress testing of financial conglomerates. They shall require the relevant competent authorities to cooperate fully with the coordinator.

2. For the purpose of Union-wide stress tests the ESA may, through the Joint Committee and in cooperation with the European Systemic Risk Board, established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on the European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (*), develop supplementary parameters that capture the specific risks associated with financial conglomerates, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010. The coordinator shall communicate the results of the stress tests to the Joint Committee.

(*) OJ L 331, 15.12.2010, p. 1.';

(10) Article 10(2)(b) is amended as follows:

(a) in point (ii), the first paragraph is replaced by the following:

'(ii) where at least two regulated entities which have their registered office in the Union have as their parent the same mixed financial holding company, and one of those entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority of the regulated entity authorised in that Member State.';

(b) point (iii) is replaced by the following:

'(iii) where at least two regulated entities which have their registered office in the Union have as their parent the same mixed financial holding company and none of those entities has been authorised in the Member State in which the mixed financial holding company has its head office, the task of coordinator shall be exercised by the competent authority which authorised the regulated entity with the largest balance sheet total in the most important financial sector;';

(11) Article 11 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Without prejudice to the possibility of delegating specific supervisory competences and responsibilities as provided for by Union legislative acts, the presence of a coordinator entrusted with specific tasks concerning the supplementary supervision of regulated entities in a financial conglomerate shall not affect the tasks and responsibilities of the competent authorities as provided for by the sectoral rules.';

(b) the following paragraph is added:

'4. The required cooperation under this Section and the exercise of the tasks listed in paragraphs 1, 2 and 3 of this Article and in Article 12 and, subject to confidentiality requirements and Union law, the appropriate coordination and cooperation with relevant third-country supervisory authorities where appropriate, shall be fulfilled through colleges, established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC.

The coordination arrangements referred to in the second subparagraph of paragraph 1 shall be separately reflected in the written coordination arrangements in place pursuant to Article 131 of Directive 2006/48/EC or Article 248 of Directive 2009/138/EC. The coordinator, as Chair of a college established pursuant to Article 131a of Directive 2006/48/EC or Article 248(2) of Directive 2009/138/EC, shall decide which other competent authorities participate in a meeting or in any activity of that college.';

(12) in the second subparagraph of Article 12(1), point (a) is replaced by the following:

'(a) identification of the group's legal structure and the governance and organisational structure, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the financial conglomerate, the holders of qualifying holdings at the ultimate parent level, as well as of the competent authorities of the regulated entities in the group;';

(13) in Article 12a, the following paragraph is added:

'3. The coordinators shall provide the Joint Committee with the information referred to in Article 9(4) and point (a) of the second subparagraph of Article 12(1). The Joint Committee shall make available to the competent authorities information regarding the legal structure and the governance and organisational structure of financial conglomerates.';

(14) the following Article is inserted:

'Article 12b

Common guidelines

1. The ESA shall, through the Joint Committee, develop common guidelines on how risk-based assessments of financial conglomerates are to be conducted by the competent authority. Those guidelines shall, in particular, ensure that risk- based assessments include appropriate tools in order to assess group risks posed to the financial conglomerates.

2. The ESA shall, through the Joint Committee, issue common guidelines aimed at developing supervisory practices allowing for supplementary supervision of mixed financial holding companies to appropriately complement the group supervision under Directives 98/78/EC and 2009/138/EC or, as appropriate, consolidated supervision under Directive 2006/48/EC. Those guidelines shall allow all relevant risks to be incorporated in the supervision, while eliminating potential supervisory and prudential overlaps.';

(15) Article 18 is amended as follows:

(a) the title is replaced by the following:

'Parent undertakings in a third country';

(b) paragraph 3 is replaced by the following:

'3. Competent authorities may apply other methods which ensure appropriate supplementary supervision of the regulated entities in a financial conglomerate. Those methods shall be agreed by the coordinator, after consulting the other relevant competent authorities. The competent authorities may in particular require the establishment of a mixed financial holding company which has its head office in the Union, and apply this Directive to the regulated entities in the financial conglomerate headed by that holding company. The competent authorities shall ensure that those methods achieve the objective of supplementary supervision under this Directive and shall notify the other competent authorities involved and the Commission thereof.';

(16) Article 19 is replaced by the following:

'Article 19

Cooperation with third-country competent authorities

Article 39(1) and (2) of Directive 2006/48/EC, Article 10a of Directive 98/78/EC and Article 264 of Directive 2009/138/EC shall apply *mutatis mutandis* to the negotiation of agreements with one or more third countries regarding the means of exercising supplementary supervision of regulated entities in a financial conglomerate.';

(17) the title of Chapter III is replaced by the following:

'**DELEGATED ACTS AND IMPLEMENTING MEASURES**';

(18) Article 20 is replaced by the following:

'*Article 20*

Powers conferred on the Commission

The Commission shall be empowered to adopt delegated acts in accordance with Article 21c concerning the technical adaptations to be made to this Directive in the following areas:

(a) a more precise formulation of the definitions laid down in Article 2 in order to take account of developments in financial markets for the application of this Directive;

(b) the alignment of terminology and the framing of definitions in this Directive in accordance with subsequent Union acts on regulated entities and related matters;

(c) a more precise definition of the calculation methods set out in Annex I in order to take account of developments on financial markets and prudential techniques.

Those measures shall not include the subject matter of the power delegated to and conferred on the Commission with regard to the items listed in Article 21a.';

(19) in Article 21, paragraphs 2, 3 and 5 are deleted;

(20) Article 21a is amended as follows:

(a) in the first subparagraph of paragraph 1, the following point is added:

'(d) Article 6(2) in order to ensure a uniform format (with instructions) for, and determine the frequency of and, where appropriate, the dates for reporting.';

(b) the following paragraph is inserted:

'1a. In order to ensure consistent application of Articles 2, 7 and 8 and Annex II, the ESA shall, through the Joint Committee, develop draft regulatory technical standards to establish a more precise formulation of the definitions set out in Article 2 and to coordinate the provisions adopted pursuant to Articles 7 and 8 and Annex II.

The Joint Committee shall submit those draft regulatory technical standards to the Commission by 1 January 2015.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.';

(c) the following paragraph is added:

'3. Within two years of the adoption of any implementing technical standards in accordance with paragraph 2(a), Member States shall require a uniform format for and shall determine the frequency of, and the dates for, reporting of the calculations referred to in this Article.';

(21) the following Articles are inserted in Chapter III:

'*Article 21b*

Common Guidelines

The ESA shall, through the Joint Committee, issue the common guidelines referred to in Article 3(8), Article 7(5), Article 8(5), Article 9(6), the third subparagraph of Article 11(1), Article 12b and Article 21(4) in accordance with the procedure laid down in Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

Article 21c

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of power referred to in Article 20 shall be conferred on the Commission for a period of four years from 9 December 2011. The Commission shall draw up a report in respect of the delegated power at the latest six months before the end of the four-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 20 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect on the day following the publication of the decision in the *Official Journal of the European Union* or on a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 20 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of the notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.';

(22) in Article 30, the first subparagraph is replaced by the following:

'Pending further coordination of sectoral rules, Member States shall provide for the inclusion of asset management companies:

(a) within the scope of consolidated supervision of credit institutions and investment firms, or in the scope of supplementary supervision of insurance undertakings in an insurance group;

(b) where the group is a financial conglomerate, in the scope of supplementary supervision within the meaning of this Directive; and

(c) within the identification process in accordance with Article 3(2).';

(23) the following Article is inserted:

'*Article 30a*

Alternative investment fund managers

1. Pending further coordination of sectoral rules, Member States shall provide for the inclusion of alternative investment fund managers:

(a) within the scope of consolidated supervision of credit institutions and investment firms, or within the scope of supplementary supervision of insurance undertakings in an insurance group;

(b) where the group is a financial conglomerate, within the scope of supplementary supervision within the meaning of this Directive; and

(c) within the identification process in accordance with Article 3(2).

2. For the application of paragraph 1, Member States shall determine, or give their competent authorities the power to decide, according to which sectoral rules (banking sector, insurance sector or investment services sector) alternative investment fund managers are to be included in the consolidated or supplementary supervision referred to in point (a) of paragraph 1. For the purposes of this paragraph, the relevant sectoral rules regarding the form and extent of the inclusion of financial institutions shall apply *mutatis mutandis* to alternative investment fund managers. For the purposes of supplementary supervision referred to in point (b) of paragraph 1, the alternative investment fund manager shall be treated as part of whichever sector it is included in by virtue of point (a) of paragraph 1.

Where an alternative investment fund manager is part of a financial conglomerate, references to regulated entities, and to competent and relevant competent authorities shall therefore, for the purposes of this Directive, be understood as including, respectively, alternative investment fund managers and the competent authorities responsible for the supervision of alternative investment fund managers. This applies *mutatis mutandis* as regards groups as referred to in point (a) of paragraph 1.';

(24) Annex I is amended in accordance with Annex II to this Directive.

Article 3

Amendments to Directive 2006/48/EC

Directive 2006/48/EC is amended as follows:

(1) paragraph 2 of Article 1 is replaced by the following:

'2. Article 39 and Articles 124 to 143 shall apply to financial holding companies, mixed financial holding companies and mixed-activity holding companies which have their head office in the Union.';

(2) Article 4 is amended as follows:

(a) points (14) to (17) are replaced by the following:

'(14) "parent credit institution in a Member State" means a credit institution which has a credit institution or a financial institution as a subsidiary or which holds a participation in such an institution, and which is not itself a subsidiary of another credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

(15) "parent financial holding company in a Member State" means a financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

(15a) "parent mixed financial holding company in a Member State" means a mixed financial holding company which is not itself a subsidiary of a credit institution authorised in the same Member State, or of a financial holding company or mixed financial holding company established in the same Member State;

(16) "EU parent credit institution" means a parent credit institution in a Member State which is not a subsidiary of another credit institution authorised in any Member State, or of a financial holding company or mixed financial holding company established in any Member State;

(17) "EU parent financial holding company" means a parent financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company or mixed financial holding company established in any Member State;

(17a) "EU parent mixed financial holding company" means a parent mixed financial holding company in a Member State which is not a subsidiary of a credit institution authorised in any Member State or of another financial holding company or mixed financial holding company established in any Member State;';

(b) the following point is inserted:

'(19a) "mixed financial holding company" means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC;';

(c) point (48) is replaced by the following:

'(48) "consolidating supervisor" means the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies;';

(3) Article 14 is replaced by the following:

'*Article 14*

Every authorisation shall be notified to EBA. The name of each credit institution to which authorisation has been granted shall be entered on a list, which EBA shall publish and keep up-to-date on its website. The competent authority responsible for supervision on a consolidated basis shall provide the competent authorities concerned and EBA with all information regarding the banking group in accordance with Article 12(3), Article 22(1) and Article 73(3), in particular regarding the legal structure and the governance and organisational structure of the group.';

(4) Article 39 is amended as follows:

(a) in paragraph 1, point (b) is replaced by the following:

'(b) credit institutions established in third countries, the parent undertakings of which, whether credit institutions, financial holding companies or mixed financial holding companies, have their head office in the Union.';

(b) in paragraph 2, point (a) is replaced by the following:

'(a) that the competent authorities of the Member States are able to obtain the information necessary for supervision on the basis of the consolidated financial situations of credit institutions, financial holding companies or mixed financial holding companies situated in the Union which have as subsidiaries credit institutions or financial institutions established in a third country, or hold participation in such institutions;';

(5) paragraph 2 of Article 69 is replaced by the following:

'2. The Member States may exercise the option provided for in paragraph 1 where the parent undertaking is a financial holding company or mixed financial holding company established in the same Member State as the credit institution, provided that it is subject to the same supervision as that applicable to credit institutions, and in particular to the standards laid down in Article 71(1).';

(6) paragraph 2 of Article 71 is replaced by the following:

'2. Without prejudice to Articles 68, 69 and 70, credit institutions controlled by a parent financial holding company in a Member State or a parent mixed financial holding company in a Member State shall comply, to the extent and in the manner prescribed in Article 133, with the obligations laid down in Articles 75, 120, 123 and Section 5 on the basis of the consolidated financial situation of that financial holding company or mixed financial holding company.

Where more than one credit institution is controlled by a parent financial holding company in a Member State or by a parent mixed financial holding company in a Member State, the first subparagraph shall apply only to the credit institution to which supervision on a consolidated basis applies in accordance with Articles 125 and 126.';

(7) paragraph 2 of Article 72 is replaced by the following:

'2. Credit institutions controlled by an EU parent financial holding company or by an EU parent mixed financial holding company shall comply with the obligations laid down in Chapter 5 on the basis of the consolidated financial situation of that financial holding company or that mixed financial holding company.

Significant subsidiaries of EU parent financial holding companies or EU parent mixed financial holding companies shall disclose the information specified in Annex XII, Part 1, point 5, on an individual or sub-consolidated basis.';

(8) the following Article is inserted:

'Article 72a

1. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, after consulting the other competent authorities responsible for the supervision of subsidiaries, apply only the relevant provision of Directive 2002/87/EC to that mixed financial holding company.

2. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2009/138/EC, in particular in terms of risk-based supervision, the consolidating supervisor may, in agreement with the group supervisor in the insurance sector, apply to that mixed financial holding company only the provision of the Directive relating to the most significant financial sector as determined under Article 3(2) of Directive 2002/87/EC.

3. The consolidating supervisor shall inform EBA and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (*) (EIOPA) of the decisions taken under paragraphs 1 and 2 of this Article. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (**) (ESMA) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of the guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

(*) OJ L 331, 15.12.2010, p. 48.
(**) OJ L 331, 15.12.2010, p. 84.';

(9) paragraph 2 of Article 73 is replaced by the following:

'2. Competent authorities shall require subsidiary credit institutions to apply the requirements laid down in Articles 75, 120 and 123 and Section 5 of this Directive on a sub-consolidated basis if those credit institutions, or their parent undertaking where that parent undertaking is a financial holding company or mixed financial holding company, have a credit institution, a financial institution or an asset management company as defined in Article 2(5) of Directive 2002/87/EC as a subsidiary established in a third country, or hold a participation in such an undertaking.';

(10) in Article 80(7), point (a) is replaced by the following:

'(a) the counterparty is an institution or a financial holding company, mixed financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements;';

(11) Article 84 is amended as follows:

(a) in paragraph 2, the second subparagraph is replaced by the following:

'Where an EU parent credit institution and its subsidiaries or an EU parent financial holding company and its subsidiaries or an EU parent mixed financial holding company and its subsidiaries use the IRB Approach on a unified basis, the competent authorities may allow the minimum requirements of Part 4 of Annex VII to be met by the parent and its subsidiaries considered together.';

(b) paragraph 6 is replaced by the following:

'6. Where the IRB Approach is intended to be used by the EU parent credit institution and its subsidiaries, or by the EU parent financial holding company and its subsidiaries, or the EU parent mixed financial holding company and its subsidiaries, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles 129 to 132.';

(12) in Article 89(1), point (e) is replaced by the following:

'(e) exposures of a credit institution to a counterparty which is its parent undertaking, its subsidiary or a subsidiary of its parent undertaking provided that the counterparty is an institution or a financial holding company, mixed financial holding company, financial institution, asset management company or ancillary services undertaking subject to appropriate prudential requirements or an undertaking linked by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC and exposures between credit institutions which meet the requirements set out in Article 80(8);';

(13) paragraphs 3 and 4 of Article 105 are replaced by the following:

'3. Where an Advanced Measurement Approach is intended to be used by an EU parent credit institution and its subsidiaries or by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities of the different legal entities shall cooperate closely as provided for in Articles 129 to 132. The application shall include the elements listed in Part 3 of Annex X.

4. Where an EU parent credit institution and its subsidiaries or the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company use an Advanced Measurement Approach on a unified basis, the competent authorities may allow the qualifying criteria set out in Part 3 of Annex X to be met by the parent and its subsidiaries considered together.';

(14) paragraph 2 of Article 122a is replaced by the following:

'2. Where an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company, or one of its subsidiaries, as an originator or a sponsor, securitises exposures from several credit institutions, investment firms or other financial institutions which are included in the scope of supervision on a consolidated basis, the requirement referred to in paragraph 1 may be satisfied on the basis of the consolidated situation of the related EU parent credit institution, EU parent financial holding company or EU parent mixed financial holding company. This paragraph shall apply only where credit institutions, investment firms or financial institutions which created the securitised exposures have committed themselves to adhere to the requirements set out in paragraph 6 and deliver, in a timely manner, to the originator or sponsor and to the EU parent credit institution, the EU parent financial holding company or the EU parent mixed financial holding company the information needed to satisfy the requirements referred to in paragraph 7.';

(15) paragraph 2 of Article 125 is replaced by the following:

'2. Where the parent of a credit institution is a parent financial holding company in a Member State a parent mixed financial holding company in a Member State, an EU parent financial holding company or an EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities that authorised that credit institution under Article 6.';

(16) Article 126 is replaced by the following:

'*Article 126*

1. Where credit institutions authorised in two or more Member States have as their parent the same parent financial holding company in a Member State, the same parent mixed financial holding company in a Member State, the same EU parent financial holding company or the same EU parent mixed financial holding company, supervision on a consolidated basis shall be exercised by the competent authorities of the credit institution authorised in the Member State in which the financial holding company or mixed financial holding company is established.

Where the parents of credit institutions authorised in two or more Member States comprise more than one financial holding company or mixed financial holding company which have their head offices in different Member States and there is a credit institution in each of those Member States, supervision on a consolidated basis shall be exercised by the competent authority of the credit institution with the largest balance sheet total.

2. Where more than one credit institution authorised in the Union has as its parent the same financial holding company or the same mixed financial holding company and none of those credit institutions has been authorised in the Member State in which the financial holding company or the mixed financial holding company is established, supervision on a consolidated basis shall be exercised by the competent authority that authorised the credit institution with the largest balance sheet total, which shall be considered, for the purposes of this Directive, as the credit institution controlled by an EU parent financial holding company or an EU parent mixed financial holding company.

3. In particular cases, the competent authorities may by common agreement waive the criteria referred to in paragraphs 1 and 2 if their application would be inappropriate, taking into account the credit institutions and the relative importance of their activities in different countries, and appoint a different competent authority to exercise supervision on a consolidated basis. Before agreeing on such a waiver, the competent authorities shall give the EU parent credit institution the EU parent financial holding company, the EU parent mixed financial holding company, or the credit institution with the largest balance sheet total, as appropriate, an opportunity to state its opinion.

4. The competent authorities shall notify the Commission and EBA of any waiver under paragraph 3.';

(17) Article 127 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall adopt any measures necessary, where appropriate, to include financial holding companies or mixed financial holding companies in consolidated supervision. Without prejudice to Article 135, the consolidation of the financial situation of the financial holding company or the mixed financial holding company shall not in any way imply that the competent authorities are required to play a supervisory role in relation to the financial holding company or mixed financial holding company on a stand alone basis.';

(b) paragraph 3 is replaced by the following:

'3. Member States shall provide that their competent authorities responsible for exercising supervision on a consolidated basis may ask the subsidiaries of a credit institution, a financial holding company or a mixed financial holding company, which are not included within the scope of supervision on a consolidated basis for the information referred to in Article 137. In such a case, the procedures for transmitting and verifying the information laid down in that Article shall apply.';

(18) Article 129 is amended as follows:

(a) in the first subparagraph of paragraph 1, the introductory part is replaced by the following:

'1. In addition to the obligations provided for in this Directive, the competent authority responsible for the exercise of supervision on a consolidated basis of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or EU parent mixed financial holding companies shall carry out the following tasks:';

(b) in paragraph 2, the first subparagraph is replaced by the following:

'2. In the case of applications for the permissions referred to in Article 84(1), Article 87(9) and Article 105 and in Part 6 of Annex III respectively, submitted by an EU parent credit institution and its subsidiaries, or jointly by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the competent authorities shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the terms and conditions, if any, to which such permission should be subject.';

(c) in paragraph 3:

(i) the first subparagraph is replaced by the following:

'3. The consolidating supervisor and the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company shall do everything within their power to reach a joint decision on the application of Articles 123 and 124 to determine the adequacy of the consolidated level of own funds held by the group with respect to its financial situation and risk profile and the required level of own funds for the application of Article 136(2) to each entity within the banking group and on a consolidated basis.',

(ii) the fifth subparagraph is replaced by the following:

'The decision on the application of Articles 123 and 124 and Article 136(2) shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of the four-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within one month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.',

(iii) the ninth subparagraph is replaced by the following:

'The joint decision referred to in the first subparagraph and any decision taken in the absence of a joint decision in accordance with the fourth and fifth subparagraphs, shall be updated on an annual basis or, in exceptional circumstances, where a competent authority responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company makes a written and fully reasoned request to the consolidating supervisor to update the decision on the application of Article 136(2). In the latter case, the update may be addressed on a bilateral basis between the consolidating supervisor and the competent authority making the request.';

(19) in Article 131a(2), the sixth subparagraph is replaced by the following:

'The following may participate in colleges of supervisors:

(a) the competent authorities responsible for the supervision of subsidiaries of an EU parent credit institution, an EU parent financial holding company or an EU parent mixed financial holding company;

(b) the competent authorities of a host country where significant branches as referred to in Article 42a are established;

(c) central banks as appropriate; and

(d) third-country competent authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all the competent authorities, to Articles 44 to 52.';

(20) Article 132(1) is amended as follows:

(a) the fifth subparagraph is replaced by the following:

'In particular, competent authorities responsible for consolidated supervision of EU parent credit institutions and credit institutions controlled by EU parent financial holding companies or by EU parent mixed financial holding companies shall provide the competent authorities in other Member States who supervise subsidiaries of those parent undertakings with all relevant information. In determining the extent of relevant information, the importance of those subsidiaries within the financial system in those Member States shall be taken into account.';

(b) in the sixth subparagraph, point (a) is replaced by the following:

'(a) identification of the legal structure and the governance and organisational structure of the group, including all regulated entities, non-regulated subsidiaries and significant branches belonging to the group, the parent undertakings, in accordance with Article 12(3), Article 22(1) and Article 73(3), as well as identification of the competent authorities of the regulated entities in the group;';

(21) Article 135 is replaced by the following:

'Article 135

The Member States shall require that persons who effectively direct the business of a financial holding company or a mixed financial holding company be of sufficiently good repute and have sufficient experience to perform those duties.';

(22) in Article 139(3), the first subparagraph is replaced by the following:

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

(23) Article 140 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Where a credit institution, financial holding company, mixed financial holding company or a mixed activity holding company controls one or more subsidiaries which are insurance companies or other undertakings providing investment services which are subject to authorisation, the competent authorities and the authorities entrusted with the public task of supervising insurance undertakings or those other undertakings providing investment services shall cooperate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task and to allow supervision of the activity and overall financial situation of the undertakings they supervise.';

(b) paragraph 3 is replaced by the following:

'3. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies or mixed financial holding companies referred to in Article 71(2). Those lists shall be communicated to the competent authorities of the other Member States, to EBA and to the Commission.';

(24) Articles 141 and 142 are replaced by the following:

'Article 141

Where, in applying this Directive, the competent authorities of one Member State wish in specific cases to verify the information concerning a credit institution, a financial holding company, a financial institution, an ancillary services undertaking, a mixed activity holding company, a mixed financial holding company, a subsidiary as referred to in Article 137 or a subsidiary as referred to in Article 127(3), situated in another Member State, they shall ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request shall, within the framework of their competence, act upon it either by carrying out the verification themselves, by allowing the authorities who made the request to carry it out, or by allowing an auditor or expert to carry it out. The competent authority which made the request may participate in the verification when it does not carry out the verification itself.

Article 142

Without prejudice to their criminal law provisions, Member States shall ensure that penalties or measures aimed at ending observed breaches or the causes of such breaches may be imposed on financial holding companies, mixed financial holding companies and mixed activity holding companies, or their effective managers, that infringe laws, regulation or administrative provisions brought into force to transpose Articles 124 to 141 and this Article. The competent authorities shall cooperate closely to ensure that those penalties or measures produce the desired results, especially when the central administration or main establishment of a financial holding company or of a mixed financial holding company or of a mixed activity holding company is not located in the same Member State as its registered office.';

(25) Article 143 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Where a credit institution, the parent undertaking of which is a credit institution or a financial holding company, or a mixed financial holding company, which has its head office in a third country, is not subject to consolidated supervision under Articles 125 and 126, the competent authorities shall verify whether the credit institution is subject to consolidated supervision by a third-country competent authority which is equivalent to that governed by the principles laid down in this Directive.

The verification shall be carried out by the competent authority which would be responsible for consolidated supervision if paragraph 3 were to apply, at the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative. The competent authority shall consult the other competent authorities involved.';

(b) in paragraph 3, the third subparagraph is replaced by the following:

'Competent authorities may in particular require the establishment of a financial holding company or a mixed financial holding company which has its head office in the Union, and may apply the provisions on consolidated supervision to the consolidated position of that financial holding company or mixed financial holding company.';

(26) the following Article is inserted:

'Article 146a

The Member States shall require credit institutions to disclose publicly, at the level of the banking group, on an annual basis, either in full or by way of references to equivalent information, a description of their legal structure, and their governance and organisational structure.';

(27) Annex X is amended in accordance with Annex III to this Directive.

Article 4

Amendments to Directive 2009/138/EC

Directive 2009/138/EC is amended as follows:

(1) in Article 212(1), points (f) and (g) are replaced by the following:

'(f) "insurance holding company" means a parent undertaking which is not a mixed financial holding company and the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance or reinsurance undertakings, or third-country insurance or reinsurance undertakings, at least one of such subsidiary undertakings being an insurance or reinsurance undertaking;

(g) "mixed-activity insurance holding company" means a parent undertaking other than an insurance undertaking, a third-country insurance undertaking, a reinsurance undertaking, a third-country reinsurance undertaking, an insurance holding company or a mixed financial holding company, which includes at least one insurance or reinsurance undertaking among its subsidiary undertakings;

(h) "mixed financial holding company" means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC.';

(2) in Article 213, paragraphs 2 and 3 are replaced by the following:

'2. Member States shall ensure that supervision at the level of the group applies to the following:

(a) insurance or reinsurance undertakings, which are a participating undertaking in at least one insurance undertaking, reinsurance undertaking, third-country insurance undertaking or third-country reinsurance undertaking, in accordance with Articles 218 to 258;

(b) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in the Union, in accordance with Articles 218 to 258;

(c) insurance or reinsurance undertakings, the parent undertaking of which is an insurance holding company or a mixed financial holding company which has its head office in a third country or a third-country insurance or reinsurance undertaking, in accordance with Articles 260 to 263;

(d) insurance or reinsurance undertakings, the parent undertaking of which is a mixed-activity insurance holding company, in accordance with Article 265.

3. In the cases referred to in points (a) and (b) of paragraph 2, where the participating insurance or reinsurance undertaking or the insurance holding company or mixed financial holding company which has its head office in the Union is either a related undertaking of, or is itself a regulated entity or a mixed financial holding company which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244 of this Directive, the supervision of intra-group transactions referred to in Article 245 of this Directive, or both, at the level of that participating insurance or reinsurance undertaking or that insurance holding company or mixed financial holding company.

4. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2002/87/EC, in particular in terms of risk-based supervision, the group supervisor may, after consulting the other supervisory authorities concerned, apply only the relevant provisions of Directive 2002/87/EC to that mixed financial holding company.

5. Where a mixed financial holding company is subject to equivalent provisions under this Directive and under Directive 2006/48/EC, in particular in terms of risk-based supervision, the group supervisor may, in agreement with the consolidating supervisor in the banking and investment services sector, apply only the provisions of the Directive relating to the most significant sector as determined in accordance with Article 3(2) of Directive 2002/87/EC.

6. The group supervisor shall inform the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (*) (EBA) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (EIOPA) (**) of the decisions taken under paragraphs 4 and 5. EBA, EIOPA and the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 (***) (ESMA) shall, through the Joint Committee of the European Supervisory Authorities (Joint Committee), develop guidelines aimed at converging supervisory practices and shall develop draft regulatory technical standards, which they shall submit to the Commission within three years of the adoption of those guidelines.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.

(*) OJ L 331, 15.12.2010, p. 12.
(**) OJ L 331, 15.12.2010, p. 48.
(***) OJ L 331, 15.12.2010, p. 84.';

(3) Article 214(1) is replaced by the following:

'1. The exercise of group supervision in accordance with Article 213 shall not imply that the supervisory authorities are required to play a supervisory role in relation to the third-country insurance undertaking, the third-country reinsurance undertaking, the insurance holding company, the mixed financial holding company or the mixed-activity insurance holding company taken individually, without prejudice to Article 257 as far as insurance holding companies or mixed financial holding companies are concerned.';

(4) in Article 215, paragraphs 1 and 2 are replaced by the following:

'1. Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company referred to in Article 213(2)(a) and (b) is itself a subsidiary undertaking of another insurance or reinsurance undertaking or of another insurance holding company or of another mixed financial holding company which has its head office in the Union, Articles 218 to 258 shall apply only at the level of the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company which has its head office in the Union.

2. Where the ultimate parent insurance or reinsurance undertaking or insurance holding company or mixed financial holding company which has its head office in the Union, as referred to in paragraph 1, is a subsidiary undertaking of an undertaking which is subject to supplementary supervision in accordance with Article 5(2) of Directive 2002/87/EC, the group supervisor may, after consulting the other supervisory authorities concerned, decide not to carry out the supervision of risk concentration referred to in Article 244, the supervision of intra-group transactions referred to in Article 245, or both, at the level of that ultimate parent undertaking or company.';

(5) Article 216(1) is replaced by the following:

'1. Where the participating insurance or reinsurance undertaking or the insurance holding company or the mixed financial holding company which has its head office in the Union, as referred to in Article 213(2)(a) and (b), does not have its head office in the same Member State as the ultimate parent undertaking at Union level referred to in Article 215, Member States may allow their supervisory authorities to decide, after consulting the group supervisor and that ultimate parent undertaking at Union level, to subject the ultimate parent insurance or reinsurance undertaking, insurance holding company or mixed financial holding company at national level to group supervision.';

(6) Article 219 is replaced by the following:

'Article 219

Frequency of calculation

1. The group supervisor shall ensure that the calculations referred to in Article 218(2) and (3) are carried out at least annually, by the participating insurance or reinsurance undertaking, by the insurance holding company or by the mixed financial holding company.

The relevant data for and the results of that calculation shall be submitted to the group supervisor by the participating insurance or reinsurance undertaking or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company or the mixed financial holding company or by the undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group itself.

2. The insurance undertaking, reinsurance undertaking, insurance holding company and mixed financial holding company shall monitor the group Solvency Capital Requirement on an ongoing basis. Where the risk profile of the group deviates significantly from the assumptions underlying the last reported group Solvency Capital Requirement, the group Solvency Capital Requirement shall be recalculated without delay and reported to the group supervisor.

Where there is evidence to suggest that the risk profile of the group has altered significantly since the date on which the group Solvency Capital Requirement was last reported, the group supervisor may require a recalculation of the group Solvency Capital Requirement.';

(7) Article 226 is replaced by the following:

'*Article 226*

Intermediate insurance holding companies

1. When calculating the group solvency of an insurance or reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a third-country insurance undertaking or a third-country reinsurance undertaking, through an insurance holding company or a mixed financial holding company, the situation of such an insurance holding company or mixed financial holding company shall be taken into account.

For the sole purpose of that calculation, the intermediate insurance holding company or intermediate mixed financial holding company shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I in respect of the Solvency Capital Requirement and were subject to the same conditions as are laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I in respect of own funds eligible for the Solvency Capital Requirement.

2. In cases where an intermediate insurance holding company or intermediate mixed financial holding company holds subordinated debt or other eligible own funds subject to limitation in accordance with Article 98, they shall be recognised as eligible own funds up to the amounts calculated by application of the limits set out in Article 98 to the total eligible own funds outstanding at group level as compared to the Solvency Capital Requirement at group level.

Any eligible own funds of an intermediate insurance holding company or intermediate mixed financial holding company, which would require prior authorisation from the supervisory authority in accordance with Article 90 if they were held by an insurance or reinsurance undertaking, may be included in the calculation of the group solvency only in so far as they have been duly authorised by the group supervisor.';

(8) in Article 231(1), the first subparagraph is replaced by the following:

'1. In the case of an application for permission to calculate the consolidated group Solvency Capital Requirement, as well as the Solvency Capital Requirement of insurance and reinsurance undertakings in the group, on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or a mixed financial holding company, the supervisory authorities concerned shall cooperate to decide whether or not to grant that permission and to determine the terms and conditions, if any, to which such permission is subject.';

(9) Article 233(5) is replaced by the following:

'5. In the case of an application for permission to calculate the Solvency Capital Requirement of insurance and reinsurance undertakings in the group on the basis of an internal model, submitted by an insurance or reinsurance undertaking and its related undertakings, or jointly by the related undertakings of an insurance holding company or mixed financial holding company, Article 231 shall apply *mutatis mutandis*.';

(10) in Section 1 of Chapter II of Title III the title of Subsection 5 is replaced by the following:

'Supervision of group solvency for insurance and reinsurance undertakings that are subsidiaries of an insurance holding company or a mixed financial holding company';

(11) Article 235 is replaced by the following:

'*Article 235*

Group solvency of an insurance holding company or a mixed financial holding company

1. Where insurance and reinsurance undertakings are subsidiaries of an insurance holding company or mixed financial holding company, the group supervisor shall ensure that the calculation of the solvency of the group is carried out at the level of the insurance holding company or mixed financial holding company applying Article 220(2) to Article 233.

2. For the purpose of that calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the rules laid down in Subsections 1, 2 and 3 of Section 4 of Chapter VI of Title I as regards the Solvency Capital Requirement and subject to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I as regards the own funds eligible for the Solvency Capital Requirement.';

(12) Article 243 is replaced by the following:

'*Article 243*

Subsidiaries of an insurance holding company and mixed financial holding company

Articles 236 to 242 shall apply *mutatis mutandis* to insurance and reinsurance undertakings which are the subsidiary of an insurance holding company or mixed financial holding company.';

(13) Article 244(2) is replaced by the following:

'2. Member States shall require insurance and reinsurance undertakings or insurance holding companies or mixed financial holding companies to report on a regular basis and at least annually to the group supervisor any significant risk concentration at the level of the group, unless Article 215(2) applies.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by a insurance or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The risk concentrations referred to in the first subparagraph shall be subject to supervisory review by the group supervisor.';

(14) Article 245(2) is replaced by the following:

'2. Member States shall require insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to report on a regular basis and at least annually to the group supervisor all significant intra-group transactions by insurance and reinsurance undertakings within a group, including those performed with a natural person with close links to an undertaking in the group, unless Article 215(2) applies.

In addition, Member States shall require reporting of very significant intra-group transactions as soon as practicable.

The necessary information shall be submitted to the group supervisor by the insurance or reinsurance undertaking which is at the head of the group or, where the group is not headed by an insurance or reinsurance undertaking, by the insurance holding company, the mixed financial holding company or the insurance or reinsurance undertaking in the group identified by the group supervisor after consulting the other supervisory authorities concerned and the group.

The intra-group transactions shall be subject to supervisory review by the group supervisor.';

(15) in Article 246(4), the first, second and third subparagraphs are replaced by the following:

'4. Member States shall require the participating insurance undertaking or reinsurance undertaking, the insurance holding company or the mixed financial holding company to undertake at the level of the group the assessment required by Article 45. The own-risk and solvency assessment conducted at group level shall be subject to supervisory review by the group supervisor in accordance with Chapter III.

Where the calculation of the solvency at the level of the group is carried out in accordance with method 1, as referred to in Article 230, the participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company shall provide to the group supervisor a proper understanding of the difference between the sum of the Solvency Capital Requirements of all the related insurance or reinsurance undertakings of the group and the group consolidated Solvency Capital Requirement.

The participating insurance or reinsurance undertaking, the insurance holding company or the mixed financial holding company may, subject to the agreement of the group supervisor, undertake any assessments required pursuant to Article 45 at the level of the group and at the level of any subsidiary in the group at the same time, and may produce a single document covering all the assessments.';

(16) in Article 247(2), point (b) is replaced by the following:

'(b) where a group is not headed by an insurance or reinsurance undertaking, by the following supervisory authority:

(i) where the parent of an insurance or reinsurance undertaking is an insurance holding company or mixed financial holding company, the supervisory authority which has authorised that insurance or reinsurance undertaking,

(ii) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or mixed financial holding company, and one of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority of the insurance or reinsurance undertaking authorised in that Member State,

(iii) where the group is headed by more than one insurance holding company or mixed financial holding company which have their head offices in different Member States and there is an insurance or reinsurance undertaking in each of those Member States, the supervisory authority of the insurance or reinsurance undertaking with the largest balance sheet total,

(iv) where more than one insurance or reinsurance undertaking which have their head offices in the Union have as their parent the same insurance holding company or mixed financial holding company and none of those undertakings has been authorised in the Member State in which the insurance holding company or mixed financial holding company has its head office, the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total, or

(v) where the group is a group without a parent undertaking, or in any circumstances not referred to in points (i) to (iv), the supervisory authority which authorised the insurance or reinsurance undertaking with the largest balance sheet total.';

(17) in Article 249(1), the following subparagraph is added:

'The group supervisor shall provide the supervisory authorities concerned and EIOPA with information regarding the group, in accordance with Article 19, Article 51(1) and Article 254(2), in particular regarding the legal structure and the governance and organisational structure of the group.';

(18) in Article 256, paragraphs 1 and 2 are replaced by the following:

'1. Member States shall require participating insurance and reinsurance undertakings, insurance holding companies and mixed financial holding companies to disclose publicly, on an annual basis, a report on solvency and financial condition at the level of the group. Articles 51, 53, 54 and 55 shall apply *mutatis mutandis*.

2. A participating insurance or reinsurance undertaking, an insurance holding company or a mixed financial holding company may, subject to the agreement of the group supervisor, provide a single report on its solvency and financial condition which shall comprise the following:

(a) the information at the level of the group to be disclosed in accordance with paragraph 1;

(b) the information for any of the subsidiaries within the group, which information must be individually identifiable and must be disclosed in accordance with Articles 51, 53, 54 and 55.

Before granting the agreement in accordance with the first subparagraph, the group supervisor shall consult and duly take into account any views and reservations of the members of the college of supervisors.';

(19) Article 257 is replaced by the following:

'*Article 257*

Administrative, management or supervisory body of insurance holding companies and mixed financial holding companies

Member States shall require that all persons who effectively run the insurance holding company or the mixed financial holding company are fit and proper to perform their duties.

Article 42 shall apply *mutatis mutandis*.';

(20) in Article 258, paragraphs 1 and 2 are replaced by the following:

'1. Where the insurance or reinsurance undertakings in a group do not comply with the requirements provided for in Articles 218 to 246 or where the requirements are met but solvency may nevertheless be jeopardised or where the intra-group transactions or the risk concentrations are a threat to the financial position of the insurance or reinsurance undertakings, measures necessary to rectify the situation as soon as possible shall be adopted by:

(a) the group supervisor with respect to insurance holding companies and mixed financial holding companies;

(b) the supervisory authorities with respect to insurance and reinsurance undertakings.

Where, in the case referred to in point (a) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance holding company or mixed financial holding company has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Where, in the case referred to in point (b) of the first subparagraph, the group supervisor is not one of the supervisory authorities of the Member State in which the insurance or reinsurance undertaking has its head office, the group supervisor shall inform those supervisory authorities of its findings with a view to enabling them to take the necessary measures.

Without prejudice to paragraph 2, Member States shall determine the measures which may be taken by their supervisory authorities with respect to insurance holding companies and mixed financial holding companies.

The supervisory authorities concerned, including the group supervisor, shall, where appropriate, coordinate their measures.

2. Without prejudice to their criminal law provisions, Member States shall impose sanctions on or adopt measures relating to insurance holding companies and mixed financial holding companies which infringe laws, regulations or administrative provisions brought into force to transpose this Title, or in relation to the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such sanctions or measures are effective, in particular where the central administration or main establishment of an insurance holding company or mixed financial holding company is not located in the same Member State as its head office.';

(21) Article 262 is replaced by the following:

'*Article 262*

Parent undertakings registered in a third country: absence of equivalence

1. Where the verification carried out in accordance with Article 260 shows that there is no equivalent supervision, Member States shall apply to the insurance and reinsurance undertakings, *mutatis mutandis*, either Articles 218 to 258, with the exception of Articles 236 to 243, or one of the methods set out in paragraph 2 of this Article.

The general principles and methods set out in Articles 218 to 258 shall apply at the level of the insurance holding company, mixed financial holding company, third-country insurance undertaking or third-country reinsurance undertaking.

For the sole purpose of the group solvency calculation, the parent undertaking shall be treated as if it were an insurance or reinsurance undertaking subject to the same conditions as laid down in Subsections 1, 2 and 3 of Section 3 of Chapter VI of Title I as regards the own funds eligible for the Solvency Capital Requirement, and to either of the following:

(a) a Solvency Capital Requirement determined in accordance with the principles of Article 226 where it is an insurance holding company or mixed financial holding company;

(b) a Solvency Capital Requirement determined in accordance with the principles of Article 227, where it is a third-country insurance undertaking or a third-country reinsurance undertaking.

2. Member States shall allow their supervisory authorities to apply other methods which ensure appropriate supervision of the insurance and reinsurance undertakings in a group. Those methods shall be agreed by the group supervisor, after consulting the other supervisory authorities concerned.

The supervisory authorities may in particular require the establishment of an insurance holding company which has its head office in the Union, or a mixed financial holding company which has its head office in the Union and apply this Title to the insurance and reinsurance undertakings in the group headed by that insurance holding company or mixed financial holding company.

The methods chosen shall allow the objectives of the group supervision as defined in this Title to be achieved and shall be notified to the other supervisory authorities concerned and the Commission.';

(22) in Article 263, the first and second paragraphs are replaced by the following:

'Where the parent undertaking referred to in Article 260 is itself a subsidiary of an insurance holding company or a mixed financial holding company which has its head office in a third country or of a third-country insurance or reinsurance undertaking, Member States shall apply the verification provided for in Article 260 only at the level of the ultimate parent undertaking which is a third-country insurance holding company, a third-country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.

Supervisory authorities may, however, in the absence of equivalent supervision referred to in Article 260, carry out a new verification at a lower level where a parent undertaking of insurance or reinsurance undertakings exists, whether at the level of a third-country insurance holding company, a third country mixed financial holding company, a third-country insurance undertaking or a third-country reinsurance undertaking.'.

Article 5

Review

The Commission shall fully review Directive 2002/87/EC, including the delegated and implementing acts adopted pursuant thereto. Following that review, the Commission shall send a report to the European Parliament and to the Council by 31 December 2012, addressing, in particular, the scope of that Directive, including whether the scope should be extended by reviewing Article 3, and the application of that Directive to non-regulated entities, in particular special purpose vehicles. The report shall also cover the identification criteria of financial conglomerates owned by wider non-financial groups, whose total activities in the banking sector, insurance sector and investment services sector are materially relevant in the internal market for financial services.

The Commission shall also consider whether the ESAs should, through the Joint Committee, issue guidelines for the assessment of this material relevance.

In the same context, the report shall cover systemically relevant financial conglomerates, whose size, inter-connectedness or complexity make them particularly vulnerable, and which are to be identified by analogy with the evolving standards of the Financial Stability Board and the Basel Committee on Banking Supervision. In addition, that report shall review the possibility to introduce mandatory stress testing. The report shall be followed, if necessary, by appropriate legislative proposals.

Article 6

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2 and 3 of this Directive by 10 June 2013. They shall communicate immediately to the Commission the text of those measures and a correlation table between those measures and this Directive.

2. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 4 of this Directive from 10 June 2013. They shall communicate immediately to the Commission the text of those measures and a correlation table between those measures and this Directive.

3. By derogation from paragraph 1, Member States shall bring into force by 22 July 2013 the laws, regulations and administrative provisions necessary to comply with Article 2(23) of this Directive, as well as with Article 2(1) and (2)(a) of this Directive in so far as those provisions amend Article 1, Article 2(4), (5a) and (16), and Article 3(2) of Directive 2002/87/EC with regard to alternative investment fund managers. They shall communicate immediately to the Commission the text of those measures and a correlation table between those measures and this Directive.

4. When Member States adopt the measures referred to in this Article, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 7

Entry into force

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

Article 8

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 16 November 2011.

For the European Parliament	*For the Council*
The President	*The President*
J. BUZEK	W. SZCZUKA

ANNEX I

Annexes I and II to Directive 98/78/EC are amended as follows:

A. Annex I is amended as follows:

(1) in Section 2.1:

(a) the second indent of the fourth paragraph is replaced by the following:

'— if the insurance undertaking or the reinsurance undertaking is a related undertaking of an insurance holding company or of a mixed financial holding company which has its registered office in the same Member State as the insurance undertaking or the reinsurance undertaking, and both the insurance holding company or mixed financial holding company and the related insurance undertaking or the related reinsurance undertaking are taken into account in the calculation carried out.';

(b) the fifth paragraph is replaced by the following:

'Member States may also waive calculation of the adjusted solvency of an insurance undertaking or reinsurance undertaking if it is a related insurance undertaking or a related reinsurance undertaking of another insurance undertaking, another reinsurance undertaking or an insurance holding company or a mixed financial 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.';

(2) Section 2.2 is replaced by the following:

'2.2. Intermediate insurance holding companies and intermediate mixed financial holding companies

When calculating the adjusted solvency of an insurance undertaking or a reinsurance undertaking which holds a participation in a related insurance undertaking, a related reinsurance undertaking, a non-member-country insurance undertaking or a non-member-country reinsurance undertaking, through an insurance holding company or a mixed financial holding company, the situation of the intermediate insurance holding company or the intermediate mixed financial 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 or mixed financial holding company shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to a zero solvency requirement and as if it were subject to the same conditions as are laid down in Article 16 of Directive 73/239/EEC, in Article 27 of Directive 2002/83/EC or in Article 36 of Directive 2005/68/EC in respect of elements eligible for the solvency margin.'.

B. Annex II is amended as follows:

(1) The title is replaced by the following:

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

(2) in point 1, the first paragraph is replaced by the following:

'1. In the case of two or more insurance undertakings or reinsurance undertakings as referred to in Article 2(2) which are the subsidiaries of an insurance holding company, a mixed financial holding company, a non-member-country insurance undertaking or a non-member-country reinsurance 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.';

(3) in point 2, the second and third indents and the subparagraph following the third indent are replaced by the following:

'— if that insurance undertaking or reinsurance undertaking and one or more other insurance undertakings or reinsurance undertakings authorised in the same Member State have as their parent undertaking the same insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking, and the insurance undertaking or reinsurance 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 or reinsurance undertaking and one or more other insurance undertakings or reinsurance undertakings authorised in other Member States have as their parent undertaking the same insurance holding company, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking, and an agreement granting the 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).

Where insurance holding companies, mixed financial holding companies or non-member-country insurance or reinsurance undertakings hold successive participations in the insurance holding company, mixed financial holding company or non-member-country insurance or reinsurance 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 or reinsurance undertaking which is an insurance holding company, a mixed financial holding company, a non-member-country insurance undertaking or a non-member-country reinsurance undertaking.';

(4) point 3 is replaced by the following:

'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, mixed financial holding company, non-member-country insurance undertaking or non-member-country reinsurance undertaking.

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

For the sole purpose of that calculation, the parent undertaking shall be treated as if it were an insurance undertaking or reinsurance undertaking subject to the following conditions:

— a zero solvency requirement where it is an insurance holding company or mixed financial holding company,

— a solvency requirement determined in accordance with the principles of section 2.3 of Annex I, where it is a non-member-country insurance undertaking or a non-member-country reinsurance undertaking,

— 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.'.

ANNEX II

In Annex I to Directive 2002/87/EC, under 'II. Technical Calculation Methods', Method 3 and Method 4 are replaced by the following:

'Method 3: "Combination method"

Competent authorities may allow a combination of method 1 and method 2.'.

ANNEX III

In Directive 2006/48/EC, point 30 of Section 3 of Part 3 of Annex X is replaced by the following:

'30. When an Advanced Measurement Approach is intended to be used by the EU parent credit institution and its subsidiaries, or by the subsidiaries of an EU parent financial holding company or an EU parent mixed financial holding company, the application shall include a description of the methodology used for allocating operational risk capital between the different entities of the group.'.