

PROTOCOL

**RELATING TO THE COLLABORATION
OF THE SUPERVISORY AUTHORITIES
OF THE MEMBER STATES OF THE EUROPEAN UNION
WITH REGARD TO
THE APPLICATION OF
DIRECTIVE 98/78/EC
ON THE SUPPLEMENTARY SUPERVISION
OF INSURANCE UNDERTAKINGS IN AN INSURANCE GROUP**

11 May 2000

PART I

GENERAL CONSIDERATIONS

1.1 General aims

On 27 October 1998, Directive 98/78/EC of the European Parliament and of the Council on the supplementary supervision of insurance undertakings in an insurance group (further: the Directive) was adopted. The supplementary supervision of insurance undertakings in an insurance group enables the supervisors involved to form a more soundly based judgement on the financial situation of insurance undertakings being part of that group, thus providing additional safety to policyholders. Furthermore, the Directive aims to prevent distortion of competition, and will contribute to the stability of financial markets.

The adoption of the Directive necessitates a deepening of the co-operation between supervisors which is already covered by the Protocol relating to the collaboration of the supervisory authorities of the Member States of the European Community in particular in the application of the Directives on life assurance and non-life insurance. The supervisory authorities of the Member States wish to lay down this additional co-operation in a further Protocol with regard to the application of Directive 98/78/EC. This Protocol encourages and facilitates the deepening of the practical co-operation between the relevant supervisory authorities, where the supplementary supervision as required in the Directive concerns undertakings in more than one Member State.

Furthermore, whereas the Directive brings about the need for a closer co-operation between the supervisory authorities, the recommendations of the Joint Forum on Financial Conglomerates and the International Association of Insurance Supervisors (IAIS) are also being taken into account where these recommendations do not go beyond the scope of the Directive.

1.2 Background and content of Directive 98/78/EC

The Directive must be seen as an addition to existing EC-legislation with regard to the life and non-life insurance sector. The aim of the Directive is to make insurance supervisors better equipped to assess the solvency of an insurance undertaking that is part of an insurance group. Although insurance undertakings are separate legal entities and are required to meet solvency requirements on an individual basis, the financial position of an insurance undertaking may be affected and come under pressure by belonging to a wider group of undertakings.

The earlier EC-legislation – especially the Third Non-Life Directive (92/49/EEC) and the Third Life Directive (92/96/EEC) - limits the scope of the supervision on an insurance company to the financial situation of that individual insurance company as such (“solo supervision”). If an insurance undertaking is a member of a group, the earlier insurance directives do not specifically oblige to take the group environment into account. The financial situation and especially the solvency margin of such an insurance company may, however, be affected by the financial resources of the group of which it is a part and by the distribution of financial resources within that group.

Therefore, the Directive requires the supervisory authorities not to limit themselves in such a situation to merely (solo) supervision on individual insurance companies, but also to take into account explicitly the relevant financial affiliations between the insurance company and other parts of the insurance group (solo-plus supervision), without, however, undertaking supervision of the group itself as a whole. It should be stressed that any new supervisory requirements are additional to existing “solo” supervisory requirements. They are not intended to replace the principle of “solo” supervision or “solo” requirements.

This supplementary supervision is aimed at, first of all, the protection of the interests of insured persons. Moreover, it will also help to prevent distortions of competition between insurance undertakings in the European Union and contribute to the stability of financial markets.

In order to reach the objectives of the Directive, the competent authorities must be provided with the means of exercising supplementary supervision and of taking appropriate measures at the level of the insurance undertaking where its solvency is or may be jeopardised. The activities of a number of European insurance groups are not limited to one Member State but extend over several member countries. Therefore, it becomes more and more difficult for the individual national supervisors to assess the financial soundness of an individual company under their supervision in the light of the international activities of the group. Also, the national supervisors in the Member States involved in the supervision of the different companies of the group will, to a large extent, need the same information in order to be able to take into account the influences of the group environment on the individual company they supervise. Therefore, especially with regard to the supplementary supervision, it is more efficient, for both the supervisors and the companies under supervision, if supervisors co-operate in order to obtain – in an efficient way – the necessary information on the group and share, as much as possible, the supervisory information available.

In particular, the need for closer co-operation and co-ordination follows from the following articles of the Directive:

- Article 4.2: “Where insurance undertakings authorised in two or more Member States have as their parent undertaking the same insurance holding company, reinsurance undertaking, non-member-country insurance undertaking or mixed-activity insurance holding company, the competent authorities of the Member states concerned may reach agreement as to which of them will be responsible for exercising supplementary supervision.”
- Article 6.3: “Where,, the competent authorities of one Member State wish in specific cases to verify important information concerning an undertaking situated in another Member State which is a related insurance undertaking, a subsidiary undertaking, a parent undertaking or a subsidiary of a parent undertaking of the insurance undertaking subject to supplementary supervision, they must ask the competent authorities of that other Member State to have that verification carried out. The authorities which receive such a request must act on it within the limits of their jurisdiction by carrying out the verification themselves, by allowing the authorities making the request to carry it out or by allowing an auditor or expert to carry it out.”
- Article 7.1: “Where insurance undertakings established in different Member States are directly or indirectly related or have a common participating undertaking, the competent authorities of each Member State shall communicate to one another on request all relevant information which may allow or facilitate the exercise of supervision pursuant to this Directive and shall communicate on their own initiative any information which appears to them to be essential for the other competent authorities.”

- Article 7.2: “Where an insurance undertaking and either a credit institution or an investment firm, or both, are directly or indirectly related or have a common participating undertaking, the competent authorities and the authorities with public responsibility for the supervision of those other undertakings shall co-operate closely. Without prejudice to their respective responsibilities, those authorities shall provide one another with any information likely to simplify their task, in particular within the framework of this Directive.”

1.3 Cases of application and competent authorities for supplementary supervision

The Directive distinguishes in article 2 three different cases in which supplementary supervision should be exercised, and the content of such supplementary supervision:

- An insurance undertaking which is a participating undertaking in at least one insurance undertaking, reinsurance undertaking, or a non-member-country insurance undertaking (article 2.1);
- An insurance undertaking the parent undertaking of which is an insurance holding company, a reinsurance undertaking or a non-member-country insurance undertaking (article 2.2);
- An insurance undertaking the parent undertaking of which is a mixed-activity insurance holding company (article 2.3).

Article 4 of the Directive defines the competent authority for the supplementary supervision. Starting point is that the supplementary supervision shall be exercised by the competent authorities of the Member State in which the insurance undertaking has received official authorisation. If the insurance undertaking under supervision is a participating undertaking as defined in article 2.1, the supplementary supervision will be exercised by the competent authority as indicated above, i.e. the supervisor already carrying out the “solo” supervision. However, if the cases as defined in article 2.2. or 2.3 of the Directive apply, there may, according to article 4.2 of the Directive, exist a choice as to which of the supervisors involved will be responsible for exercising supplementary supervision. Where insurance undertakings authorised in two or more Member States have as their parent undertaking the same insurance holding company, reinsurance undertaking, non-member-country insurance undertaking or mixed-activity insurance holding company, the competent authorities of the Member States concerned may reach agreement as to which of them will be responsible for exercising supplementary supervision.

However, in all cases the supplementary supervision as defined in the Directive applies. As provided for in article 3 of the Directive, the scope of the supplementary supervision should include related undertakings of the insurance undertaking, participating undertakings in the insurance undertakings, or related undertaking of a participating undertaking in the insurance undertaking.

Furthermore, Annex I and II, as relevant, describe the case of successive participations, and indicate in which cases the Member States may waive calculation of the adjusted solvency of an insurance undertaking, alternatively the calculations provided for in Annex II with regard to an insurance undertaking.

Where in the aforementioned cases two insurance undertakings are located in two different Member States, or where it appears necessary to obtain information from one of the companies of the group (insurance undertakings or otherwise), situated in a different Member State, co-operation between the supervisors will in principle be required, and this Protocol will then apply to all cases and group structures covered by the Directive.

1.4 Enabling protocol

The present Protocol must be seen as an enabling protocol. The competent supervisory authorities take upon themselves to put in all reasonable efforts to co-operate in order to exercise the supplementary supervision.

1.5 Responsibility of the supervisory authorities

The supervisory authorities acknowledge that efficient and effective co-operation does in no way diminish their own supervisory responsibility. The “solo” supervision will remain unimpaired the sole responsibility of the national authorities empowered by law or regulation to supervise insurance undertakings. As outlined in paragraph 2.2, the relevant competent authorities of the Member States should strive to co-operate in a Co-ordination Committee formed by the competent authorities involved with an insurance undertaking. Furthermore, whenever the Directive leaves a choice as to which authority should exercise supplementary supervision, the competent authorities should strive for agreement as to which of them will be responsible for exercising supplementary supervision.

This does not take away the fact that it will be the responsibility of the competent supervisor, i.e. the supervisor responsible for the “solo” supervision, to take any measures, if deemed necessary, at the level of the insurance undertaking.

1.6 Flexibility of the supplementary supervision of insurance undertakings in an insurance group

The insurance supervisory authorities should at all times take into account possible developments with regard to an insurance undertaking in or becoming part of an insurance group and if necessary adjust the supplementary supervision and co-operation. This may imply a reconsideration of the composition of a Co-ordination Committee, the responsibility for the supplementary supervision, and the assignment, by agreement, of various tasks as described in paragraph 2.2.

1.7 Non-emergency situations, emergency situations and conflicts of interests

In essence, two kinds of supervisory situations can be distinguished: non-emergency situations and emergency situations. This Protocol applies in both situations.

An emergency situation may originally arise or be identified in relation to either the “solo” supervision or the supplementary supervision, and consequently further action may be urgently required. Since the supplementary supervision, just as the “solo” supervision, is directed at the authorised insurance undertaking, the competent supervisory authority, i.e. the supervisor responsible for the “solo” supervision on the insurance undertaking, shall take the appropriate measures at the level of the insurance undertaking. However, because of the fact that the situation and measures taken are relevant for all the supervisory authorities within the Co-ordination Committee, the competent authority taking the measures will inform the other members of the Co-ordination Committee on a timely basis and (if possible) beforehand. If necessary, an emergency meeting of the Co-ordination Committee can be arranged in order to co-ordinate the measures taken by the relevant competent authority.

Also, especially in emergency situations, it is possible that conflicts of interests between the members of the Co-ordination Committee occur.

In order to avoid these situations as much as possible, and be well prepared for any action which may be required, the Co-ordination Committee should analyse beforehand any emergency situations that may arise and any potential conflicts of interests. Furthermore, the Co-ordination Committee should endeavour to agree on adequate emergency schemes, including the co-operation and co-ordination in these kinds of situations, as indicated in paragraph 2.2.

1.8 Relation with the general collaboration Protocol

The present Protocol must be seen as an addition to the earlier protocols concluded between the supervisory authorities of the Member States, especially to the Protocol relating to the collaboration of the supervisory authorities of the Member States of the European Community in particular in the application of the directives on life assurance and non-life insurance. The earlier collaboration protocols thus remain unimpaired effective.

1.9 Rules on professional secrecy

The supervisory authorities agree to exchange confidential information within the limits of the rules laid down in the Third Directives (Articles 16.1 and 16.2 of the Third Non-life Directive and 15.1 and 15.2 of the Third Life Directive) in order to improve the effectiveness of insurance supervision in the European Union.

1.10 Co-operation with non-European Union States that are parties to the EEA Agreement

This Protocol applies also to the supervisory authorities of non-European Union States that are parties to the EEA Agreement as laid down in the second Protocol of 26 October 1995 on the collaboration of the supervisory authorities of the European Economic Area with a view to the application of directives concerning life assurance and non-life insurance. Consequently, where in the Protocol the term "Member States" is used, the non-European Union States that are parties to the EEA Agreement are also included. Furthermore, where the terms "European Union" or "European Community" are used, this should be understood to apply to the whole European Economic Area.

1.11 Co-operation with authorities responsible for the supervision of credit institutions and supervision of security and investment firms

As described in point 1.2 of this Protocol, the supervisory authorities must have access to all the information relevant to the exercise of supplementary supervision. Especially with regard to financial conglomerates, not only co-operation between the authorities responsible for the supervision of insurance undertakings but also between those authorities and the authorities responsible for the supervision of other financial sectors is necessary.

PART II

CO-OPERATION AND CO-ORDINATION BETWEEN SUPERVISORS RESULTING FROM DIRECTIVE 98/78/EC ON THE SUPPLEMENTARY SUPERVISION OF INSURANCE UNDERTAKINGS IN AN INSURANCE GROUP

2.1 Principle

The supervisory authorities support the principle of supplementary supervision as prescribed in the Directive, and will co-operate to implement the requirements of the Directive. The supervisory authorities realise that the aim of co-operation is to improve supervision on the insurance undertakings. The following paragraphs elaborate the possible organisational forms of co-operation, the content of supplementary supervision, and the prerequisites for an unimpaired gathering and exchange of information.

The supervisory authorities agree that the aim of co-operation is to ensure optimal supplementary supervision. The supplementary supervision should be carried out efficiently and effectively, and should form no unnecessary burden for the insurance undertakings subject to supplementary supervision nor for the supervisory authorities involved.

The supervisory authorities agree on the need and importance of co-operation in order to carry out their responsibilities in an optimal manner. They will put in all reasonable efforts to exercise the co-operation as referred to in the present Protocol. They will promptly and positively reply to requests for relevant information and provide any relevant information at their own initiative. They will carry out the co-operation and co-ordination as prescribed by and indicated in the Directive in a spirit of mutual trust, aiming for an optimal rather than minimalist implementation of the Directive. The supervisory authorities share the ultimate aim of ensuring optimal, effective and efficient supervision.

Furthermore, the supervisory authorities agree that the supplementary supervision is aimed at the insurance undertaking, and should be fully based on that viewpoint. The risk analysis as indicated below in paragraph 2.2 will also make clear if, and to what extent and in which form, the relevant banking or securities supervisors should be involved in the work of the Co-ordination Committee.

2.2 Organisational forms for exercising supplementary supervision

The Directive prescribes in Article 2 the cases in which an insurance undertaking is subject to supplementary supervision. Such undertakings may be part of a fairly straightforward group structure, or may indeed be part of a complex and wide-ranging conglomerate. Also, the legal structure of the group or conglomerate will often not be static, but may be altered as a consequence of e.g. a change in business strategy or in response to developments in the business and financial environment. At the same time, the business structure of a complex group may not correspond with the structure of legal entities, licensed or otherwise.

As a consequence, the supervisors of the Member States concerned should strive for forms of co-operation in the exercise of the supplementary supervision which are sufficiently flexible, and which are based on a genuine wish to work together.

As a first step, in order to initiate the co-operation process, the supervisors of the Member States involved should form a committee of the supervisors involved: the Co-ordination Committee. In principle, an initiating meeting should be convened unless the supervisors all agree otherwise¹. The initiative to convene the Co-ordination Committee and to initiate the co-operation process can be taken by any of the supervisors involved. In practice, however, the initiative will usually be taken by the competent authority supervising the apparently dominant insurance undertaking within a group². If this supervisor does not take the initiative to convene the relevant supervisory authorities, any of the other supervisors involved can do so. As far as the exercise of the supplementary supervision is concerned, all supervisors concerned share a mutual duty to co-operate. Therefore, every supervisor involved has the obligation to make themselves known to and be available to participate in the Co-ordination Committee. The Co-ordination Committee should at least consist of (preferably) the staff members who are, within their organisations, responsible for the day-to-day supervision of the group members established in their state.

One of the supervisors forming the Co-ordination Committee should be chosen *chairman* of the meetings of the Co-ordination Committee.

The first task of the Co-ordination Committee is to produce an overview of the group in terms of its formal and operational structure. In order to achieve efficient and effective co-operation and supervision, it will be helpful if at this stage the Co-ordination Committee also carries out a risk analysis of the group environment, identifying the most relevant undertakings and the most important relationships in the group. This analysis will also make clear which supervisors are most involved, which information is most relevant to be gathered and exchanged, and which organisational form of co-operation is most practical. In particular where the group environment is large and complex, it will be necessary to consider carefully and limit both the amount of information gathered and the exchange thereof. In such cases it will be practical if a small number of key supervisors have more intensive supervisory contacts, and if the exchange of information focuses on noteworthy exceptions which give rise to supervisory concern rather than on confirmation of standard issues.

The next step for the Co-ordination Committee is to agree on how the co-operation and co-ordination process as far as the supplementary supervision is concerned will be arranged, taking into account the group structure. Often, in practice, it will be useful for the members of the Co-ordination Committee to agree on one or more supervisors acting as key co-ordinator(s). The role of the key co-ordinator is to arrange and manage the co-ordination of the activities necessary to carry out the supplementary supervision. The key co-ordinator will in practice chair the meetings of the Co-ordination Committee. The key co-ordinator does not, however, assume any of the responsibilities for supplementary supervision from other supervisors, as indicated in Article 4.2 of the Directive. The responsibility for the exercise of the supplementary supervision thus remains with the competent authorities of the Member States in which the insurance undertaking subject to supplementary supervision has received official authorisation.

Although the supervisors involved share a mutual duty to co-operate as far as the supplementary supervision is concerned, in practice it will often be useful to strive for one of the supervisors to carry out most or all of the supplementary supervision, and assume the responsibility to do so, whenever the Directive leaves a choice in that respect. This supervisor will be called the *lead supervisor for supplementary supervision* (further: lead supervisor). The lead supervisors will share its findings with the other supervisors in the Co-ordination Committee. In practice the supervisors involved may wish to appoint as the lead

¹ It can be foreseen that the kind of co-operation differs according to the size of the insurance group. For smaller groups, it might not be necessary to convene a meeting of the Co-ordination Committee in order to start co-operation.

² This insurance undertaking is not necessarily the ultimate top company in the legal structure of the group.

supervisor, the supervisor of the Member State where the dominant insurance undertaking of the group, for example in terms of premium income, is established. However, a lead supervisor can only be appointed if there is unanimity within the Co-ordination Committee. Equally, depending on the group structure, the Co-ordination Committee may decide to appoint two (or more) joint lead supervisors. In practice, it will often be preferable if the lead supervisor, if any, will also be chosen to chair the Co-ordination Committee, and act as key co-ordinator.

The supervisors acknowledge and are fully aware that, as indicated in article 4.1 of the Directive, the responsibility for exercising supplementary supervision will, as a starting point, have to remain with the competent authorities of the Member State in which the insurance undertaking has received official authorisation. Article 4.2 of the Directive specifies in which cases the competent authorities of the Member States concerned may reach agreement as to which of them will be responsible for exercising supplementary supervision. More generally, the supervisors acknowledge that any arrangements made must be within the scope of the Directive.

The Co-ordination Committee will be the co-ordination platform, irrespective of whether the members of the Committee have agreed on the election of a key co-ordinator or a lead supervisor. The Co-ordination Committee will not only agree on the organisational form of supplementary supervision as described above, but also on how the information gathered will be exchanged, in which form and at which frequency. Such supervisory information will then be discussed further in the Co-ordination Committee. Furthermore, without prejudice to the responsibilities of the supervisors involved under their national legislation, the Committee should discuss and co-ordinate any measures, if necessary, to be taken by the relevant competent authority against any insurance undertaking being part of a group, both in regular and emergency situations. The Co-ordination Committee will meet as often as the members deem necessary.

The members of the Co-ordination Committee may wish to lay down any arrangements on the supplementary supervision in written bilateral or multilateral agreements, addressing both the regular and any emergency situations.

In case an insurance undertaking and either a credit institution as defined in Directive 77/780/EEC or an investment firm as defined in Directive 93/22/EEC, or both, are directly or indirectly related or have a common participating undertaking, staff members of the relevant banking or securities supervisors should at least be invited to attend the meetings of the Co-ordination Committee, or may become full members. Without prejudice to their respective responsibilities, and within the limits of the rules on professional secrecy, those authorities shall provide one another with any information likely to simplify their task.

In case the insurance undertaking subject to supplementary supervision belongs to an insurance group or a financial conglomerate in which also companies established in non-member-countries participate, the insurance, banking and/or securities supervisors of the latter countries may, if practicable, and within the limits of the rules on professional secrecy, also be invited to participate in the meetings of the Co-ordination Committee.

In practice, it may also prove efficient if the meetings of Co-ordination Committees concerning different insurance groups, in which the same supervisory staff are represented, can be combined.

2.3 Content of supplementary supervision

The competent authorities shall communicate to one another on request all relevant information which may allow or facilitate the exercise of supervision pursuant to the Directive and shall communicate on their own initiative any information which appears to them to be essential for the other competent authorities.

The supervisory authorities acknowledge that the supplementary supervision, and thus the co-operation and co-ordination, will not limit itself to the two specific issues addressed in the Directive, i.e. the supervision of intra-group transactions and positions, and the additional adjusted solvency calculations alternatively the method of supplementary supervision provided for in article 10 of the Directive, but extends to the gathering and sharing of any information which they feel is of assistance in the exercise of adequate supervision.

2.3.1 Supervision on intra-group transactions and positions

The supervisor, or supervisors, which carry out the supplementary supervision on an insurance undertaking³, as agreed by the Co-ordination Committee, shall include in its supervision the transactions and positions between this insurance undertaking and:

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

These transactions and positions concern in particular:

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

³ The Italian insurance supervisory authority wishes to point out that under Italian law insurance undertakings authorised in Italy need to notify the Italian insurance supervisory authority in advance of certain types of intra-group transactions they wish to enter into. The Italian insurance supervisory authority is obliged to review these intended intra-group transactions, and has the authority to forbid such transactions being concluded.

The supervisory authorities agree that, whilst the Directive refers to transactions between the insurance undertaking and the other parties mentioned, it is necessary to include in their supervision both intra-group positions and transactions, i.e. changes in positions.

The supervisor(s) exercising the supplementary supervision as agreed by the Co-ordination Committee will require the insurance undertakings concerned to submit at least annually a report containing all significant transactions and positions as outlined above. This report will in principle be distributed to all members of the Co-ordination Committee.

If, on the basis of this information on intra-group transactions and positions, it appears that the solvency of an insurance undertaking is, or may be, jeopardised, the competent supervisory authority, i.e. the supervisor responsible for the “solo” supervision on the insurance undertaking, shall take appropriate measures at the level of that insurance undertaking. The Co-ordination Committee, however, should without delay, and if possible beforehand, without prejudice to the responsibilities of the supervisors involved under their national legislation, discuss and co-ordinate any such measures taken by the relevant competent authority.

2.3.2 Adjusted solvency calculations and calculations prescribed by article 10 of the Directive.

The Co-ordination Committee will agree on which supervisor or supervisors carry out the supplementary supervision as prescribed by the Directive, whenever the latter leaves a choice. All members of the Co-ordination Committee will be adequately informed of the calculation method applied and the outcome of the calculations.

If the outcome of the adjusted solvency calculations is negative, or if the calculations prescribed by article 10 of the Directive make the competent authorities conclude that the solvency of the insurance undertaking is or may be jeopardised, the competent supervisory authority, i.e. the supervisor responsible for the “solo” supervision on the insurance undertaking, shall take appropriate measures at the level of the insurance undertaking. The Co-ordination Committee, however, should without delay, and if possible beforehand, without prejudice to the responsibilities of the supervisors involved under their national legislation, discuss and co-ordinate any such measures taken by the relevant competent authority.

2.3.3 Further co-ordination and co-operation

Where insurance undertakings established in different Member States are directly or indirectly related or have a common participating undertaking, the supervisors of each Member State shall communicate to one another on request all relevant information concerning a member of the group which may allow or facilitate the exercise of the supplementary supervision and shall communicate on their own initiative any information which appears to them to be essential for the other supervisors.

The supervisor(s) exercising the supplementary supervision as agreed by the Co-ordination Committee will communicate to all supervisors involved his (their) needs for data and information for the purposes of the supplementary supervision. The supervisors involved will take, within the limits of their jurisdiction, the necessary steps to ensure that the insurance undertakings provide such data and information.

The Co-ordination Committee could extend its work along the lines as described in e.g. the IAIS paper⁴ “Supervisory Standard on Group Co-ordination” or the Joint Forum “Co-ordinator Paper”. In particular, the Committee could take into consideration to work along the lines of the “Co-ordination catalogue” of the Joint Forum paper in order to achieve an “overall assessment” of the performance of the group, i.e. producing an understanding and evaluation of the group in terms of its formal and operational structure, business strategy, skills and propriety of management, main internal systems, internal controls and auditing processes, financial resources including solvency and liquidity, the overall risk profile and the risk management of the group. The Co-ordination Committee could agree on an allocation of the various tasks, and share and discuss the findings of the supervisors involved.

Furthermore, the Co-ordination Committee should aim to agree on the information which should at least be exchanged by all members of the Committee. In particular, the following items may be useful for other supervisors:

- A negative result on the inquiry into the good repute, competence and professional experience of managers;
- Any granting or withdrawal of authorisations;
- Changes on the management board of any undertakings involved;
- Measures considered or taken by a supervisor which can have an influence on other group members;
- Solvency concerns or problems concerning (one of) the members of the group, e.g.:
 - financial problems which could lead to the drafting of financing schemes with regard to a member of the group;
 - financial problems which could lead to winding-up of a member of the group;
 - the declaration of emergency settlements;
 - the freezing of assets.
- The granting of declarations of no objection or licences to one of the members of the group in order to allow a major acquisition leading to a qualified participation in another insurance undertaking, or other financial undertaking;
- (Other) major acquisitions by one of the members of the group.

2.4 Prerequisites for supplementary supervision

In order to exercise the supplementary supervision some prerequisites concerning the availability and quality of data and information have to be fulfilled.

⁴ This paper currently still has draft status.

2.4.1 Internal control mechanisms

The competent authorities of the Member State in which the insurance undertaking has received official authorisation⁵ shall require that every insurance undertaking subject to supplementary supervision shall have adequate internal control mechanisms in place for the production of any data and information relevant for the purposes of supplementary supervision. Some of these data and information may originate from subsidiary undertakings of the insurance undertakings, parent undertakings, or subsidiary undertakings of a parent undertaking of the insurance undertaking.

The competent authorities shall require that such information shall be of sufficient quality, can be made available in the form most suitable for the purpose of supplementary supervision, and in a timely manner.

2.4.2 Access to information

The supervisor, or supervisors, responsible for exercising supplementary supervision as agreed by the Co-ordination Committee, shall have access to any information relevant for the purpose of the supplementary supervision. In order to execute their tasks, the supervisor(s) concerned may address itself (themselves) directly to related undertakings of the insurance undertaking, participating undertakings in the insurance undertaking and related undertakings of a participating undertaking in the insurance undertaking, only if the necessary information has been requested from the insurance undertaking and has not been supplied by it.

Notwithstanding and without prejudice to the right of access to information provided by the Directive, the supervisor or supervisors responsible for exercising supplementary supervision will, in accordance with article 2.3.3., second paragraph, of this Protocol, co-operate closely with the “solo” supervisor in relevant Member States. The supervisor(s) responsible for exercising supplementary supervision will communicate to the “solo” supervisor(s) involved his (their) needs for information for the purposes of supplementary supervision. In order to ensure access to information relevant for the supplementary supervision, the “solo” supervisors involved will take, within the limits of their jurisdiction, the necessary steps to ensure that the undertakings involved provide such data and information. However, within the Co-ordination Committee further arrangements with regard to the right of access to information can be made. In all cases, the “solo” supervisor will be kept fully informed of any actions and findings.

2.4.3 Verification of information

Where the supervisor of one Member State wishes in specific cases to verify important information concerning an undertaking situated in another Member State which is a related insurance undertaking, a subsidiary undertaking, a parent undertaking or a subsidiary of a parent undertaking of the insurance undertaking subject to supplementary supervision, they must ask the supervisor of that other Member State to have that verification carried out. The supervisors that receive such a request must act on it within the limits of their jurisdiction by carrying out the verification themselves, by allowing the authorities making the request to carry it out or by allowing an auditor or expert to carry it out.

⁵ The “solo” supervisor, for practical reasons, will thus be responsible for the availability of data and information necessary for supplementary supervision, also if the responsibility for the actual supplementary supervision has been transferred to one of the other supervisors.

The supervisors involved may reach agreement on carrying out the verification by a joint team of staff members.

In all cases, the “solo” supervisor will be kept fully informed of any actions and findings.

PART III

FINAL PROVISIONS

3.1 List of the protocols in force

At the date of coming into effect of the present protocol, the following protocols are in force:

- Protocol of 3 June 1977 on taking hidden reserves into account in the solvency margin for the implementation of the first Directive 73/239/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance of 24 July 1973.
- Protocol of 5 December 1980 on taking hidden reserves into account in the solvency margin for the implementation of the first Directive 79/267/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance of 5 March 1979.
- Protocol of 5 December 1980 of the Second Working Party on collaboration of supervisory authorities for the application of the Directive 78/473/EEC of 30 May 1978 on Community co-insurance.
- Protocol of 13 April 1984 on the implicit elements of the solvency margin for the application of the first Directive 79/267/EEC on the co-ordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance of 5 March 1979.
- Protocol of 26 October 1995 on the collaboration of the supervisory authorities of the countries of the European Economic Area with a view to the application of directives concerning life assurance and non-life insurance.
- Protocol of 30 October 1997 relating to the collaboration of the supervisory authorities of the Member States of the European Community in particular in the application of the directives on life assurance and non-life insurance.
- Protocol of 11 May 2000 relating to the collaboration of the supervisory authorities of the Member States of the European Union with regard to the application of Directive 98/78/EC on the supplementary supervision of insurance undertakings in an insurance group.

3.2 The principle of permanent co-operation between supervisors

This protocol is not intended on its own to represent the collaboration between the supervisory authorities. This collaboration is first of all based on permanent co-operation and working relations between supervisors. All the provisions designed to develop this state of mind must be encouraged, in particular the exchanges of supervisory staff, at the request of a supervisory authority.

3.3 Report on the application of the Protocol

A report on the application of the present Protocol will be made, as often as proves to be necessary, at the level of the Plenary Conference which will be able to decide on updating, if appropriate. Every Member State has the right to put the functioning of the Protocol on the agenda of the Plenary Meeting.

ANNEX I

Definitions

Definitions: for the purposes of the present protocol:

- a) “Insurance undertaking” means an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;
- b) “Non-member-country insurance undertaking” means an undertaking which would require authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC if it had its registered office in the Community;
- c) “Reinsurance undertaking” means an undertaking, other than an insurance undertaking or a non-member-country insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, a non-member-country insurance undertaking or other reinsurance undertakings;
- d) “Parent undertaking” means a parent undertaking within the meaning of Article 1 of Directive 83/349/EEC and any undertaking which, in the opinion of the competent authorities, effectively exercises a dominant influence over another undertaking;
- e) “Subsidiary undertaking” means a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC and any undertaking over which, in the opinion of the competent authorities, a parent undertaking effectively exercises a dominant influence. All subsidiaries of subsidiary undertakings shall also be considered subsidiaries of the parent undertaking which is at the head of those undertakings;
- f) “Participation” means participation within the meaning of Article 17, first sentence, of Directive 78/660/EEC or the holding, directly or indirectly, of 20% or more of the voting rights or capital of an undertaking;
- g) “Participating undertaking” means an undertaking which is either a parent undertaking or another undertaking which holds a participation;
- h) “Related undertaking” means either a subsidiary or other undertaking in which a participation is held;
- i) “Insurance holding company” means a parent undertaking the main business of which is to acquire and hold participations in subsidiary undertakings, where those subsidiary undertakings are exclusively or mainly insurance undertakings, reinsurance undertakings or non-member-country insurance undertakings, one at least of such subsidiary undertakings being an insurance undertaking;
- j) “Mixed-activity insurance holding company” means a parent undertaking, other than an insurance undertaking, a non-member-country insurance undertaking, a reinsurance undertaking or an insurance holding company, which includes at least one insurance undertaking among its subsidiary undertakings;
- k) “Competent authorities” means the national authorities which are empowered by law or regulation to supervise insurance undertakings.