

Supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate

2001/0095(COD) - 12/09/2002 - Council position

The common position follows the Commission's proposal and incorporates a number of the amendments proposed by the European Parliament. As regards the main changes introduced by the Council relate to: - Objectives and definitions : a new definition has been introduced of the term "asset management company". Another new definition of the term "relevant competent authorities", has been introduced in order to facilitate the decision-making and making it effective and which comprises the authorities most concerned in the supervision of a financial conglomerate. The terms "group" and "close links" have been amended. The Council finds it important to include the so-called "horizontal groups" referred to in Article 12(1) of Directive 83/349, in all cases, and not leave the inclusion of these groups to national discretion. The definition of "close links" is used in the common position purely to define intra-group transactions and does not bear upon the determination of a group. The definition of the term "financial conglomerate" has been made more precise without changing the approach of the Commission proposal. For the purposes of the definition the banking and investment services sectors are considered as one sector, and a financial conglomerate must have at least one entity in this sector and one in the insurance sector, and its activities in both sectors must be significant. The term "financial sector" has also been amended to make it more precise and the definition of "close links" has been redrafted without changing the substance, in order to avoid unnecessary cross-references. - The identification of a financial conglomerate : includes those groups, not headed by an EU regulated entity, with mixed activities (industrial or commercial and financial) which have a financial interest of at least 40% as proposed by the European Parliament. The cross sectoral activities of the group must be significant. In addition to the 10% threshold for the determination of whether activities in different financial sectors are significant, the common position includes an alternative Threshold. The Council finds the figure of 3 billion proposed by the Parliament too restrictive and has fixed the threshold at EUR 6 billion. A group which meets the EUR 6 billion threshold but not the 10% threshold may, however, be excluded, either from the application of the Directive or from the provisions relating to risk concentration, intra-group transactions and internal control mechanisms, if the relevant competent authorities consider that the inclusion of that group would be inappropriate or misleading with respect to the objectives of supplementary supervision. Capital adequacy : the common position follows Parliament's amendments which introduce a clarification on co-operative structures which transfer part of the text of Annex I to the body of the Directive. The common position now explicitly states, in line with the Commission's objectives, that sectoral risks are to be covered by sectoral capital according to the sectoral rules and that any additional deficit at conglomerate level should be covered by cross-sectoral capital. - Choice of the methods for calculating a conglomerate's solvency requirement : the common position does not go as far as Parliament's wish to give financial conglomerates the full freedom to choose one of those methods, subject to supervisory approval. The Council considers that where a group is headed by a regulated entity, Member States should be in a position to require the calculation to be carried out according to one particular method, in particular where the sectoral rules for group-wide supervision for regulated entities in that Member State provide for a particular method and given that all methods are not equivalent under all circumstances (Annex I of the Directive explicitly provides for this). However, if a group is not headed by a regulated entity, Annex I provides that Member States shall in principle authorise the application of any of those methods. - Risk concentration : the provisions in the Common Position dealing with risk concentration and intra-group transactions have a different presentation to that proposed by the Commission. In particular, Article 6 of the Commission proposal has been split in a new Article 7 on risk concentration and a new Article 8 on intra-group transactions. The Common Position however does not depart from the Commission proposal on the substance. The Common Position also takes up the essence of Parliament's amendment which requires the

Commission to evaluate and to report on the appropriateness of Community rules on risk concentration and intra-group transactions, and by requiring the Commission to make legislative proposals if necessary;

- Regarding the procedure for the appointment of a co-ordinator: the common position has reversed the procedural decision making order compared to the Commission proposal. The common position provides for the automatic identification of a co-ordinator on the basis of criteria as proposed by the Commission, which may be waived subsequently by common agreement of the relevant competent authorities after consultation of the financial conglomerate. Furthermore, the Common Position provides for the appointment of a single co-ordinator, as well as for the communication of the latter's appointment to the financial conglomerate. A new provision of the Common Position explicitly provides that the coordinator, as regards information that has already been reported to another supervisor, should address itself to the latter in order to prevent duplication of reporting.
- Cooperation : Article 12 of the Common Position on co-operation, by deleting a further specification on the concept of strategic policies compared to the Commission proposal, follows Parliament's amendment. The Common Position is also in line with the spirit of another of the Parliament's amendments, as the ability for supervisory authorities to waive the exchange of information has been deleted and the ability to waive consultation, although not fully deleted, is limited to well defined exceptional cases.
- Financial conglomerates that are active in the EU, with a parent undertaking outside of the Community : the common position departs from the Commission proposal by replacing the procedures for the notification and objection against a co-ordinator's decision on the equivalence of a third country's regime with an obligatory consultation procedure that requires the coordinator to take into account guidance of the Financial Conglomerates Committee.
- Powers conferred on the Commission in accordance with the comitology procedure: the common position follows Parliament's amendments by using a slightly different wording compared to the Commission's proposal. Furthermore, the common position complements the Commission proposal by adding supplementary competence with a view to enhance supervisory convergence regarding risk concentration and intra-group transactions. Finally, the Common Position requires the Commission to consult interested parties and to inform the public prior to submitting draft regulation. As regards the Commission proposal on the Comitology procedure, the common position accepts the amendment which aims to further clarify the Commission proposal through the introduction of two new recitals but fails to accept the amendment includes a recital referring explicitly to the 'Lamfalussy' resolution of the Parliament on the implementation of the financial services legislation. The common position follows the Parliament's amendment that proposes the introduction of a new provision according to which the procedure referred to will end after four years, subject to a possible renewal.
- Amending sectoral banking, insurance and investment firm regulations : these amendments concern the elimination of multiple gearing of capital in a group. The Common Position reflects the compromise reached in the Council between those Member States, which want a more stringent and harmonised approach across financial sectors than proposed by the Commission, and those Member States, which want a less stringent approach. In general, compared to the Commission's proposal some of the thresholds that apply to the insurance sector have been raised (in principle from 10% to 20%), as well as some of the thresholds that apply to the banking and investment firms sector (in principle from 10% to 20% for holdings in insurance entities), and the different calculation methods provided by Annex I of the Directive for financial conglomerates will also be applicable to sectoral groups as regards their capital holdings in a different financial sector. Furthermore, the Common Position provides for timely initiatives to be taken by the Commission in order to bring Community legislation in this domain in line with future international agreements. In addition, new provisions introduced by the Council can be summarised as follows:
 - a new Article providing for an explicit procedure for the identification of a financial conglomerate, as well as for the notification of that identification. This procedure will add to the transparency of the implementation process of the Directive, both for the financial conglomerates concerned and the competent authorities involved.
 - another new Article provides for fit and proprietary requirements as regards the management body of mixed financial holding companies.
 - a new Article deals with asset management companies. The text reflects a compromise between Member States in the Council, which aims at including these institutions in the group-wide supervision of financial groups (whether sectoral groups or financial conglomerates).

Obligation for the Commission to make a report Member States' practices and propose further harmonisation of EU legislation if necessary.

- a new Article provides that within three years after

implementation of the Directive the Commission will report on a number of issues and on the need for further harmonisation if necessary. Other new provisions of the Common Position, which are of a more technical nature, deal with, among other things, the identification of the entity responsible for reporting risk concentration and intra-group transactions, the introduction of an explicit threshold for identifying significant intra-group transactions, a further specification of items that could be covered by the co-ordination agreement and a further clarification on which authorities may take enforcement measures.