

CEIOPS-CP-02/08

25 February 2008

## Consultation Paper No. 25

### **CEIOPS' Draft Advice on aspects of the Framework Directive Proposal related to Insurance Groups**

### **Measures to facilitate the effective supervision of groups**

*CEIOPS' Draft Advice regarding Aspects of the EU Commission's Solvency II Framework Directive Proposal related to Insurance Groups, focuses on measures to facilitate their effective supervision. Part I relates to the Group Support Regime. Part II relates to the rights and duties of the Group Supervisor and Colleges of Supervisors.*

*The tight timing for Advice on the proposed new and complex system of Group Supervision has required CEIOPS to focus only on its most immediate issues. They are based on the Proposal and do not put it into question.*

*Please send your comments - by using the comments template - to CEIOPS by email ([secretariat@ceiops.eu](mailto:secretariat@ceiops.eu)) by 25 April 2008, indicating the reference 'CEIOPS-CP-02/08'. CEIOPS will make all comments available on its website, except where respondents specifically request that their comments remain confidential. Furthermore CEIOPS expects to organize a Public Hearing on 2 April 2008. Further organizational details will follow.*

Summary request from the Commission's letter of 19 July 2007

*To facilitate the negotiations in the EU Parliament and the Council, the Commission Services has requested CEIOPS to advise on practical measures to facilitate the effective supervision of groups and in particular the operation of the Group Support Regime.*

*CEIOPS draft advice and recommendations take as their starting point the Commissions' Proposal for a Framework Directive. Furthermore, CEIOPS does not restrict itself to the preparation of Level 2 measures, but also considers what level 3 guidance could be developed to ensure strong supervisory convergence.*

*The Commission emphasized in its letter that the advice should not put the EU Commission Framework Directive Proposal into question, but rather provide technical answers. This paper seeks to address that mandate.*

*Work on this issue is urgent as it is directly relevant for the successful conclusion of the political negotiations. CEIOPS' advice should be fully consulted by May 2008.*

Extract from the Commission's letter of 19 July 2007

*'We would like CEIOPS to provide the Commission with advice on the application of the proportionality principle (covering all three Pillars), as well as with advice on practical measure to facilitate the effective supervision of groups and in particular the supervision of the „group support“ regime, as it is likely that parties involved in the negotiation will want to have more details about how these topics will be dealt with in practice, even if much of the detail will be left to level 2.*

*It is worth emphasizing that with respect to the advice provided on the practical measures to facilitate effective supervision of groups and in particular the supervision of the 'group support' regime, the advice should not put the Commission Framework Directive Proposal into question, but rather provide technical answers to issues such as group support, cooperation between supervisors and diversification.*

*Work on these issues is urgent as it will be directly relevant for the successful conclusion of the negotiations. I would therefore like to suggest that you provide fully consulted upon advice on these issues by May 2008.'*

Extract from the Guidance Note of the Commission sent out by the end of July 2007

• **Group Support**

*'Articles 243 to 253 contain general provisions on the optional Group Support Regime, and Article 254 provides for the adoption of implementing measures with a view to ensuring uniform application of these Articles. In this context, the following work should be undertaken:*

- Specify the criteria to be applied when assessing whether the entry conditions (Article 243) are satisfied;
- Specify the criteria to be applied when assessing whether the conditions for acceptance of a declaration of group support (Article 246) are satisfied;
- Specify the means to be used when disclosing information on the existence of declarations of group support, and on any use thereof (Article 250);
- Specify the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties in accordance with Articles 244 to 249 and 251 to 253.'

- **Rights and duties of the Group Supervisor & Coordination arrangements**

'Article 261 contains general provisions a) listing the rights and duties assigned to the Group Supervisor and b) requiring the establishment for each group of coordination arrangements by the Group Supervisor and the other supervisory authorities concerned, and its paragraph 3 provides for the adoption of implementing measures for the coordination of group supervision. In this context, at least the following work should be undertaken:

- Develop, in respect of Article 261(1), concrete proposals for the contents and wording of appropriate harmonisation at Level 2 of the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties as mentioned in that paragraph;
  
- Develop, in respect of Article 261(2), concrete proposals for the contents and wording of appropriate harmonisation at Level 2 of the minimum provisions to be contained in coordination arrangements on decision-making and cooperation procedures, as mentioned in that paragraph.'

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## I. Group Support Regime

### ***I.a. Criteria in respect of Article 243(c) and Article 246(3)(b) and 246(3)(c) of the Framework Directive Proposal***

#### **Background**

1. The background of the Group Support Regime in the Framework Directive Proposal is established in Recital 67. There it is stated, that *"It is necessary to ensure that own funds are appropriately distributed within the group available to protect policyholders and beneficiaries where needed. To this end insurance and reinsurance undertakings within a group should have sufficient own funds to cover their solvency capital requirement, unless the objective of protection of policyholders and beneficiaries can effectively be achieved otherwise. Insurance and reinsurance undertakings within a group should therefore be authorised to cover their Solvency Capital Requirement with group support declared by their parent undertaking, under defined circumstances. In order to assess the need for and prepare any possible future revision of the Group Support Regime, the Commission should report on the rules of the Member States and the practices of the supervisory authorities in this field."*
2. This provides that the Group Support Regime is a way of achieving the required level of policyholder protection established by Solvency II and an equivalent treatment of all policyholders of the group. Respecting the proportionality principle, it should promote an equivalent treatment of stand-alone undertakings and subsidiaries belonging to a group.
3. Solvency II is based on a prospective and risk-orientated approach to insurance supervision and is not a zero-failure regime. In this respect understanding the relationship between the MCR and the application of the Group Support Regime is of the utmost importance in understanding the overall Solvency II concept. Group support is not of theoretical nature. With a calibration of the MCR at 80% to 90% confidence level, the group support gains practical relevance. The lower the MCR is calibrated, the higher is the average statistical probability that the undertakings will become insolvent or will need to trigger group support for the transfer of additional own funds. Therefore, establishing robust criteria for the transfer of own funds pursuant to a group support commitment is essential.
4. The College of Supervisors, and the Group Supervisor, need criteria for these conditions to test the basis on which a legally binding document would be acceptable to the Group Supervisor in accordance with Article 246. These criteria are important in providing a framework that the College of Supervisors can use to assess whether Article 243(c), Article 246.3(b) and Article 246.3(c) have been satisfied.

## **Explanatory text**

### **The effect of the Group Support Regime in the Framework Directive Proposal**

5. The effect of the Group Support Regime in the Framework Directive Proposal is to allow a subsidiary to cover all or part of the difference between its individual solo Solvency Capital Requirement (SCR) and its individual Minimum Capital Requirement (MCR) with a parent commitment (group support). The Framework Directive Proposal allows a parent undertaking to apply, on a subsidiary-by-subsidiary basis, to use group support. The parent can only use the Group Support Regime if the parent and subsidiary both satisfy the conditions set out in the Framework Directive Proposal, particularly those in Article 243. The group support declaration is an off-balance sheet item. When group support is triggered by a subsidiary, the commitment is replaced by eligible own funds held by the Group parent or one of its other subsidiaries.
  
6. In practise, an actual transfer of own funds with respect to the group support declaration is only triggered either (a) according to Article 247(3) when the MCR is not fully covered, or (b) according to Article 247(4) when the parent undertaking does not provide a new declaration or the new declaration is not accepted, or (c) when according Article 252(3) in connection to the group support system is no longer valid or (d) according to Article 251(2) if any derogations from Article 245, 246 and 247 no longer apply. The actual transfer of own funds would in (a) be limited to the amount necessary to cover the MCR, in (b) be limited to the amount necessary to cover the SCR, in (c) probably be reduced to an amount less than the one committed due to the fact that the group is in crisis and in (d) be limited to the scope defined according to Article 251(2). The stated purpose of the Group Support Regime is to facilitate capital management by allowing insurance groups to meet the difference between a subsidiary's MCR and SCR through the use of declarations of group support. Article 247 states that the Group Support Regime is a derogation from Article 135, which deals with the non-compliance with the SCR by solo entities. However, no mention is made in Title III of a derogation to Article 134, which deals with the non-compliance with the MCR by solo entities and yet it is a breach of Article 134 that is the most likely event that will give rise to a transfer of own funds under the Group Support Regime. This would appear to be a significant defect in the Level 1 text.

### **Relation between group support and diversification effects**

7. Diversification effects and group support are two issues that should not be considered as identical or completely interrelated. While any diversification effects at group level should be recognised in the required solvency

requirements, the Group Support Regime provided for under Article 243 facilitates the group with an alternative tools of allocating available capital.

8. Article 246 states that on a subsidiary level any difference between the SCR and the MCR of the subsidiary shall be covered by either own funds eligible under Article 97(4) or group support, or any combination thereof.

### **The treatment of non-EEA subsidiaries of European groups regarding the recognition of diversification effects with third countries under the Group Support Regime**

9. The Framework Directive Proposal could be interpreted differently with regard to the treatment of non-EEA subsidiaries of European groups regarding the recognition of diversification effects with third countries.

- Article 234(1) first paragraph of the Directive Framework Proposal implies that by default there is recognition of diversification benefits with non-EEA entities (because third countries related entities are treated as if they were EEA entities);
- However, Article 234(1) second paragraph states that where the third country in question has a system of supervision deemed equivalent, local requirements may be taken into account, which could imply that no diversification is recognised.

10. So, Article 234(1) first paragraph of the Framework Directive Proposal implies that diversification benefits with non-EEA entities could be recognized, provided that these non-EEA entities are part of the group's consolidation.

11. The possible legal difficulties in transferring assets from third countries, especially under stressed circumstances (including regulatory restrictions on the payment of dividends) could result in EU policyholders being less protected than third country policyholders, if no further safety guards are to be put into the system.

12. Therefore it is important to consider the treatment of third countries activities in all circumstances to ensure that the recognition of diversification effects could not, in any way, undermine the level of protection of EU policyholders with respect to a situation in which no diversification effects would be recognised. The treatment of diversification between EEA entities and non-EEA entities in the solvency assessment is of most importance in cases where groups build part of their strategy on geographical diversification and different business-mix on a worldwide basis.

13. Therefore it seems important to CEIOPS, in order to ensure an adequate distribution of capital within the group under the Group Support Regime, to

consider the impact that the diversification effects of non-EEA subsidiaries have on the available own funds being used by the Group to cover group support commitments given to EEA subsidiaries (in order to ensure appropriate downstreaming of diversification effects).

### **CEIOPS' advice**

14. CEIOPS considers it important that the treatment of third country diversification effects be conditional on the protection of EU policyholders in all circumstances. Recognition of the group support regime by third countries could be a way of downstreaming diversification benefits coming from third countries activities.

### **Obligations under the Group Support Regime**

15. The Framework Directive Proposal provides detailed obligations that apply under the Group Support Regime:

- an obligation to have eligible own funds to cover the group SCR;
- an obligation that there are sufficient transferable eligible own funds available to meet commitments by the parent undertaking, including that there is "no current or foreseeable material practical or legal impediment to the prompt transfer." of these eligible funds;
- an obligation to ensure that the commitment covers the difference between the MCR and the SCR of a subsidiary in the Group Support Regime;
- an obligation to ensure that the MCR of a subsidiary in the Group Support Regime is covered with eligible own funds at all times; and
- an obligation on the group to transfer own funds pursuant to a commitment in specific circumstances.

16. Before authorising the application of the Group Support Regime to a subsidiary, CEIOPS expects that the group must be able to demonstrate the sound financial position of the group as a whole and its ability to meet the group support commitment on a going concern basis also both at the time of authorisation and beyond, including the requirement to have sufficient eligible own funds to cover the consolidated group SCR.<sup>1</sup> Thus, in line with recitals 35 and 67, and Article 28 of the Framework Directive Proposal, the Group Supervisor assisted by the College of Supervisors should conduct a prospective assessment of the group's capacity to meet the SCR in the future and check the adequate distribution of own funds within the group before authorising the application of the Group Support Regime.

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<sup>1</sup> Article 246(3)(a).

17. Before accepting a group support commitment, the Group Supervisor and the College of Supervisors are required pursuant to Article 244 to verify that the document containing the declaration of group support meets all requirements under the law of the parent undertaking to be recognised as a legal commitment, and that any recourse before a legal or administrative body shall not have suspensive effect.<sup>2</sup> Therefore there are a number of criteria that need to be satisfied in order to enable this verification to work in practice.

### CEIOPS' advice

18. In order to ensure the group's ability to fulfil its group support commitment, the entry into the Group Support Regime should be subject to the group's ability to meet its SCR in the future and to the adequacy of the distribution of own funds within the group

### I.a.1. Legal conditions to be met according to Article 243(c) of the Framework Directive Proposal

19. According to Article 243(c) of the Framework Directive Proposal "*the parent undertaking has declared, in writing and in a **legally binding document accepted by the Group Supervisor** in accordance with Article 246, that **it guarantees that own funds eligible** under Article 97(5) **will be transferred** where necessary and up to **the limit** resulting from the application of Article 246.*"

In the following paragraphs CEIOPS analyses the criteria mentioned under Article 243(c), and the way they could work in practice.

#### **Criteria 1: Aspects relating to the legal basis of the commitment**

- *Design of the declaration*

20. The legally binding document accepted by the Group Supervisor shall contain the group declaration for the group support.

21. Where the unilateral commitment is followed by an acceptance, the obligation becomes automatically a contract. Acceptance can be either implicit or explicit and CEIOPS considers that the inclusion of group support at the level of the subsidiary's solvency requirements implies acceptance.

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<sup>2</sup> Article 246(3)(c).

## CEIOPS' advice

22. The group declaration is regarded by the majority of CEIOPS' Members as legally binding if the design of the declaration is in the form of a one-sided commitment (from the supporting to the supported) that leads to a legally enforceable transfer of capital at first demand from the subsidiary (a parental guarantee) to the parent undertaking, with an immediate enforceability of the entitlement. The group support shall be available regardless of the cause of the solvency breach. The declaration is in effect a bilateral written agreement between undertakings.

23. For solvency purposes, a minority of CEIOPS' Members are analysing the possibility that the commitment could be regarded as a credit from the supporting to the supported undertaking, when group support is triggered by a subsidiary (see Annex 1 under C for a further explanation and Annex 2 for an example). Hence, in that case the commitment shall yield interest to the creditor, in order to avoid any kind of conflict (i.e. with supported undertaking minority shareholders or with-profits policyholders). The yield would then be predefined on the declaration of group support, and must be paid in cash to the creditor. The yield would be competitive under market conditions to ensure that no subsidiaries under group support benefit from an artificially low cost of capital.

- *Nature of the commitment*

24. The Framework Directive Proposal provides that:

*"Where the parent undertaking does not rapidly transfer eligible own funds to the subsidiary, the Group Supervisor shall use all powers available, including the power... [to withdraw authorisation] to ensure that the group provides the requested transfer as soon as possible."*<sup>3</sup>

## CEIOPS' advice

25. Therefore the commitment made by the parent undertaking in the Group Support Regime will be enforceable by the exercise of supervisory power. The commitments under the Group Support Regime shall be seen as regulatory obligations. The parent undertaking's commitment of group support should provide for the immediate implementation of group support. This means that implementation of the commitment to provide group support is not triggered by supervisors but by the subsidiary which benefits from the commitment. If the subsidiary fails to trigger the group support, the supervisor of the subsidiary or the Group Supervisor shall also be allowed to trigger it.

<sup>3</sup> Article 249(1) paragraph 2.

- *Involved counterparties*

26. In practice, the involved counterparties (parent undertaking – subsidiaries) shall ensure that there are no legal obstacles in any circumstances to providing group support in accordance with the criteria and they should be held directly and immediately liable under their respective laws for any failures or delays in the execution of group support.

**CEIOPS' advice**

27. Any support declaration between the parent undertaking and the subsidiary should be individually documented. Therefore, every support declaration is limited to the involved parties (parent undertaking – subsidiaries).

- *Content of the declaration*

28. The parent undertaking must declare group support for a specific subsidiary by promising to transfer own funds.

**CEIOPS' advice**

29. For the purpose of transparency and for the clear allocation of responsibilities, individual declarations of group support (bilateral between undertakings) shall contain, at least, the following:

- an unconditional and irrevocable guarantee from the parent to the subsidiary (a parental guarantee) on first demand;
- a guarantee given by the parent undertaking with an immediate implementation of group support ("first pay, then raise objections if deemed necessary");
- Parties involved: supporting and supported undertaking. Unspecified support (generally or vaguely specified) should not be allowed;
- Explicit declaration that no time limits or exclusions for the commitment exist (no side letters);
- Explicit declaration of responsibility for updating the content of the declaration to adapt to future circumstances; and
- Explicit declaration of responsibility for guaranteeing policyholders' rights.

The following criteria relate only to the possibility where the commitment would be recognised as a credit (see para. 23):

- Capital committed: supporting undertaking's credit risk should be considered when calculating the amount of support provided –depends on the outcome;
- Compensation for the transfer of assets: yield, frequency and dates of payment; and
- Assets backing group support.

- *Legal basis*

30. The Commission has proposed under Article 246(3)(c) that the legal basis for the commitment shall always be the law of the Group Supervisor due to the fact that the parent undertaking is liable for providing the support.

31. Though the Framework Directive Proposal refers to the law of the parent undertaking, it does not state whether this law is meant as the law of the place in which the parent undertaking is incorporated, or the law of the place where it has its head office, or the law of another centre of activity. CEIOPS therefore recommends to provide for an approach consistent with the Financial Conglomerate Directive (2002/87/EC).

32. What issues are to be decided with reference to the applicable law? All issues relevant to the enforceability and effect of the undertaking should be determined according to the applicable law alone. For example, Article 9 of the Financial Collateral Directive<sup>4</sup> provides:

*"Any question arising in relation to .... Secure collateral shall be governed by the law of the country in which the relevant account is maintained. This reference to the law of a country is a reference to its domestic law, disregarding any rule under which, in deciding the relevant question, reference should be made to the law of another country."*

33. Some CEIOPS' Members argue that if the legal basis for the commitment shall be the law of the parent undertaking, it may cause difficulties especially in crisis situations. These CEIOPS' Members would like consideration given to the circumstances provided for under Article 247(4) where the Framework Directive Proposal envisages that the supervisor of the subsidiary will regain full responsibility on solvency in crisis situations under Article 247(4). As a consequence, a reliable legal scheme could not only entail a support declaration at a group level, but also an equal number of support declarations and support relationships between undertakings (e.g. between a subsidiary in "health" and a subsidiary in "need"). In that case individual declarations should not only meet the law of the parent undertaking, but needs also to be consistent with the supported subsidiary law, be authorised by both, subsidiary's and Group

<sup>4</sup> Directive 2002/47/EC on Financial Collateral Arrangements.

Supervisor, give the same “power to authorise and request” to group and subsidiary’s supervisors (with respect to the subsidiaries in their Member States).

34. It is important that, even in crisis situations, the claim of the subsidiary “in need” towards the parent undertaking is immediately enforceable in all involved Member States and that the law of the supervisor of the parent should enable the supervisor of the subsidiary to enforce the declaration.

#### **CEIOPS’ advice**

35. It is important that, even in crisis situations, the claim of the subsidiary “in need” towards the parent undertaking is immediately enforceable in all involved Member States and that the law of the supervisor of the parent should enable the supervisor of the subsidiary to enforce the declaration.

36. CEIOPS would request the Commission to clarify if - from a legal perspective - a contradiction between Article 243(c) and Article 247(4) could occur, that could hinder the enforceability.

37. Although the Framework Directive Proposal refers to the law of the parent undertaking, it does not state whether the law of the place in which the parent undertaking is incorporated, or the law of the place where it has its head office, or other centre of activity, is meant. CEIOPS recommends to provide for an approach consistent with the Financial Conglomerate Directive (2002/87/EC).

#### *- Termination, amendment or replacement of the commitment*

38. The obligation under the Group Support Regime is to re-distribute eligible own funds amongst the parent undertaking and its subsidiaries that rely on group support. The obligation to re-distribute ceases to apply when sufficient funds have been transferred so that either of the following conditions is satisfied:

- 1) The parent undertaking and subsidiaries relying on group support comply with their MCR; or
- 2) Where some subsidiaries within the Group Support Regime do not comply with their MCR, neither the parent undertaking nor any other subsidiary within the Group Support Regime has eligible own funds in excess of their MCR.

39. In the case that the gap between the eligible own funds and the SCR will be reduced or the subsidiary has been sold or the parent undertaking wants to shift the capital support from one subsidiary to another, binding decisions are needed for termination, amendment or replacement of the existing commitment. The

Framework Directive Proposal does not include any specific solution for these cases.

### **CEIOPS' advice**

40. CEIOPS advises that for termination, amendment or replacement of the existing commitment, a solution would be required along the same lines as the initial authorisation. Since reorganisations are quite common it is important to have predefined time frames for consultations to avoid situations where subsidiaries could be put at a disadvantage.

41. In general, CEIOPS recommends that the group support declaration itself should not have a time limit (see para. 29 above), while its review and assessment performed by the Group Supervisor after consultation with the College of Supervisors shall be conducted on an annual basis (see part II of the draft advice below) in order to check if and what amendments to Solo and Group SCR have appeared during the year, or in cases linked to circumstances when changes in the SCR will occur.

### **Criteria 2: Aspects related to the transferability of eligible own funds**

42. The Framework Directive Proposal specifies that the group must maintain group eligible own funds to cover the group SCR and that there are sufficient eligible own funds in the group that can be transferred to meet a commitment to cover the difference between the MCR and SCR of a subsidiary<sup>5</sup>. Compliance with these obligations must be assessed following any transfer of eligible own funds and in any other relevant circumstances. Therefore, it is to be expected that alternative actions, including raising own funds from external parties, will be carried out by groups to maintain their compliance with the obligations of the Group Support Regime.

43. CEIOPS has analysed different ways in which eligible own funds can be transferred around a group in respect of their advantages and disadvantages (see Annex 1).

44. Future implementing measures should require, at least, adequate liquidity management and sufficient liquidity of the assets transferred (see also para. 2.23 (d) of CEIOPS' advice to the Commission in the framework of the Solvency II project on subgroup supervision, diversification effects, cooperation with third countries and issues related to the MCR and SCR in a group context, see <http://www.ceiops.eu/media/files/consultations/consultationpapers/CP14/CEIOPS-DOC-05-06.pdf>). Appropriate liquidity management has to be demonstrated given the potential need to transfer own funds. Given that the transfer has to be done

<sup>5</sup> Articles 246, 247(4), 249(3) and 252.

within a very short timeframe of the need arising, liquidity management is crucial to the risk control process.

45. In cases where one subsidiary is expected to transfer own funds to another in need of such funds, it is important to ascertain that the subsidiary transferring funds has own funds in excess of its MCR.

### **CEIOPS' advice**

46. CEIOPS would advise that the legally binding commitment has to include the basis on which the group proposes to comply with the obligations of the Group Support Regime, particularly on the obligations to transfer own funds within the group and maintain transferable eligible own funds.

47. CEIOPS recommends that possible future implementing measures should require, at least, adequate liquidity management and sufficient liquidity of the assets transferred (see also para. 2.23 (d) of CEIOPS' advice to the Commission in the framework of the Solvency II project on subgroup supervision, diversification effects, cooperation with third countries and issues related to the MCR and SCR in a group context).

48. A majority of CEIOPS' Members further proposes the option A in Annex 1 to be regarded as the most effective and secure method of transferring eligible own funds. Other potential methods are set out in Annex 1 (under B, C and D) and in Annex 2.

### **Criteria 3: Aspects relating to possible limits of transferability**

- *General remarks related to fungibility of capital and the amount of the group support*

49. One of the key issues in the context of the Group Support Regime is the fungibility of capital. Fungible capital is that part of the group capital which can be transferred between different legal entities of the group without restriction. Following a crisis situation, fungibility is of most importance.

- The application of the Group Support Regime will be subject to the availability of transferable own funds within a group.<sup>6</sup> Therefore, it is important that a parent evaluates the implications of any restrictions on the movement of own funds between legal entities when calculating the

<sup>6</sup> In the assessment of the group support commitment, the group supervisor must be confident that there are no "current or foreseeable material practical or legal impediments to the prompt transfer of the eligible own funds..." (Article 246(3)(b)).

eligible own funds that can be used to support its commitment to a subsidiary.

- When assessing an application to apply the Group Support Regime for a subsidiary, CEIOPS considers that groups will need to demonstrate how they have addressed three key issues:
  - i. The likely costs that will be deducted from the transferable own funds at the point of transfer (e.g. tax obligations);
  - ii. The likely restrictions on the transfer of own funds at the point of transfer (e.g. company law restrictions);
  - iii. The timing of the transfer of own funds.
  
- These issues will need to be factored in to the calculation of the transferable available own funds. Therefore, CEIOPS finds it important that groups can demonstrate the 'net' transferable own funds that will be available to support the subsidiary. This will also need to be assessed in a stress scenario as part of the criteria laid out in the assessment of Article 243(b).
  
- The ability to assess the fungibility of capital within a group will also be affected by the valuation of own funds at the subsidiary level. Therefore the treatment of intra-group participations is crucial. While in principle, intra-group participations may be eligible capital instruments for the purposes of the solo calculations, at group level, this may affect the ability to identify where eligible own funds reside within the group.
  
- When assessing an application for the Group Support Regime, the Group Supervisor should consider the distribution of the eligible own funds inside the group. This is because the location of the own funds may have a bearing on its transferability (e.g. the impact of domestic company law).
  
- The assessment of the distribution of own funds within a group is also expected to be included in the development of supervisory cooperation and coordination arrangements in the College of Supervisors (this observation is obviously valid for the two regimes: the "Group Support Regime" and the "default regime, i.e. when the Group Support Regime is not applied"). As part of the college's oversight of available own funds, a sound understanding of the fungibility of group capital will also help to improve the management of crisis situations.
  
- All in all the existence of restrictions on the transferability of own funds may mean groups will either have to hold excess assets to fulfil a group support commitment or will not be allowed to execute further group support declarations.

- Further consideration is also needed on how limits and deductions may need to be applied to the pool of transferable funds in a group, including the treatment of intra-group participations in the solo calculations.

### **CEIOPS' advice**

50. CEIOPS highlights the importance of the issues with respect to fungibility of capital to be assessed by the Group Supervisor and the College of Supervisors in the Group Support Regime.

51. While in principle, intra-group participations may be eligible capital instruments for the purposes of the solo calculations, at group level, this may affect the ability to identify where eligible own funds reside within the group.

52. Also, CEIOPS finds it important that groups can demonstrate the 'net' transferable own funds that will be available to support the subsidiary.

53. CEIOPS believes that the existence of restrictions on the transferability of own funds may mean groups will have either to hold excess assets to fulfil a group support commitment or will not be allowed to execute further group support declarations.

- *Limitations in relation to the actual transfer of group support*

54. CEIOPS distinguishes three possible important limitations on the extent of group support:

- Group support, in the form of a transfer of funds, must be provided from eligible own funds present in the parent or in any subsidiary within the Group Support Regime, subject to the subsidiary's continued compliance with its MCR. The individual supervisor of such a subsidiary may not prevent that transfer. In case the parent undertaking is itself an insurance undertaking, two results will follow. First, the parent may access group support from participating subsidiaries. Secondly, in the case where the parent will transfer its own funds, the parent's obligation to transfer own funds must also be limited by its obligation to comply with its SCR. If these consequences do not apply, policyholders of the parent insurance undertaking would have less protection than policyholders of subsidiaries.
- Secondly, where several requests to transfer eligible own funds are addressed to the parent undertaking, but the group does not have sufficient own funds to meet all of those together, "the amounts resulting from the most recent declaration shall be reduced where necessary" according to Article 253(1) of the Framework Directive Proposal. The

reduction is to be made “with a view to ensure that” each subsidiary has the same ratio of available assets to technical provisions and MCR. Policyholders of a parent undertaking are to be treated no better than the policyholders of any subsidiary insurance undertaking.

- Thirdly, in extremis when the group as a whole is in crisis in case the MCR on subsidiary level has been breached, CEIOPS expects the transfer not to lead to a redistribution of unfulfilled liabilities between the different entities of a group (including the parent).

55. The Framework Directive Proposal does not state explicitly that the declaration must contain a commitment to pay a certain amount nor does it state that it must always cover the gap between the eligible own funds and the SCR. However from the fact that new declarations may be necessary if the gap widens it can be inferred that the Framework Directive Proposal does not consider the commitment to be flexible.

### **CEIOPS’ advice**

56. CEIOPS inferred from the Framework Directive Proposal that the declaration shall refer to a concrete amount of capital, an amount limited by the rules laid down in the group support declaration. In this respect policyholders of the subsidiary shall not be disadvantaged towards policyholders of the parent undertaking. If the subsidiary fails to trigger the group support, the solo supervisor or the Group Supervisor shall also be allowed to trigger it.

### **I.a.2. Criteria to be met following Article 246(3)(b) of the Framework Directive Proposal**

57. According to Article 246(3)(b) and 246(3)(c) the “Group Supervisor shall verify:

*“...b) that there is no current or foreseeable material practical or legal impediment to the prompt transfer of the eligible own funds referred to in paragraph 2;*

*c) that the document containing the declaration of group support meets all requirements existing under the law of the parent undertaking to be recognised as a legal commitment, and that any recourse before a legal or administrative body shall not have suspensive effect.”*

### **Material legal impediments to the prompt transfer of the eligible own funds (Article 246(3)(b)) and possible solutions**

58. While supervisors are prohibited under the current Directive from requiring insurance undertakings to localise assets in any particular Member State, there remain clear legal difficulties, both in Community and in national company as

well as insolvency law, regarding the transferability of assets between entities in a group, particularly in insolvency and crisis situations where assets need to be transferred from an undertaking in one Member State to an undertaking in another Member State in order to meet the obligations made under a declaration of group support to that second undertaking. This was specifically recognised for the banking sector by European Finance Ministers in October 2007. The conclusions of the October ECOFIN meetings called on the Commission, inter alia, to examine the feasibility of removing barriers to the transferability of assets.

59. Company law distinguishes Europe-wide between cases where a control agreement within a group exists and where no such agreement can be found. Some Member States (e.g. Germany) have codified rules on control agreements, others (e.g. The Netherlands, France) do not have any.

60. When a control agreement exists, the parent undertaking may, as a rule, direct orders at the subsidiary. However, in the absence of such an agreement, in some cases the parent company may only instruct the subsidiary to carry out transactions when it provides compensation for the losses occurring to the subsidiary. In other countries there should be special provisions in the articles of association.

61. For Member States that do not have any codified rules on control agreements, provisions in the articles of association of the subsidiary to the same effect are generally accepted. Nevertheless it is yet not clear to which extent these articles can contain orders to the detriment of the subsidiary. It is generally thought that the provisions may never conflict with the basic needs of the subsidiary and its obligation towards third parties.

62. Apart from the company and insolvency law, CEIOPS is aware that entering/exiting the Group Support Regime may have an impact on consumer protection. The Framework Directive Proposal does not include any specification as to how the consumer shall be protected. Many aspects of the potential impact on consumer protection are illustrated in the effect of transfers of own funds within the group to consumers. The transfer might affect the likelihood and amount of future profits in different subsidiaries, and might therefore not be neutral to policyholders, especially if they have participating contracts. From CEIOPS' perspective potential future implementing measures must ensure that policyholders participate in their profits in the same way after the transfer of own funds, i.e. as if they would have been participating in profits in the absence of a transfer.

### **CEIOPS' advice**

63. CEIOPS recommends to ensure that the provisions to transfer assets under the Group Support Regime do not clash with national law, in particular national

company law and/or national insolvency law. Since ownership of assets is given to another undertaking located in another EEA country, creditors of the supporting undertaking will potentially be in a more favourable position than those of the supported undertaking (including policyholders). An equivalent treatment among all creditors apart from policyholders can be reached if the existing provision in the winding-up Directive giving preferential rights to certain creditors is modified, in order to formulate new priorities among different types of creditors to respect that a claim of a subsidiary towards its parent should be considered as a preferential claim in case of an insolvent parent undertaking.

64. Also, from CEIOPS' perspective potential future implementing measures have to ensure that policyholders participate in their profits in the same way after the transfer of own funds, i.e. as if they would have been participating in profits in the absence of a transfer, so that no disadvantage might occur as set out in recital 67 in the Framework Directive Proposal.

65. CEIOPS advises, notwithstanding para. 32, that criteria be introduced in order for the Group Supervisor and the College of Supervisors to assess whether the condition in Article 246(3)(b) has been met. In particular these criteria need to identify the legal issues that could restrict or reduce the quantum of transferable eligible own funds that the group considers to be available to meet its commitments. Therefore CEIOPS suggests that the following may be relevant:

- the value of participations and subsidiaries in the parent undertaking's balance sheet that are not included within the Group Support Regime;
- the minority interests in subsidiaries that are either in the group support or outside and what impact those other interests may have on the parent undertaking's control over the subsidiary, on the ability of the parent undertaking to require a transfer of funds and on the amount of funds that can be transferred;
- the implications of tax that may apply to transfers of eligible own funds;
- the implications of any exchange controls that may apply to transfers of eligible own funds;
- the regulatory requirements that may restrict the transfer of eligible own funds;
- the impact of the legal structure of the subsidiary undertaking and the relevant law of the jurisdiction on the ability of the subsidiary undertaking to transfer own funds, including company law and insolvency law;
- the impact of contractual relationships of the subsidiary undertaking with the parent undertaking or other third parties;
- the impact of the purpose of the subsidiary and whether this will restrict its ability to transfer eligible own funds; and
- the demonstration by the undertaking that it has sought and received legal advice from an independent third party, agreed in advance by the Group Supervisor, to the effect that the agreement is in compliance with Article 246(3)(b).

## **Material practical impediments to the prompt transfer of the eligible own funds (Article 246(3)(b)) and possible solutions**

- *The promised group support is not immediately available within the group*

66. In cases where the promised group support is not immediately available within the group and capital needs to be obtained by raising new funds outside the group, there is a material practical impediment.

### **CEIOPS' advice**

67. In order to avoid such a material practical impediment, Article 246(3)(b) of the Framework Directive Proposal will be interpreted by CEIOPS in such a manner, that a group actually needs capital in excess of the SCR to the extent that the group support is declared. If a group only holds enough capital to cover the group SCR, it is conceivable that it has no actual immediately available capital to supply as group support.

68. CEIOPS recommends to oblige the group undertaking to assess on a regular basis which kinds of assets to cover own funds are available and immediately transferable.

69. In the case of another subsidiary of the group being committed to transfer own funds, CEIOPS believes it must be ascertained that the concerned subsidiary has either capital in excess of the SCR or if the transfer would lead to result in a breach of the SCR, that the transfer could only take place in exchange of a declaration of group support.

- *The parent undertaking is able but not willing to fulfil its group support obligation*

70. In this case the Group Supervisor shall use all necessary means to ensure that the parent undertaking increases the own funds of the subsidiary (Article 249). Furthermore, any legal action taken by the parent undertaking on foot of the demand should not have a suspensive effect. The parent undertaking has to increase the own funds of the subsidiary to the required level or by the amount of the commitment, whichever is greater.

### **CEIOPS' advice**

71. As an overall principle, CEIOPS recommends that Member States must ascertain that the Group Supervisor has sufficient powers pursuant to Article 34(1) to require that the transfer actually takes place.

72. This has especially to be ensured in the case of a holding company. The Framework Directive Proposal is more specific on the scope of enforcement powers and sanctions that supervisors must be able to exercise over holding companies in comparison to the FCD (Article 271). However, European supervisors are not required to play a supervisory role in relation to a holding company taken individually except for the fit and proper management of the holding company. As a result, the powers of supervisors over holding companies may differ for each Member State. If the parent undertaking in the Group Support Regime is a holding company, most of the European supervisors may not have sufficient power or authority to play a proactive role in supervising the holding company in the same way as they would a direct insurance undertaking operating as parent in the Group Support Regime. This may restrict the effective functioning of the Group Support Regime where a holding company seeks to apply under Article 256. CEIOPS therefore recommends that future implementing measures on enforcement and the application of the supervisory Pillar II toolkit for solo undertakings shall be considered, especially the right to require any risk-based information that is necessary to assess as supervisor the actual risk profile of the holding company and its eligible own funds within the group. Alternatively CEIOPS considers that a further clarification could be provided at Level 1.

- *The parent undertaking is willing but is not able to fulfil its group support obligation due to a crisis of the whole group*

73. In case the group breaches its overall group SCR, it must inform the Group Supervisor and the supervisor of any affected subsidiary without delay. Once the group SCR is breached, it cannot be assumed that the Group Support Regime, which is calibrated to 99.5% 1 year Value at Risk, (VaR), will continue to apply "as usual". Solvency II is not envisaged as a "zero-failure" regime. Nonetheless, other solutions have to be found for these cases in order to protect the policyholders' claims, including methods to recapitalise subsidiaries back to SCR.

### **CEIOPS' advice**

74. If the parent undertaking is not able to address all requests to transfer eligible own funds simultaneously, according to Article 253(1), the amounts resulting from the most recent declarations accepted shall be reduced where necessary. Member States shall ensure that liabilities resulting from insurance contracts entered into by the parent undertaking are not treated more favourably than liabilities resulting from insurance contracts entered into by any consolidated subsidiary (Article 253(1)) so as to ensure that, as a consequence of the Group Support Regime, no disadvantage to policyholders can occur.

75. If the parent undertaking is not able to give group support, and another subsidiary of the group is required to transfer own funds to the subsidiary in

need, it must be ascertained that the concerned subsidiary has either capital in excess of the MCR or if the transfer would lead to result in a breach of the SCR, the transfer could only take place in exchange of a new declaration of group support. Alternatively, other re-financing arrangements (e.g. stress testing in advance of crisis situations, other guarantors in case of crisis situations) could be provided for the transfer or settlement after a period of three months after the breach under a group support declaration. Conceivable solutions are an additional triple-A guarantee payable on first demand, high rated entity independent from the group, or any other marked-based solution. Parent undertakings should be free to choose an appropriate measure as long as the needs of the subsidiary are fully met. Measures by the parent could also include further group-internal solutions like a group-internal guarantee scheme that pays the claims of the local policyholders in the case of an insolvency of the subsidiary caused by an insufficient short-term financial scheme to restore the MCR or a suspensive effect. The claims of the policyholders will not be violated.

### **I.a.3. Criteria to be met following Article 246(3)(c) of the Framework Directive Proposal**

#### **Any recourse before a legal or administrative body shall have no suspensive effect (Article 246(3)(c))**

76. In some jurisdictions administrative law provides that legal action taken before an administrative authority might have a suspensive effect. This could result in excessive delays over months and years in executing supervisory demands as the court would have to rule on the justification of the supervisory demand before the parent undertaking has to take the required action.

77. CEIOPS considers that the Framework Directive Proposal should address the potential problem of verifying that “any recourse before a legal or administrative tribunal shall not have suspensive effect”. The Financial Collateral Directive, for example, which mandates that certain financial collateral agreements are effective according to their terms notwithstanding Member States legal provisions to the contrary, recognises this issue. It notes that the Directive does not alter the rights that any person may have in respect of collateral that arise as a matter of general law. For example, rights to seek restitution of assets as a result of mistake, error or lack of capacity are not affected.<sup>7</sup> Another possible solution of how to reduce a suspensive effect might also be included in Article 69 of the CRD that deals with the practicability of a free capital allocation on a national basis in each Member State.

78. In a risk-based approach, an absolute verification that there can be no effective legal challenge to a group support commitment is probably not necessary. A

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<sup>7</sup> Preamble to the Financial Collateral Directive (2002/47/EC).

lower verification standard could be combined with Level 2 measures that provide, broadly, that commitments to provide group support are effective according to their terms. The grounds of legitimate challenge to a group support commitment should be limited so as to achieve an appropriate balance between the interests of policyholders and the interests of other creditors of the undertaking. This approach has the added benefit that the possible future Level 2 measures for group support commitment will lower the cost of establishing group support arrangements.

### **CEIOPS' advice**

79. Since it cannot be ruled out that some national legal systems within the EU provide suspensive effects or cannot entirely exclude suspensive effects, CEIOPS proposes to either work within the confines of the company law or to construe the requirement in Article 243(3)(c), so that any recourse before a legal or administrative body shall not have a suspensive effect, by referring to a recourse of the parent undertaking against the demand of the subsidiary or other creditors to perform on the given commitment under civil law.

80. In order to ensure that the parent undertaking can neither successfully delay the demand of the subsidiary by initiating legal proceedings nor simply refuse to perform in spite of an irrefutable legal obligation to do so, CEIOPS advises that the parent undertaking needs to agree in the group support commitment to the immediate implementation of group support. This means that performance under the commitment to provide group support is not triggered by supervisors but by the subsidiary that benefits from the commitment.

However, to give further assurance to supervisors of subsidiaries that group support will be promptly provided when the need arises, the supervisors of the subsidiaries could be given the power to instruct a subsidiary to lodge their claim immediately where that subsidiary has not immediately enforced its right under the commitment given.

81. CEIOPS sees a possible need to introduce provisions that address the problem for a supervisor to verify that "any recourse before a legal or administrative tribunal shall not have suspensive effect". The Financial Collateral Directive, for example, which mandates that certain financial collateral agreements are effective according to their terms notwithstanding Member States' legal provisions to the contrary, recognises this issue. It notes that the Directive does not alter the rights that any person may have in respect of collateral that arise as a matter of general law. Another possible solution of how to reduce a suspensive effect might also be included in Article 69 of the CRD that deals with the practicability of a free capital allocation on a national basis in each Member State.

82. CEIOPS recommends that there is a need to balance legal responsibilities and accountability of authorising supervisors with the need to ensure a smooth functioning of the Group Support Regime.

83. Supervisors are concerned that, as authorising supervisors, the proposal to remove responsibility from authorising supervisors to enforce the SCR of a subsidiary is incompatible with their legal responsibilities. Moreover, the proposal that an authorising supervisor would request additional capital from an entity that he has no legal control over is also incompatible with supervisory responsibilities and accountability. This could introduce an unnecessary burden on both supervisors and institutions by requesting capital from the parent entity rather than the supervised entity. CEIOPS believes a pragmatic response should be to maintain the status quo whereby the authorising supervisor would be responsible for monitoring and enforcing compliance with the SCR, i.e. the derogation from Article 135 provided for in Article 247 would not apply.

#### **CEIOPS' advice**

84. CEIOPS wishes to balance legal responsibilities and accountability of authorising supervisors with the need to ensure a smooth functioning of the Group Support Regime. Therefore it believes that the status quo whereby the authorising supervisor would be responsible for monitoring and enforcing compliance with the SCR should be maintained.

## ***I.b. Criteria in respect of Article 243(b) on Internal controls & Risk Management Processes***

### **Background**

85. The Framework Directive Proposal for insurance group supervision prescribes the specific conditions which must be satisfied in order to apply the Group Support Regime. The Group Support Regime permits subsidiary undertakings in a group to cover part of their solvency capital requirement with group support declared by their parent undertaking under defined circumstances.<sup>8</sup> The text states that the Commission shall adopt implementing measures to specify the criteria to be applied when assessing whether the conditions for the Group Support Regime are met.<sup>9</sup> In this section CEIOPS' advice is developed on the criteria that would enable supervisors to assess the condition in Article 243(b) that states:

*"the risk management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary."*

### **Explanatory text**

86. The purpose of this section is to identify the criteria to be applied when assessing the condition of Article 243(b), particularly whether risk management and internal controls for a group wishing to apply the Group Support Regime are integrated in the parent and subsidiary.

87. The key provision is Article 259 regarding a group's system of governance, which states that Title 1, Chapter IV, Section 2 shall apply *mutatis mutandis* at the level of the group. These articles capture the requirements for risk management and internal controls at the subsidiary level and set out the principles of general governance as part of the Framework Directive Proposal's qualitative requirements of supervision (Pillar II of the Solvency II framework).

### **Framework Directive Proposal on risk management processes**

88. The Framework Directive Proposal covers risk management processes in Title I, Chapter IV, Section 2 (systems of governance). Article 41 details the general governance requirements required of undertakings, which include the requirement for written policies on risk management. These policies must be reviewed at least annually by the undertaking and are subject to the approval of

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<sup>8</sup> Recital 67.

<sup>9</sup> Article 254.

senior management. Risk management policies may be adapted in view of any significant change in the system or area concerned.

89. Article 43 deals specifically with risk management and requires undertakings to have risk management systems in place "comprising strategies, processes and reporting procedures necessary to monitor, manage and report, on a continual basis the risks, on an individual and aggregated level...". An undertaking's risk management system must cover the risks included in the calculation of the SCR and include at least the following items:

- Underwriting and reserving;
- Asset-liability management;
- Investment in particular derivatives and similar commitments;
- Liquidity and concentration risk management;
- Reinsurance and other risk mitigation techniques; and
- Operational risk management.

### **Framework Directive Proposal on internal control mechanisms**

90. The provisions concerning internal controls are also found in Title 1, Chapter IV, Section 2. Article 41 requires undertakings to have a transparent organisational structure with a clear allocation and segregation of responsibilities and effective system for ensuring the transmission of information. Article 41 similarly provides for written policies on an undertaking's internal controls.

91. Article 45 deals specifically with internal controls and requires undertakings to have in place a system that at least includes "administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a permanent compliance function."

- *Internal models*

92. The Framework Directive Proposal on internal models is also relevant to the assessment of undertakings' risk management processes, particularly the qualitative criteria for the assessment of internal models. For example, the Framework Directive Proposal requires that it will be a condition of model approval that undertakings can demonstrate that their internal model is widely used, and plays an important role in the actual running of the undertaking, "in particular their risk management system and decision-making processes, and capital allocation..." (so-called use test).<sup>10</sup>

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<sup>10</sup> Article 118(4).

93. The implementing measures on internal models that the Commission shall adopt may also inform the criteria for the conditions of group support. Article 124 notes that their purpose is to "enhance the better assessment of the risk profile and management of the business of insurance and reinsurance undertakings...".

- *Group risk assessment*

94. Article 259 states that the solo system of governance provisions shall apply *mutatis mutandis* at the level of the group. This means that the solo provisions described above apply to all undertakings in a group. The Framework Directive Proposal states that:

"...the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision...so that those systems and reporting procedures can be controlled at the level of the group."<sup>11</sup>

95. Article 259(2) goes on to state that the group internal control mechanisms must include:

- Adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks; and
- Sound reporting and accounting procedures to monitor and manage the intra-group transactions and the risk concentration.

96. The monitoring of these criteria is established in Article 259(4), which states that the Own Risk and Solvency Assessment (ORSA) provided for in Article 44 must be carried out at the level of the group. The assessments are subject to supervisory review by the Group Supervisor and may also be undertaken at the level of any subsidiary in the group.

97. In addition to Article 259, group supervision also requires the supervision of risk concentration<sup>12</sup> and intra-group transactions<sup>13</sup>. These provisions will assist supervisors to assess the risk to subsidiaries due to their participation in a group.

- *Concluding remarks*

98. Article 259 provides a clear set of principles of what is expected of a group and its responsibilities towards the risk management and internal controls of its entities. It requires a centralised top-down approach to governance whereby

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<sup>11</sup> Article 259(1).

<sup>12</sup> Article 257.

<sup>13</sup> Article 258.

parent companies are responsible for implementing and harmonising procedures within the group. The Framework Directive Proposal also lays out the principles for the supervision of risk concentration and intra-group transactions at group level.

99. These principles are independent of the Group Support Regime, as Title III, Chapter II, Section 3 applies to all insurance groups, regardless of whether the solo/supplementary or Group Support Regime is applied.

100. However, CEIOPS considers that a generic approach may not take account of the specific conditions of the Group Support Regime. In particular, it is not clear that the provisions establish the criteria for assessing the integration of risk management processes and internal controls or that Article 259 sufficiently captures the importance of the relationship between a subsidiary and a parent undertaking that is so critical for the well functioning of the Group Support Regime.

101. Therefore, CEIOPS considers that the degree to which risk management processes and internal control mechanisms are integrated in a group is an important component of the assessment of Article 243(b) and that the development of further criteria is necessary. The risk of not tailoring the generic group requirements on systems of governance to the assessment of Article 243(b) is that supervisors may apply a range of criteria. This could lead to divergence in supervisory practices and raise the potential for regulatory arbitrage. Therefore, Article 259 should be customised to account for the differences between the Group Support Regime and solo/supplementary supervision.

102. However, the criteria must not repeat or conflict with the requirements already laid out in the solo rules that apply to groups. Therefore the additional criteria will be exclusive to the Group Support Regime and the application of Articles 245-250. CEIOPS envisages this will be a limited set of criteria with a particular focus on the relationship between subsidiaries and parent undertakings and the integrated nature of risk management processes and internal control mechanisms.

## **CEIOPS' Advice**

103. CEIOPS recommends the development of specific criteria on risk management processes and internal control mechanisms solely for the assessment of Article 243(b) in addition to those already applied by the solo rules via Article 259 and the application of Articles 245-250. The purpose of the criteria is to enable supervisors to assess the integration of the group's risk management processes and internal control mechanisms and the prudent management of the subsidiary.
104. The criteria shall form the basis for the assessment of the extent to which risk management processes and internal control mechanisms are integrated by the parent undertaking to account for the subsidiary in which the application is made.
105. The criteria are necessary to ensure a parent undertaking can demonstrate that it has systems and controls in place for managing the capital requirements of a subsidiary subject to the Group Support Regime and any risks to compliance with those requirements.
106. It is important to reiterate that the criteria laid out below are in addition to the more extensive Pillar II criteria laid out at the subsidiary level (Title 1, Chapter IV, Section 2), which are subject to oversight by individual supervisors, and applied at the level of the group by Article 259. The criteria below are intended neither to replicate nor to reopen these requirements. Rather, the criteria are designed to require groups to provide evidence that risk management processes and internal controls are integrated to clearly establish the relationship between the parent undertaking and the subsidiary in question.
107. In addition to the criteria established by Article 259, the following are the criteria that supervisory authorities shall take into account when verifying that the conditions in Article 243(b) are met:
- Whether the risk appetite of the parent undertaking and subsidiary are incorporated in clear and well-defined group risk objectives;
  - Whether the businesses of the parent undertaking and subsidiary are clearly well defined in the context of the groups overall business strategy;
  - Whether the tasks, roles and responsibilities for the senior management of the parent undertaking and subsidiary are integrated into the risk governance structure;
  - Whether the group's policies and procedures around risk identification, risk assessment, risk monitoring, risk reporting and risk mitigation are integrated into the parent undertaking and subsidiary;

- Whether the parent undertaking includes the subsidiary in stress and scenario analysis on how the group would comply with the conditions of the Group Support Regime in various stresses and scenarios;
- Whether the stress and scenario analysis includes subsidiary's and group crisis analysis; and
- Whether the parent undertaking has considered re-financing options (e.g. external guarantees) and how these could mitigate losses to the subsidiary in a crisis scenario.
- Verification of all of the above should enable supervisors to conclude on the prudent management of the subsidiary.

108. The criteria noted above will require further explanation and detail to assist supervisors on a practical level. Therefore, CEIOPS considers that Level 3 guidance is necessary to further clarify the criteria for the assessment of Article 243(b).

## ***I.c. Public disclosure of the existence and use of group support declarations***

### **Background**

109. The terms of reference for this part of CEIOPS' draft advice have also been set by the Commission, in the Solvency II Framework Directive Proposal, as described at the top of this advice.

110. Once satisfied the conditions of Article 243 have been satisfied and considering the criteria for the decision on the application defined on Article 244 as well as the requirements on the determination of the SCR on Article 245, the following high level requirement is established in Article 246.

*(1) 'By way of derogation from Article 97(4), any difference between the Solvency Capital Requirement and the minimum capital requirement of the subsidiary shall be covered by either own funds eligible under Article 97(4) or group support, or any combination thereof.*

*The group support shall, for the purposes of the classification of own funds into tiers in accordance with Articles 92 to 95, be treated as ancillary own funds.*

*(2) The group support shall take the form of a declaration to the group supervisor, expressed in a legally binding document and constituting a commitment to transfer own funds eligible under Article 97(5).*

*(3) Before accepting the declaration referred to in paragraph 2, the group supervisor shall verify the following:*

*(a) that the group has sufficient eligible own funds to cover its consolidated group Solvency Capital Requirement;*

*(b) that there is no current or foreseeable material practical or legal impediment to the prompt transfer of the eligible own funds referred to in paragraph 2;*

*(c) that the document containing the declaration of group support meets all requirements existing under the law of the parent undertaking to be recognised as a legal commitment, and that any recourse before a legal or administrative body shall not have suspensive effect.*

111. Furthermore, Article 250 establishes that:

*'The existence of declarations of group support, and any use thereof, shall be publicly disclosed by both the parent undertaking and the subsidiary concerned.'*

112. Furthermore, Article 254 states that the Commission shall adopt implementing measures specifying the means to be used when disclosing this information.

## Explanatory text

113. CEIOPS believes that public disclosure requirements aim at developing a level playing field and strengthening market discipline.

114. Public disclosure requirements should be essentially principles-based and can build on existing requirements when appropriate. However, within the Group Support Regime, existing requirements may be difficult to identify given that, as stated in the Framework Directive Proposal's explanatory memorandum, this is an innovative regime.

115. Considering that information must be provided on a timely and adequate basis, disclosure is required on two aspects of group support:

a) The existence of declarations of group support

Information to be disclosed on a regular basis shall be provided annually within the Solvency and Financial Condition Report under a specific section on capital management entitled "group support regime"; This obligation does not impede the fulfillment of any other information requirement of the supervisors of a subsidiary or a Group Supervisor.

b) The use of declarations of group support

In predefined events involving the use of group support, information shall be publicly disclosed immediately including its origin, timing, amounts and the identification of any external guarantor where one exists (see par. 75).

The frequency of updating the disclosed information is crucial in guaranteeing genuine effectiveness of Pillar III mechanisms. The authorized group support may change as time goes by, the group support may be partially implemented, the solo and group capital requirements change continuously, etc. The information should be disclosed as soon as possible, that is to say without any delay.

According Framework Directive Proposal, this point in time may have quite different origins and developments, and therefore should be ascertained so that public disclosure requirements are suitable and appropriate to capture and cover all situations.

116. The "group support regime" section shall, insofar as possible, assure an appropriate understanding of the Group Support Regime. The Framework Directive Proposal provides that the existence of group support is subject to the group's verified compliance with certain conditions.

In addition, the "group support regime" section shall include the following specific information:

- Responsibilities and powers of the subsidiary's and Group Supervisors;
- List of undertakings in the group subject to the Group Support Regime;
- The solo MCR and SCR of all the subsidiaries subject to the Group Support Regime;
- For any subsidiary, the percentage of group support used to cover the difference between the MCR and the SCR of that subsidiary;
- Quantification of the group diversification effects, including a description of the method applied to distribute positive and negative effects among all the undertakings of the group;
- For any subsidiary, the percentage of group support amount in the total amount of capital eligible for group support in the group;
- What stress and scenario testing has been undertaken; and
- Information disclosed during the period in accordance with para. 117.

117. Considering the specificity of the Group Support Regime as well as the objective of assuring an appropriate market transparency and discipline, immediate disclosures are deemed necessary, in the form of an update of the section on capital management entitled "group support regime" on the Solvency and Financial Condition Report, in predefined events as described below.

- i) The decision to allow group support pursuant to Article 244 to any subsidiary in the group;
- ii) New declarations as foreseen in Article 247(2);
  - o A new declaration can be provided when the SCR is no longer fully covered by the eligible own funds and the amount of group support declared, nevertheless sufficient to cover the MCR.
  - o Simultaneously, at subsidiary level, in accordance with Article 53 of the Framework Directive Proposal, insurance undertakings shall disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken, unless a recovery plan considered viable is delivered to the supervisory authorities within 2 months. Where, in spite of the recovery plan initially considered to be viable, a significant non compliance with the SCR has not been resolved 4 months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken. It should be noted that if a viable recovery plan is delivered and the breach has been resolved within the referred period, no disclosure is required.
  - o In cases of insurance undertakings subject to group support, the recovery plan could refer to the provision of a new declaration. As a result, if the new declaration is delivered within the predefined

timeframe, the amount of the non-compliance is not subject to immediate disclosure. Nevertheless this still should be disclosed at year-end within the Solvency and Financial Condition Report.

- However, since the increase of the group support is considered to be an event affecting significantly the relevance of the information disclosed, insurance undertakings shall disclose, immediately after the delivery of the new declaration, appropriate information on its delivery, nature and effects.
- iii) Transfer of own funds to ensure the covering of the MCR and the providing of a new declaration as foreseen in Article 247(3);
- Where the SCR is no longer fully covered by eligible own funds and the amount of group support declared, and the own funds eligible are not sufficient to cover the MCR, the supervisory authority may call on the parent undertaking to transfer own funds eligible to the extent necessary to ensure that the MCR is again covered, and to provide a new declaration bringing the group support to the amount necessary to ensure that the SCR is again fully covered.
  - At subsidiary level, in accordance with Article 53 of the Framework Directive Proposal, insurance undertakings shall disclose immediately the amount of the non-compliance, together with an explanation of its origin and consequences, including any remedial measure taken, unless a recovery plan considered viable is delivered to the supervisory authorities within 1 month. Where in spite of a recovery plan initially considered to be viable, a non-compliance with the MCR has not been resolved 2 months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken. If a viable recovery plan is delivered and the breach has been resolved within the referred period, no disclosure is required.
  - Consistent with the approach in case of the non-compliance with the SCR, in cases of insurance undertakings subject to group support, the recovery plan could provide for the receipt of own funds committed under a group support declaration, as well as providing for the acceptance of a new declaration bringing the group support to the amount necessary to ensure that the SCR is again fully covered. As a result, if the compliance is achieved within the predefined timeframe, the amount of the non-compliance is not subject to immediate disclosure. Nevertheless this still should be disclosed at year's end within the Solvency and Financial Condition Report.
  - However, as stated before, considering that it is an event affecting significantly the relevance of the information disclosed, insurance undertakings shall disclose immediately after the transfer of the funds, appropriate information on its transfer, nature and effects, including an explanation of the consequences in terms of balance sheet as well as the delivery of the new declaration and consequently its respective nature and effects.

- Likewise, the transferor (parent undertaking or other subsidiary) shall also, within the same timeframe, disclose the same information.
- iv) Continuing disclosure of extant commitments as envisaged in Articles 247(4), 251(2) and 252(3);
- v) The imposition of a capital add-on as foreseen in Article 245;
  - At subsidiary level, undertakings are required to include within the Solvency and Financial Condition Report (Article 50) which is publicly disclosed on an annual basis, the amount of the SCR showing separately the amount calculated in accordance with Chapter VI, Section 4, Subsections 2 and 3 and any capital add-on imposed in accordance with Article 37, together with concise information on its justification by the supervisory authority concerned.
  - However, Member States may provide that the capital add-on need not be separately disclosed during a transitional period not exceeding 5 years after the date referred to in Article 318.
  - Nevertheless, if as a result of imposing that add-on a new declaration has to be provided or an increase of eligible own funds is required because the SCR is no longer fully covered, that is considered to affect significantly the relevance of the information disclosed, which means that insurance undertakings shall disclose immediately after imposing the add-on appropriate information on its origin and consequences.
- vi) Declarations required in the circumstances envisaged in the second paragraph of Article 249(2);
  - Disclosed appropriate information on its delivery, nature and effects immediately after the deliver of the new declaration.
- vii) The cessation of the application of the Group Support Regime pursuant to Article 251; and
- viii) Reductions of group support as established in Article 253.

## **CEIOPS' advice**

118. Relevant and identical information on the Group Support Regime shall be disclosed at subsidiary and group levels.

119. Information must be disclosed in a timely and adequate manner. Disclosure is required on two aspects of group support:

a) The existence of declarations of group support

Information to be disclosed on a regular basis shall be provided annually within the Solvency and Financial Condition Report under a specific section on capital management entitled "group support regime".

b) The use of declarations of group support

In predefined events involving the use of group support, information shall be publicly disclosed immediately including its origin, timing, amounts and the identification of any external guarantor where one exists (see par. 75) and consequences.

120. The "group support regime" section shall assure, insofar as possible, an appropriate understanding of the Group Support Regime. The Framework Directive Proposal provides that the existence of group support is subject to the group's verified compliance with certain conditions.

In addition, the "group support regime" section shall include the following specific information:

- Responsibilities and powers of the subsidiary's and Group Supervisors;
- List of undertakings in the group subject to the Group Support Regime;
- The solo MCR and SCR of all the subsidiaries subject to the Group Support Regime;
- For any subsidiary, the percentage of group support used to cover the difference between the MCR and the SCR of that subsidiary;
- quantification of the group diversification effects, including a description of the method applied to distribute positive and negative effects among all the undertakings of the group;
- For any subsidiary, the percentage of group support amount in the total amount of capital eligible for group support in the group; and
- Information disclosed during the period in accordance with para. 121.

121. Considering the specificity of the Group Support Regime as well as the objective of assuring an appropriate market transparency and discipline, immediate disclosures are deemed necessary, in the form of an update of the section on capital management entitled "group support regime" of the Solvency and Financial Condition Report, in predefined events as described below.

- The decision to allow group support pursuant to Article 244 to any subsidiary in the group;

- New declarations as foreseen in Article 247(2);

Insurance undertakings shall disclose, immediately after the provision of a new declaration, appropriate information on its delivery, nature and effects.

- Transfer of own funds to ensure the covering of the MCR and the providing of a new declaration as foreseen in Article 247(3);

Insurance undertakings shall disclose immediately after the transfer of the funds appropriate information on the transfer, its nature and effects including details of its impact on the balance sheet, as well as the information in respect of the provision of any new declaration and its respective nature and effects.

Likewise, the transferor (parent undertaking or other subsidiary) shall, within the same timeframe, also disclose the same information.

- Continuing disclosure of extant commitments as envisaged in Articles 247(4), 251(2) and 252(3);

- The imposing of capital add-ons as foreseen in Article 245;

If as a result of imposing that add-on, a new declaration has to be provided or an increase of eligible own funds is required because the SCR is no longer fully covered, the insurance undertaking shall disclose appropriate information on the origin and consequences of the add-on, immediately after it has been imposed.

- Declarations required in the circumstances envisaged in the second paragraph of Article 249(2);

Insurance undertakings shall disclose appropriate information on its delivery, nature and effects immediately after the delivery of the new declaration.

- The cessation of the application of the Group Support Regime pursuant to Article 251; and

- Reductions of group support as established in Article 253.

## **II. Coordination, cooperation and information exchange between supervisors**

### ***II.a. General***

#### **Background**

122. The Commission proposal for insurance group supervision prescribes in Article 261(1) the rights and duties of the Group Supervisor.

123. Article 261(2) states that in order to facilitate group supervision, the Group Supervisor and the other supervisory authorities concerned shall have coordination arrangements in place.

124. CEIOPS has been tasked with developing advice on the implementing measures that the Commission shall adopt pursuant to Article 261(3) for the coordination of group supervision. As supervisory coordination, cooperation and information exchange are closely related, CEIOPS has included in its draft advice aspects relating to the information exchange between supervisors pursuant to Article 262.

#### **Explanatory text**

125. The way in which insurance groups are supervised and the streamlining of that supervision are crucial elements of the Framework Directive Proposal.

126. It is essential that all supervisors involved in the supervision of groups exchange essential information automatically and any relevant information on request. The exchange of information could be expected to cover:

7. the elements of information necessary for day-to-day supervision; and
8. the information material to the assessment of the financial soundness of the (re)insurance group, circulated upon the occurrence of pre-defined events.

127. Information exchanged amongst supervisors will be a subset of the information available within the College of Supervisors and should be proportionate to the informational needs of the recipient. This helps to minimize the administrative burden and reduces the amount of superfluous data held by all supervisors.

128. Supervisory authorities must consult with each other prior to making any important decisions that might affect the group as a whole or other entities within the group.

129. The aim of coordination arrangements as implementing measures is to provide a legal basis for future cooperation between supervisors involved in the supervision of a group and improve the overall supervision of the group and thereby enhance convergence between supervisors.

130. As the responsibility for the supervision of an insurance group rests with both the Group Supervisor and the other supervisory authorities involved in the supervision of that group, the implementing measures should ensure that both Group Supervisor and other supervisory authorities concerned have access to all relevant information necessary for the supervision of a group. The responsibilities of the other supervisors in monitoring SCR at subsidiary level and ensuring that solo entities have sufficient appropriate assets covering technical liabilities are crucial to ensuring that group supervision proposal is effective in practice.

131. The CEIOPS mediation procedure can be utilized wherever necessary should diverging views between supervisors involved in the supervision of a group emerge.

## ***II.b. CEIOPS' Advice on the operation, the control and the Key Responsibilities of Colleges of Supervisors***

### **CEIOPS' advice**

#### **Operation**

132. For the purposes of Title III of the Solvency II Framework Directive Proposal, relevant supervisory authorities in a group will co-operate to implement the requirements of this Framework Directive Proposal.

133. The supervisors of the Member States involved in the supervision of an insurance group will form a college of the supervisors involved. This college will be known as the College of Supervisors.

134. Within the College of Supervisors the supervisors could have formalised roles in the on-going supervision of the group whereupon smaller supervisory teams<sup>14</sup>

<sup>14</sup> Different working forms could be assumed including working virtually together but also joint inspections.

could be established, depending of the specificities of the Group. All teams would have to report to the College of Supervisors. CEIOPS thinks it is desirable to allow for some flexibility and development towards closer more integrated cooperation when necessary as will be further outlined in forthcoming Level 3 guidance.

135. The College of Supervisors will meet as often as the members deem necessary but in any event, at least annually.

136. The College of Supervisors should at least consist of the staff members who are, within their organisations, responsible for the day-to-day supervision of the group members established in their state.

137. On an annual basis the College of Supervisors will review the effectiveness of the work plan as well as the results of initiatives undertaken pursuant to point 157 below.

138. The College of Supervisors will discuss and co-ordinate any measures to be taken by the members of the College of Supervisors against any insurance undertaking being part of a group, both in regular and emergency situations.

## **Control**

139. The Group Supervisor will be chairman of the meetings of the College of Supervisors.

140. The initiative to convene the College of Supervisors and to initiate the co-operation process will be taken by the Group Supervisor. In exceptional circumstances, to be further described in Level 3 guidance, the initiative to convene the College of Supervisors can be expected to be taken by any of the other members of the College of Supervisors.

141. The Group Supervisor will arrange and manage the co-ordination of the activities necessary to carry out group supervision.

142. The Group Supervisor, together with the members of the College of Supervisors, will lay down any arrangements on group supervision in written bilateral or multilateral agreements, addressing both regular and emergency situations. Such agreements should include details of the relevant Member States, supervisors, companies, contact persons, working language and communication channels.

## Key Responsibilities

143. The Group Supervisor, assisted by the other supervisors in the College of Supervisors, will produce an overview of the group in terms of its formal and operational structure.
144. The Group Supervisor, assisted by the College of Supervisors, will produce an evaluation of the group in terms of its formal and operational structure, business strategy, skills and propriety of management, main internal systems, internal controls, risk management and auditing processes, group support guarantees, financial resources including solvency and liquidity, the overall risk profile and the risk management of the group, through a general top-down approach, supplemented with input from the other members of the College of Supervisors of the system used at the level of the individual undertakings.
145. The Group Supervisor, in consultation with the other supervisors in the College of Supervisors, will be responsible for assessing the overall standard of corporate governance of the group.
146. The Group Supervisor, assisted by the other supervisors in the College of Supervisors, will carry out, at a minimum on an annual basis, a risk analysis of the group and its operating environment, identifying the most relevant undertakings, the most important relationships in the group and areas of most significant risk.
147. 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.
148. The Group Supervisor will share his findings with the other supervisors in the College of Supervisors.
149. The Group Supervisor is responsible for devising a work programme for the supervision of the group. This programme will include, but is not limited to:
- A work plan for the supervision of the Group;
  - The work plan will include identifying responsibilities for carrying out supervisory tasks;
  - The work plan will include the supervisory initiatives necessary to ensure, at a minimum, the appropriate supervision of a Group as set out in the Directive and in these implementing measures;
  - The work plan should include provisions for the exchange of information between supervisors;

- The supervisory initiatives referred to above include, but are not limited to, a programme of inspections and review meetings;
- Supervisory initiatives within a Group will include joint programmes; and
- Supervisory initiatives can be delegated to or by the Group Supervisor.

150. The Group Supervisor shall include in its supervision the assessment of the SCR at group level as well as the Group ORSA (Own Risk and Solvency Assessment).

151. The Group Supervisor shall include in its supervision the assessment of the Risk Concentration and particularly features of financial innovation and the drivers and controls for entering into such arrangements.

152. The Group Supervisor, in consultation with the other supervisors in the College of Supervisors, will assess the ability of the Group to raise additional capital, and where it may be able to source this, and the adequate capital distribution of capital within the group. The Group Supervisor will notify the other supervisors in the College of Supervisors of the results of this assessment.

153. The Group supervisor, in consultation with the relevant competent supervisors, will assess the possibilities of transferring capital around the Group and will notify the other supervisors in the College of Supervisors of that assessment.

154. The Group Supervisor, assisted by the other supervisors in the College of Supervisors, will in a situation of non-compliance with the Group Support Regime enforce the capital add-on. CEIOPS considers it might be relevant to complement Article 239 hereabouts in this respect.

155. The Group Supervisor 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.

It is proposed Level 3 advice to be provided in relation to intra-group transactions.

156. The Group Supervisor will require the insurance and reinsurance undertakings concerned to submit on a regular basis and at least annually a report containing all significant transactions and positions as outlined above. This report will be distributed to all members of the College of Supervisors.

157. 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 Group Supervisor, acting in close cooperation with the other supervisors in the College of Supervisors, shall take appropriate measures at the level of the group. The College of Supervisors, 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 Group Supervisor.

158. The Group Supervisor is responsible for the co-ordination of the gathering and dissemination of relevant or essential information in going concern and emergency situations. The solo supervisor would need to feed in their information and views on the solo undertaking's information upwards to the Group Supervisor which could then be also shared within the smaller supervisory teams and supervisory college. An unrestricted exchange of prudential information between involved supervisors, in emergency situations and on an ongoing basis, is a prerequisite for the development of effective coordination agreements with respect to an insurance group.

159. The College of Supervisors will agree on how the information gathered will be exchanged, in which form and at which frequency. It is important to avoid duplication of reporting as this can result in supervisory burden on undertakings within a group and information overload within supervisory authorities. Supervisory information gathered will then be discussed further in the College of Supervisors.

160. The supervisors in the College of Supervisors shall communicate to one another on request all relevant information which may allow or facilitate the exercise of group 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 (see also [http://www.ceiops.org/media/docman/public\\_files/publications/standardsandmore/recommendations/CEIOPS-DOC-16-07%20Information%20exchange.pdf](http://www.ceiops.org/media/docman/public_files/publications/standardsandmore/recommendations/CEIOPS-DOC-16-07%20Information%20exchange.pdf)).

161. A supervisor of a subsidiary in a Group shall notify the Group Supervisor of any request to the parent entity to provide additional Group support (where a breach of the SCR has taken place). The Group Supervisor shall notify all other supervisors in the College of Supervisors.

162. The following information will be exchanged among supervisors in the College of Supervisors.

- Significant changes in the group structure, including all supervised entities in the group unless they are negligible;
- Any changes in the competent authorities involved in the supervision of the group;
- The group structure should be understood as encompassing: The legal structure of the group and the location of significant business units; Significant investments in group entities; Significant financial links between entities including the forms of those linkages e.g. contingent capital, sub-debt, hybrid; Significant qualifying holdings;
- Changes in the procedures for the collection of information from the institutions in a group, and in the verification of that information. This covers: The information to be collected by the different supervisors; The means by which that information will then be disseminated; Any additional information flows from other competent authorities of significant entities;
- Adverse developments, such as: Matters which cast doubt on the viability of the group as a going concern; Factors which suggest a potentially high risk of contagion (significant intragroup transactions); Significant developments in the financial position of the group; Major fraud;
- Major sanctions and exceptional measures taken by competent authorities.
- Other matters, paying due consideration to how the group is organized (centralized versus decentralized functions): Changes in organisation or senior management that may have a significant impact on the group; Changes in strategy; Material changes in risk management or internal control system; Legal difficulties at the group level that could have an impact on the financial position of the group; Material changes in risks of entities that could have an impact on the financial position of the group; Transfer of risks to unregulated entities of the group;
- The level of group technical provisions, group MCR, group SCR (including capital add-on), and group own-funds along with the key assumptions used to set the technical provisions or capital requirements;
- The level of technical provisions, MCR, SCR (including capital add-on), and own-funds along with the key assumptions used to set the technical provisions or capital requirements for each major solo undertaking in the group;

- Methodology for calculating the SCR (i.e. by standard formula, internal model or a combination of both);
- Rationale for any group SCR capital add-on;
- Any breaches of the SCR or the MCR throughout the group over the year should be immediately disseminated to all relevant supervisors;
- Details of the group's ORSA;
- Details of group support mechanisms. 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.: Non-compliance with the group-support regime and the need of an capital add-on; 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;
- A direction to a undertaking to cease writing new business;
- 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; and
- (Other) major acquisitions by one of the members of the group.

## Annexes

### ***Annex 1: Description of possible methods of transferring eligible own funds***

1. As own funds represent the difference between assets and liabilities of an undertaking, the “transfer of own funds” merely does not exist. It may be understood as a shortcut to mean the increase of eligible own funds in a subsidiary performed by a transfer of assets in that subsidiary. In order to increase the own funds of the subsidiary, the parent undertaking has different possibilities at its disposal.
2. It is worth highlighting that as long as the group satisfies with the group SCR, the transfer of assets can be realised within the group without raising new funds outside of the group. CEIOPS points out the fact that the Group Support Regime should not lead into a system that encourages double gearing by creation of intra-group capital to fulfil solo requirements, which can be a source of contagion risks within groups. One solution could be to value at zero all intragroup loans and participations at subsidiary level for the assessment of the solo solvency.
3. Different ways in which eligible own funds can be transferred around a group have been analysed by CEIOPS in respect of their advantages and disadvantages. All transactions mentioned before would probably have tax implications.

#### **Option A: Dividend and subscription method**

4. The quality of eligible own funds – CEIOPS working assumption is that eligible own funds will either form free reserves (no share capital and legal reserves) in the parent or be upstreamed from subsidiaries with surplus above the MCR and available reserves to the parent by declaring a dividend.  
  
The upstream of funds from the subsidiaries can take place in case the Group decides to centralise the available capital, for which the parent shall in return issue a declaration of group support for that subsidiary or in case the parent undertaking needs funds in order to transfer to another subsidiary in “need”.  
  
The parent can then downstream to a subsidiary in the group with eligible own funds less than MCR using the proceeds from the dividend to subscribe for equity issued by those subsidiary.
5. Quality of assets – CEIOPS working assumption is that the assets that may be transferred by dividend or used to subscribe for shares will be of a type

that is acceptable for prudential purposes – i.e. they need not necessarily be cash.

6. Accounting entries – in normal circumstances under the Group Support Regime;
  - the subsidiary will have contingent liability to pay eligible own funds to the parent, limited to the eligible own funds they hold in excess of their MCR<sup>15</sup>. As this will be paid by a dividend, it will not be recognised until the dividend is declared.
  - the subsidiaries will also have a contingent asset to collect capital from the parent undertaking, pursuant to the obligations of the Group Support Regime as incorporated in Article 247 and the group support commitment provided in Articles 243 and 246. This contingent asset will be limited to the difference between the MCR and the SCR of the subsidiary. As this is remote, this will only be recognised when it is clear that it will be called.
  - the parent undertaking has contingent assets from all the subsidiaries included within the Group Support Regime, to mirror the contingent liabilities described above. This asset will not be recognised until a dividend is declared by a subsidiary.
  - the parent undertaking also has contingent liabilities to provide eligible own funds to the subsidiaries in the Group Support Regime. Under current GAAP, this will be recognised only when it is more likely than not to be paid; in the future it will be recognised at expected value (normally 0.5% of the difference between subsidiary's actual capital and its SCR).
5. The dividend and subscription method is an effective way in which eligible own funds can be transferred around a group that does not result in internal creation of capital or double gearing is through dividend and subscription for shares. The limited scope of free reserves that can be upstreamed can be mentioned as a disadvantage.

### **Option B: Capital increase for cash / capital increase through contributions in kind method**

6. The parent undertaking can provide capital by reducing capital in one subsidiary and increasing capital in another subsidiary. Apart from concrete contributions of capital increase in cash, a capital increase through contributions in kind is also possible instead. This approach has the disadvantage that within 3 to 4 months at the latest (according to achieve compliance with the MCR) a formal agreement of the shareholder's meeting is needed for the transfer. On the other hand it has the advantage that normally a higher amount of capital can be transferred than under Option A.

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<sup>15</sup> Article 248.

### **Option C: Credit method**

8. When the group support system is authorised and starts functioning: the supported undertaking transfers the ownership of all sorts of asset items (e.g. real estate, shares, bonds, cash, etc.) corresponding to its SCR from its solvency balance sheet to the balance sheet of the parent. At this stage, for solvency purposes the supported undertaking holds a credit and the supporting undertaking is subject to liability. In the case, the support is needed the transfer of assets from the supporting to the supported undertaking must be accomplished.
  
9. The transfer of ownership of all sorts of assets method is a very safe way and promotes policyholders interest.

### **Option D: Buy back method**

10. Not the total amount of share capital may be subscribed capital as this can only be resolved by way of a formal capital decrease. Share capital can not be unsubscribed for more than six months. Therefore subsidiaries either have to possess sufficient amounts of capital reserves as balance sheet profit, or to buy back shares from the parent. This solution has got the disadvantage, that in some Member States there are restrictions for undertakings to buy back shares, and shares will not have any value in the balance sheet. Buying back shares from the parent undertaking probably will not allow recognise the diversification benefits.

## Annex 2: Example of method C of Annex 1

The following example shows how the Group Support Regime would work as a credit.

The functioning of the credit is explained through three stages:

1<sup>st</sup> Before GSR

2<sup>nd</sup> Funds up streaming

3<sup>rd</sup> Crisis

1) Before the GSR applies:

If no diversification benefits were recognised, the solvency requirements would be:

Parent undertaking (supporting)	Subsidiary (supported)	Group
SCR = 500	SCR = 100	SCR = 600
MCR = 150	MCR = 30	MCR = 180
"Proper" own funds required = 500	"Proper" own funds required = 100	"Proper" own funds required = 600

Supervisory balance sheet:

SUBSIDIARY		PARENT	
Assets = 900	Own funds = 100	Assets = 7.000	Own funds = 500
	Liabilities = 800		Liabilities = 6.500

At this stage, the subsidiary is covering its own solvency requirements. No fund transfer has occurred yet and each undertaking is the owner of its own assets.

## 2) Funds upstreaming:

Once the Group Support Regime applies, the subsidiary (supported) is not required to hold its full SCR as proper own funds. Those can be substituted by a promise made by the parent undertaking, to provide support when needed. Hence, the assets representing the difference between SCR – MCR can be transferred to the parent undertaking. The new owner is the parent undertaking, who manages them and gets the return.

In exchange for the assets, the parent undertaking gives a credit to the subsidiary. The credit must pay interest rate that reflects:

- A yield that is competitive under market conditions.
- The risk that it implies for the subsidiary (not all parent companies have the same credit quality).
- A compensation for the assets transferred.

Solvency requirements:

Parent undertaking (supporting)	Subsidiary (supported)	Group
SCR = 500	SCR = 100	SCR = 600
MCR = 150	MCR = 30	MCR = 180
"Proper" own funds required = 500	"Proper" own funds required = 30	"Proper" own funds required = 600

Supervisory balance sheets:

SUBSIDIARY		PARENT	
<i>Group support = 70</i>	<i>Own funds = 100</i>	<i>Assets = 7.070</i>	<i>Own funds = 500</i>
			<i>Liabilities = 6.500</i>
<i>Assets = 830</i>	<i>Liabilities = 800</i>		
			<i>Group support = 70</i>

3) Crisis:

Once the crisis happens, and the group support is triggered, assets are transferred back to the subsidiary.

Solvency requirements:

Parent undertaking (supporting)	Subsidiary (supported)	Group
SCR = 500	SCR = 100	SCR = 600
MCR = 150	MCR = 30	MCR = 180
"Proper" own funds required = 500	"Proper" own funds required = 30	"Proper" own funds required = 600

Supervisory balance sheets:

SUBSIDIARY		PARENT	
Assets = 900	Own funds = 100	Assets = 7.000	Own funds = 500
	Liabilities = 800		Liabilities = 6.500

The credit solution has the following pros:

- Credits are well-known forms of commitment that are easy to understand and accepted in every jurisdiction. Other forms imply severe changes in company-law. Those changes would only affect insurance companies. Consequently, by using a credit, legal uncertainty decreases.
- Credits reflect the real nature of the risks involved, that is, the right to get an amount of money back. The creditor is paid an interest for holding those risks.
- From a transparency viewpoint, the solo balance sheet shows the real features of the transaction.
- Credits do not entail problems with minority shareholders, since they get paid interest.
- Credits do not interfere with with-profits contracts in which the profit clause is not only linked to certain assets, but to the results of the whole undertaking. Other solutions would create problems with those policies because the results are distorted.
- The credit solution involves minimal changes to the winding-up regulations.
- Indirect costs are, by far, lower.

## **Annex 3: Articles of the Framework Directive Proposal referred to in Draft Advice**

### ***Recital 35***

The supervisory regime should provide for a risk-sensitive requirement, which is based on a prospective calculation to ensure accurate and timely intervention by supervisory authorities (the Solvency Capital Requirement), and a minimum level of security below which the amount of financial resources should not fall (the Minimum Capital Requirement). Both capital requirements should be harmonised throughout the Community in order to achieve a uniform level of protection for policyholders.

### ***Recital 67***

It is necessary to ensure that own funds are appropriately distributed within the group and available to protect policyholders and beneficiaries where needed. To this end insurance and reinsurance undertakings within a group should have sufficient own funds to cover their solvency capital requirement, unless the objective of protection of policyholders and beneficiaries can effectively be achieved otherwise. Insurance and reinsurance undertakings within a group should therefore be authorised to cover their Solvency Capital Requirement with group support declared by their parent undertaking, under defined circumstances. In order to assess the need for and prepare any possible future revision of the group support regime, the Commission should report on the rules of the Member States and the practices of the supervisory authorities in this field.

### ***Article 28***

#### *General principles of supervision*

1. Supervision shall be based on a prospective and risk-oriented approach. It shall include the verification on a continuous basis of the proper operation of the insurance or reinsurance business and of the compliance with supervisory provisions by insurance and reinsurance undertakings.
2. Supervision shall be carried out both off-site and on-site.
3. Member States shall ensure that the requirements laid down in this Directive are applied in a manner which is proportionate to the nature, complexity and scale

### ***Article 34***

#### *General Supervisory powers*

*new*

1. Member States shall ensure that the supervisory authorities have the power to take preventive and corrective measures to ensure that insurance and reinsurance undertakings comply with the laws, regulations and administrative provisions adopted pursuant to this Directive.
2. The supervisory authorities shall have the power to take any measures, including where appropriate, those of an administrative or financial nature, with regard to insurance or reinsurance undertakings, and the members of their administrative or management body or the persons who control that body.
3. Member States shall ensure that supervisory authorities have the power to require all information necessary to conduct supervision in accordance with Article 35.

4. Member States shall ensure that supervisory authorities have the power to develop, in addition to the calculation of the Solvency Capital Requirement and where appropriate, quantitative tools under the supervisory review process to assess the ability of the insurance or reinsurance undertakings to cope with possible events or future changes in economic conditions that could have unfavourable effects on their overall financial standing. The supervisory authorities shall require that such tests are performed by the undertakings.

*2002/83/EC Art. 13 (adapted)*

5. The supervisory authorities shall have the power to carry out on-site investigations at the premises of the insurance and reinsurance undertakings.

*new*

6. Supervisory powers shall be applied in a timely and proportionate manner.

*new*

7. The powers with regard to insurance and reinsurance undertakings referred to in paragraphs 1 to 5 shall be available with regard to out-sourced activities of insurance and reinsurance undertakings.

*2002/83/EC Art. 13 (adapted)*

8. The measures set out in paragraphs 1 to 5 and 7 shall be carried out, where appropriate, through judicial channels.

### **Article 37**

#### *Capital add-on*

1. Following the supervisory review process supervisory authorities may in exceptional circumstances set, a capital add-on for an insurance or reinsurance undertaking by a decision stating the reasons. That possibility shall only exist in the following cases:

(a) the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using the standard formula in accordance with Chapter VI, Section 4, Subsection 2 and the request under Article 116 has proven inefficient or while a partial or full internal model is being developed in accordance with that Article;

(b) the supervisory authority concludes that the risk profile of the insurance or reinsurance undertaking deviates significantly from the assumptions underlying the Solvency Capital Requirement, as calculated using an internal model or partial internal model in accordance with Chapter VI, Section 4, Subsection 3, because certain quantifiable risks are captured insufficiently and the adaptation of the model to better reflect the given risk profile has failed within an appropriate timeframe;

(c) the supervisory authority concludes that the system of governance of an insurance or reinsurance undertaking deviates significantly from the standards laid down in Chapter IV, Section 2, that those deviations prevent it from being able to properly assess and manage the risks that it is or could be exposed to and the application of other measures is in itself unlikely to improve the deficiencies sufficiently within an appropriate timeframe.

2 In the cases set out in points (a) and (b) of paragraph 1 of this Article the capital add on shall be calculated in such a way as to ensure that the undertaking complies with Article 100(3).

3. In the cases set out in points (b) and (c) of paragraph 1 the supervisory authority shall ensure that the insurance or reinsurance undertaking makes all efforts to remedy the deficiencies that led to the imposition of the capital add-on.

4. The capital add-on referred to in paragraph 1 shall be reviewed at least once a year by the supervisory authority and be removed when the undertaking has remedied the deficiencies which led to its imposition.

The capital add-on may have a permanent character only where the conditions set out in point (a) of paragraph 1 continue to apply because the risk profile of the undertaking concerned continues to deviate significantly from the assumptions underlying the Solvency Capital Requirement, as calculated in accordance with Chapter VI, Section 4, Subsection 2.

5. The Solvency Capital Requirement including the capital add-on imposed according to points (a) and (b) of paragraph 1 shall replace the inadequate Solvency Capital Requirement.

The Solvency Capital Requirement including the capital add-on shall in any case replace the inadequate Solvency Capital Requirement for the purposes of establishing the non-compliance with the Solvency Capital Requirement referred to in Article 135.

6. The Commission shall adopt implementing measures laying down further specifications for the circumstances under which a capital add-on may be imposed and the calculation thereof.

Those measures designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 313(3).

## **Article 41**

### *General governance requirements*

1. Member States shall require all insurance and reinsurance undertakings to have in place an effective system of governance which provides for sound and prudent management of the business.

That system shall at least include an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities and an effective system for ensuring the transmission of information. It shall include compliance with the requirements laid down in Articles 42 to 48.

The system of governance shall be subject to regular internal review.

2. The system of governance shall be proportionate to the nature, scale and complexity of the operations of the insurance or reinsurance undertaking.

3. Insurance and reinsurance undertakings shall have written policies in relation to at least risk management, internal control, internal audit and, where relevant, outsourcing. They shall ensure that those policies are implemented.

Those written policies shall be reviewed at least annually. They shall be subject to prior approval by the administrative or management body and be adapted in view of any significant change in the system or area concerned.

4. The supervisory authorities shall have appropriate means, methods and powers for verifying the system of governance of the insurance and reinsurance undertakings and for evaluating emerging risks identified by those undertakings which may affect their financial soundness.

The Member States shall ensure that the supervisory authorities have the powers necessary to request that the system of governance be improved and strengthened to ensure compliance with the requirements set out in Articles 42 to 48.

## **Article 43**

### *Risk Management*

1. Insurance and reinsurance undertakings shall have in place an effective risk management system comprising strategies, processes and reporting procedures necessary to monitor, manage and report, on a continuous basis the risks, on an individual and aggregated level, to which they are or could be exposed, and their interdependencies.

That risk management system shall be well integrated into the organisational structure of the insurance or reinsurance undertaking. It shall contain contingency plans.

2. The risk management system shall cover the risks to be included in the calculation of the Solvency Capital Requirement as set out in Article 100(4) as well as the risks which are not or not fully included in the calculation thereof.

It shall cover at least the following areas:

- (a) underwriting and reserving;
- (b) asset – liability management;
- (c) investment, in particular derivatives and similar commitments;
- (d) liquidity and concentration risk management;
- (e) reinsurance and other risk mitigation techniques.

The written policy on risk management referred to in Article 41(3) shall comprise policies relating to points (a) to (e) of the second subparagraph of this paragraph.

3. As regards investment risk insurance and reinsurance undertakings shall demonstrate that they comply with Chapter VI, Section 6.

4. Insurance and reinsurance undertakings shall provide for a risk management function which shall be structured in such a way as to facilitate the implementation of the risk management system.

5. For insurance and reinsurance undertakings using a partial or full internal model approved in accordance with Articles 109 and 110 the risk management function shall cover the following additional tasks:

- (a) to design and implement the internal model;
- (b) to test and validate the internal model;
- (c) to document the internal model and any subsequent changes made to it;
- (d) to inform the administrative or management body about the performance of the internal model, suggesting areas needing improvement, and up-dating that body on the status of efforts to improve previously identified weaknesses;
- (e) to analyse the performance of the internal model and to produce summary reports thereof.

#### **Article 44**

##### *Own risk and solvency assessment*

1. As part of its risk management system every insurance or reinsurance undertaking shall conduct its own risk and solvency assessment.

That assessment shall include at least the following:

- (a) the overall solvency needs taking into account the specific risk profile, approved risk tolerance limits and the business strategy of the undertaking;

(b) the compliance, on a continuous basis, with the capital requirements, as laid down in Chapters VI, Sections 4 and 5 and with the requirements regarding technical provisions, as laid down in Chapter VI, Section 2.

(c) the extent to which the risk profile of the undertaking concerned deviates significantly from the assumptions underlying the Solvency Capital Requirement as laid down in Article 100 (3), calculated with the standard formula in accordance with Chapter VI, Section 4, Subsection 2 or with its partial or full internal model in accordance with Chapter VI, Section 4, Subsection 3.

2. For the purposes of point (a) of paragraph 1, the undertaking concerned shall have in place processes which enable it to properly identify and measure the risks it faces in the short and the long term and also to identify possible events or future changes in economic conditions that could have unfavourable effects on its overall financial standing. The undertaking shall demonstrate the methods used to determine its overall solvency needs.

3. In the case referred to in point (c) of paragraph 1 when an internal model is used, the assessment shall be performed together with the recalibration that transforms the internal risk numbers into the Solvency Capital Requirement risk measure and calibration.

4. The own risk and solvency assessment shall be an integral part of the business strategy and shall be taken into account on an ongoing basis in the strategic decisions of the undertaking.

5. Insurance and reinsurance undertakings shall perform the assessment referred to in paragraph 1 regularly and without any delay following any significant change in their risk profile.

6. The insurance and reinsurance undertakings shall inform the supervisory authorities of the results of each own risk and solvency assessment as part of the information reported under Article 35.

## **Article 45**

### *Internal Control*

1. Insurance and reinsurance undertakings shall have in place an effective internal control system.

That system shall at least include administrative and accounting procedures, an internal control framework, appropriate reporting arrangements at all levels of the undertaking and a permanent compliance function.

2. The compliance function shall include advising the administrative or management body on compliance with the laws, regulations and administrative provisions adopted pursuant to this Directive. It shall also include an assessment of the possible impact of any changes in the legal environment on the operations of the undertaking concerned and the identification and assessment of compliance risk.

## **Article 50**

### *Report on Solvency and financial condition: contents*

1. Member States shall, taking into account the principles set out in paragraphs 3 and 4 of Article 35, require insurance and reinsurance undertakings to publicly disclose, on an annual basis, a report on their solvency and financial condition.

That report shall contain the following information, either in full or by way of references to equivalent information disclosed publicly under other legal or regulatory requirements:

- (a) a description of the business and the performance of the undertaking;
- (b) a description of the system of governance and an assessment of its adequacy for the risk profile of the undertaking;
- (c) a description, separately for each category of risk, of the risk exposure, concentration, mitigation and sensitivity;
- (d) a description, separately for assets, technical provisions, and other liabilities, of the bases and methods used for their valuation, together with an explanation of any major differences in the bases and methods used for their valuation in financial statements;
- (e) a description of the capital management, including at least the following:
  - (i) the structure and amount of own funds, and their quality;
  - (ii) the amounts of the Minimum Capital Requirement and of the Solvency Capital Requirement;
  - (iii) information allowing a proper understanding of the main differences between the standard formula and any internal model used by the undertaking for the calculation of its Solvency Capital Requirement;
  - (iv) the amount of any non compliance with the Minimum Capital Requirement or any significant non compliance with the Solvency Capital Requirement during the reporting period, even if subsequently resolved, with an explanation of its origin and consequences as well as any remedial measures taken.

2. The description referred to in point (e)(i) of paragraph 1 shall include an analysis of any significant changes as compared to the previous reporting period and an explanation of any major differences in relation to the value of such elements in financial statements, and a brief description of the capital transferability.

The disclosure of the Solvency Capital Requirement referred to in point (e)(ii) of paragraph 1 shall show separately the amount calculated in accordance with Chapter VI, Section 4, Subsections 2 and 3 and any capital add-on imposed in accordance with Article 37, together with concise information on its justification by the supervisory authority concerned.

However, and without prejudice to any disclosure mandatory under any other legal or regulatory requirements, Member States may provide that the capital add-on need not be separately disclosed during a transitional period not exceeding five years after the date referred to in Article 318.

The disclosure of the Solvency Capital Requirement shall be accompanied, where applicable, by an indication that its final amount is still subject to supervisory assessment.

### **Article 53**

#### *Report on solvency and financial condition: updates and additional voluntary information*

1. In the event of any major development affecting significantly the relevance of the information disclosed in accordance with Articles 50 and 52, insurance and reinsurance undertakings shall disclose appropriate information on its nature and effects.

For the purposes of the first subparagraph, at least the following shall be regarded as major developments:

- (a) where non compliance with the Minimum Capital Requirement is observed and the supervisory authorities either consider that the undertaking will not be able to submit a viable recovery plan or do not obtain such a plan within one month;
- (b) where a significant non compliance with the Solvency Capital Requirement is observed and the supervisory authorities do not obtain a recovery plan which they consider viable within two months.

In the cases referred to in point (a) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of a recovery plan initially considered to be viable, a non compliance with the Minimum Capital Requirement has not been resolved two months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken.

In the case referred to in point (b) of the second subparagraph, the supervisory authorities shall require the undertaking concerned to disclose immediately the amount of the non compliance, together with an explanation of its origin and consequences, including any remedial measure taken. Where, in spite of the recovery plan initially considered to be viable, a significant non compliance with the Solvency Capital Requirement has not been resolved four months after its observation, it shall be disclosed at the end of that period, together with an explanation of its origin and consequences, including any remedial measure taken.

2. Insurance and reinsurance undertakings may disclose, on a voluntary basis, any information or explanation related to their solvency and financial condition which is not already required to be disclosed in accordance with Articles 50 and 52 and paragraph 1 of this Article.

## **Article 92**

### *Characteristics used to classify own funds into tiers*

Own fund items shall be classified into three tiers on the basis of the following characteristics:

(1) in the case of winding-up, the repayment of the item is refused to its holder until all other obligations, including insurance and reinsurance obligations towards policyholders and beneficiaries of insurance and reinsurance contracts, have been met (subordination);

(2) the total amount of the item, rather than only part of it, is available to absorb losses in the case of winding-up (loss-absorbency);

(3) the item is available, or can be called up on demand, to absorb losses on a going concern basis, as well as in the case of winding-up (permanence);

(4) the item is not dated, or has a duration which is sufficient taking into account the duration of the insurance and reinsurance obligations of the undertaking (perpetuality);

(5) the item is free from mandatory fixed charges and requirements or incentives to redeem the nominal sum, and is clear of any encumbrances (absence of mandatory servicing costs).

## **Article 93**

### *Main criteria for the classification into tiers*

1. Basic own fund items shall be classified in Tier 1 where they possess the characteristics set out in points (1), (2) and (3) of Article 92, and, to a substantial degree, those set out in points (4) and (5) thereof.

2. Basic own fund items shall be classified in Tier 2 where they possess the characteristics set out in points (1) and (2) of Article 92, and to a substantial degree those set out in points (4) and (5) thereof.

Ancillary own fund items shall be classified in Tier 2 where they possess the characteristics set out in points (1), (2) and (3) of Article 92, and, to a substantial degree those set out in (4) and (5) thereof.

3. Any basic and ancillary own fund items, which do not fall under paragraphs 1 and 2 shall be classified in Tier 3.

#### **Article 94**

##### *Classification of own funds into tiers*

Member States shall ensure that insurance and reinsurance undertakings classify their own fund items on the basis of the criteria laid down in Article 93.

For that purpose, insurance and reinsurance undertakings shall refer to the list of own funds referred to in point (c) of Article 96(1), where applicable.

Where an own fund item is not covered by that list, it shall be assessed and classified by insurance and reinsurance undertakings, in accordance with the first paragraph. This assessment shall be approved by the supervisory authority.

#### **Article 95**

##### *Classification of specific insurance own fund items*

Without prejudice to Article 94 and point (c) of Article 96(1), for the purposes of this Directive the following classifications shall be applied:

- (1) surplus funds falling under Article 89 shall be classified in Tier 1;
- (2) letters of credit and guarantees, provided by credit institutions authorised in accordance with Directive 2006/48/EC, and held in trust for the benefit of insurance creditors by an independent trustee shall be classified in Tier 2;
- (3) any future claims which Protection and Indemnity Associations may have against their members by way of a call for supplementary contributions, within the financial year, shall be classified in Tier 2.

#### **Article 97**

##### *Eligibility and limits applicable to Tier 1, Tier 2 and Tier 3*

1. As far as the Solvency Capital Requirement is concerned, the amounts of Tier 2 and Tier 3 items shall be subject to the following limits:

(a) in order to ensure that the proportion of Tier 1 items in the eligible own funds is higher than one third of the total eligible own funds, the eligible amount of Tier 2 together with the eligible amount of Tier 3 shall be limited to twice the total amount of Tier 1 items;

(b) in order to ensure that the proportion of Tier 3 items in the eligible own funds is less than one third of the total eligible own funds, the eligible amount of Tier 3 shall be limited to half the total amount of Tier 1 and eligible amount of Tier 2 items.

2. As far as the Minimum Capital Requirement is concerned, in order to ensure that the proportion of Tier 1 items in the eligible basic own funds shall be higher than one half of the total eligible basic own funds, the amount of basic own fund items eligible to cover the Minimum Capital Requirement which are classified in Tier 2 shall be limited to the total amount of Tier 1 items.

3. Where sub-tiers have been introduced, in accordance with point (a) of Article 96 (1), specific limits shall apply to the amount of own fund items classified in those sub-tiers.

4. The eligible amount of own funds to cover the Solvency Capital Requirement set out in Article 99 shall be equal to the sum of the amount of Tier 1, the eligible amount of Tier 2 and the eligible amount of Tier 3.

5. The eligible amount of basic own funds to cover the Minimum Capital Requirement set out in Article 125 shall be equal to sum of the amount of Tier 1 and the eligible amount of basic own fund items classified in Tier 2.

#### **Article 124**

##### *Implementing measures*

The Commission shall, in order to ensure a harmonised approach to the use of internal models throughout the Community and to enhance the better assessment of the risk profile and management of the business of insurance and reinsurance undertakings, adopt implementing measures with respect to Articles 117 to 123.

Those measures designed to amend non-essential elements of this Directive, by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 313 (3).

#### **Article 134**

##### *Non-Compliance with technical provisions*

If an insurance or reinsurance undertaking does not comply with Chapter VI, Section 2, the supervisory authorities of its home Member State may prohibit the free disposal of its assets after having communicated their intentions to the supervisory authorities of the host Member States. The supervisory authorities of the home Member State shall designate the assets to be covered by such measures.

#### **Article 135**

##### *Non-Compliance with the Solvency Capital Requirement*

1. Insurance and reinsurance undertakings shall inform the supervisory authority as soon as they observe that the Solvency Capital Requirement is no longer complied with, or where there is a risk of non-compliance in the following three months.

2. Within two months from the observation of the non-compliance with the Solvency Capital Requirement the insurance or reinsurance undertaking concerned shall submit a realistic recovery plan for approval by the supervisory authority.

3. The supervisory authority shall require the insurance or reinsurance undertaking concerned to take the necessary measures to achieve, within six months from the observation of the non-compliance with the Solvency Capital Requirement, the reestablishment of the level of eligible own funds covering the Solvency Capital Requirement or the reduction of its risk profile to ensure compliance with the Solvency Capital Requirement.

The supervisory authority may, if appropriate, extend that period by three months.

4. In exceptional circumstances, if the supervisory authority is of opinion that the financial situation of the undertaking concerned will deteriorate further, it may also restrict or prohibit the free disposal of the assets of that undertaking. That supervisory authority shall inform the supervisory authorities of the host Member States of any measures it has taken. Those authorities shall, at the request of the supervisory authority of the home Member

State, take the same measures. The supervisory authority of the home Member State shall designate the assets to be covered by such measures.

### **Article 234**

#### *Related third-country insurance and reinsurance undertakings*

1. When calculating the group solvency of an insurance or reinsurance undertaking which is a participating undertaking in a third-country insurance or reinsurance undertaking, the latter shall be treated solely for the purposes of the calculation as a related insurance or reinsurance undertaking.

However, where the third-country in which that undertaking has its head office makes it subject to authorisation and imposes on it a solvency regime at least equivalent to that laid down in Title I, Chapter VI, Member States may provide that the calculation shall take into account, as regards that undertaking, the Solvency Capital Requirement and the own funds eligible to satisfy that requirement as laid down by the third-country concerned.

2. The verification of whether the third-country regime is at least equivalent shall be carried out by the group supervisor, at the request of the participating undertaking or on its own initiative.

The group supervisor shall consult the other supervisory authorities concerned, and the Committee of European Insurance and Occupational Pensions Supervisors, before taking a decision on equivalence.

3. The Commission shall adopt, after consultation of the European Insurance and Occupational Pensions Committee and in accordance with the procedure referred to in Article 313(2), a decision as to whether the solvency regime in a third country is equivalent to that laid down in Title I, Chapter VI.

These decisions shall be regularly reviewed to take into account any changes to the solvency regime laid down in Title I, Chapter VI, and to the solvency regime in the third country.

4. When a decision adopted by the Commission in accordance with paragraph 3 concludes as to the equivalence of the solvency regime in a third country, paragraph 2 shall not apply.

When a decision adopted by the Commission in accordance with paragraph 3 concludes that the solvency regime in a third country is not equivalent, the option referred to in the second subparagraph of paragraph 1 to take into account the Solvency Capital Requirement and eligible own funds as laid down by the third country concerned shall not be applicable and the third-country insurance or reinsurance undertaking shall be treated exclusively in accordance with the first subparagraph of paragraph 1.

### **Article 239**

#### *Group capital add-on*

In determining whether the consolidated group Solvency Capital Requirement appropriately reflects the risk profile of the group, the group supervisor shall pay particular attention to the following:

(a) any specific risks existing at group level which would not be sufficiently covered by the standard formula or the internal model used, because they are difficult to quantify;

(b) any capital add-on to the Solvency Capital Requirement of the related insurance or reinsurance undertakings imposed by the supervisory authorities concerned, in accordance with Articles 37 and 238(6).

If the risk profile of the group is not adequately reflected, a capital add-on to the consolidated group Solvency Capital Requirement may be imposed.

The consolidated group Solvency Capital Requirement including the capital add-on shall replace the inadequate consolidated group Solvency Capital Requirement for the purposes of determining whether on compliance with the group Solvency Requirement occurs.

### **Article 243**

#### *Subsidiaries of an insurance or reinsurance undertaking: conditions*

Member States shall provide that the rules laid down in Articles 245 to 250 shall apply to any insurance or reinsurance undertaking which is the subsidiary of an insurance or reinsurance undertaking, on request of the latter, where all of the following conditions are satisfied:

(a) the subsidiary, in relation to which the group supervisor has not made any decision under Article 221(2), is included in the group supervision carried out by the group supervisor at the level of the parent undertaking in accordance with this Title;

(b) the risk management processes and internal control mechanisms of the parent undertaking cover the subsidiary and the parent undertaking satisfies the supervisory authorities concerned regarding the prudent management of the subsidiary;

(c) the parent undertaking has declared, in writing and in a legally binding document accepted by the group supervisor in accordance with Article 246, that it guarantees that own funds eligible under Article 97(5) will be transferred where necessary and up to the limit resulting from the application of Article 246;

(d) an application for permission to be subject to Articles 245 to 250 has been introduced by the parent undertaking and a favourable decision has been made on such application in accordance with the procedure set out in Article 244.

### **Article 244**

#### *Subsidiaries of an insurance or reinsurance undertaking: decision on the application*

1. In the case of applications for permission to be subject to the rules laid down in Articles 245 to 250, the supervisory authorities concerned shall work together, in full consultation, to decide whether or not to grant the permission sought and to determine the other terms and conditions, if any, to which such permission should be subject.

An application as referred to in the first subparagraph shall be submitted only to the group supervisor. The group supervisor shall inform the other supervisory authorities concerned without delay.

2. The supervisory authorities concerned shall do everything within their power to reach a joint decision on the application within six months from the date of receipt of the complete application by the group supervisor.

The group supervisor shall forward the complete application to the other supervisory authorities concerned without delay.

The joint decision shall be set out in a document containing the fully reasoned decision which shall be transmitted to the applicant by the group supervisor. The joint decision referred to above shall be recognised as determinative and applied by the supervisory authorities in the Member States concerned.

3. In the absence of a joint decision between the supervisory authorities concerned within six months, the group supervisor shall make its own decision on the application. The decision shall be set out in a document containing the fully reasoned decision and shall take into account the views and reservations of the other supervisory authorities concerned expressed within a six months period. The decision shall be provided to the applicant and

the other supervisory authorities concerned by the group supervisor. That decision shall be recognised as determinative and applied by the supervisory authorities concerned.

#### **Article 245**

##### *Subsidiaries of an insurance or reinsurance undertaking: determination of the Solvency Capital Requirement*

1. By way of derogation from Articles 37 and 238, the Solvency Capital Requirement of the subsidiary shall be calculated as set out in paragraphs 2, 3 and 4 of this Article.

2. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of an internal model approved at group level in accordance with Article 238 and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from this internal model, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose to the group supervisor to impose a capital add-on to the Solvency Capital Requirement of that subsidiary resulting from the application of such model, or, in exceptional circumstances where such capital add-on would not be appropriate, to require that undertaking to calculate its Solvency Capital Requirement on the basis of the standard formula. The supervisory authority shall communicate the grounds for such proposals to both the subsidiary and the group supervisor.

3. Where the Solvency Capital Requirement of the subsidiary is calculated on the basis of the standard formula and the supervisory authority having authorised the subsidiary considers that its risk profile deviates significantly from the assumptions underlying the standard formula, and as long as that undertaking does not properly address the concerns of the supervisory authority, that authority may, in the cases referred to in Article 37, propose to the group supervisor to impose a capital add-on to the Solvency Capital Requirement of that subsidiary.

The supervisory authority shall communicate the grounds for such proposal to both the subsidiary and the group supervisor. 4. Where the supervisory authority and the group supervisor disagree, or in the absence of a decision from the group supervisor within one month from the proposal of the supervisory authority, the matter shall be referred for consultation to the Committee of European Insurance and Occupational Pensions Supervisors, which shall give its advice within two months.

The group supervisor shall duly consider such advice before taking its final decision. The decision shall be submitted to the subsidiary and the supervisory authority by the group supervisor.

In the absence of a final decision from the group supervisor within one month from the date of the advice of the Committee of European Insurance and Occupational Pensions Supervisors, the proposal from the supervisory authority shall be deemed to have been accepted.

#### **Article 246**

##### *Subsidiaries of an insurance or reinsurance undertaking: coverage of the Solvency Capital Requirement*

1. By way of derogation from Article 97(4), any difference between the Solvency Capital Requirement and the minimum capital requirement of the subsidiary shall be covered by either own funds eligible under Article 97(4) or group support, or any combination thereof.

The group support shall, for the purposes of the classification of own funds into tiers in accordance with Articles 92 to 95, be treated as ancillary own funds.

2. The group support shall take the form of a declaration to the Group Supervisor, expressed in a legally binding document and constituting a commitment to transfer own funds eligible under Article 97(5).

3. Before accepting the declaration referred to in paragraph 2, the Group Supervisor shall verify the following:

(a) that the group has sufficient eligible own funds to cover its consolidated group Solvency Capital Requirement;

(b) that there is no current or foreseeable material practical or legal impediment to the prompt transfer of the eligible own funds referred to in paragraph 2;

(c) that the document containing the declaration of group support meets all requirements existing under the law of the parent undertaking to be recognised as a legal commitment, and that any recourse before a legal or administrative body shall not have suspensive effect.

### **Article 247**

#### *Subsidiaries of an insurance or reinsurance undertaking: monitoring of the Solvency Capital Requirement*

1. By way of derogation from Article 135, the supervisory authority having authorised the subsidiary shall not be responsible for enforcing its Solvency Capital Requirement by taking measures at the level of the subsidiary.

That supervisory authority shall however continue to monitor the Solvency Capital Requirement of the subsidiary as set out in paragraphs 2 and 3.

2. Where the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 97(4) and the amount of group support declared in accordance with Article 246, but the own funds eligible under Article 97(5) are sufficient to cover the minimum capital requirement, the supervisory authority may call on the parent undertaking to provide a new declaration bringing the group support to the amount necessary to ensure that the Solvency Capital Requirement is again fully covered.

3. Where the Solvency Capital Requirement is no longer fully covered by the combination of own funds eligible under Article 97(4) and the amount of group support declared in accordance with Article 246, and the own funds eligible under Article 97(5) are not sufficient to cover the minimum capital requirement, the supervisory authority may call on the parent undertaking to transfer own funds eligible under Article 97(5) to the extent necessary to ensure that the minimum capital requirement is again covered, and to provide a new declaration bringing the group support to the amount necessary to ensure that the Solvency Capital Requirement is again fully covered.

4. Before accepting any new declaration referred to in paragraphs 2 or 3, the group supervisor shall verify that the conditions laid down in Article 246 are met.

Where the parent undertaking does not provide the new declaration requested, or where the new declaration provided is not accepted, the derogations provided for in Articles 245 and 246 and in paragraph 1 of this Article shall cease to apply.

The supervisory authority having authorised the subsidiary shall regain full responsibility for setting the Solvency Capital Requirement of the subsidiary and taking appropriate measures to ensure that it is adequately met by own funds eligible under Article 97(4). The parent undertaking shall however not be released from the commitment resulting from the most recent declaration accepted.

### **Article 248**

#### *Subsidiaries of an insurance or reinsurance undertaking: winding-up*

When the subsidiary is being wound up and found to be insolvent, the supervisory authority having authorised the subsidiary shall, on its own initiative or at the request of any other authority competent for the winding-up procedure by application of TITLE IV, call on the parent undertaking to transfer eligible own funds to the subsidiary, in so far as they are necessary to meet policyholder liabilities, up to the limit of the group support resulting from the most recent declaration accepted.

### **Article 249**

#### *Subsidiaries of an insurance or reinsurance undertaking: transfer of own funds*

1. In the cases referred to in Articles 247 and 248, the supervisory authority shall address its request to the parent undertaking and immediately inform the group supervisor.

Where the parent undertaking does not rapidly transfer eligible own funds to the subsidiary, the group supervisor shall use all powers available, including the power available under Article 141, to ensure that the group provides the requested transfer as soon as is practicable.

2. Group support may be provided from eligible own funds present in the parent undertaking or in any subsidiary, subject to that subsidiary, where it is an insurance or reinsurance undertaking, having eligible own funds in excess of its minimum capital requirement. The supervisory authority having authorised that subsidiary shall not prevent the transfer of such excess eligible own funds.

However, where such transfer would lead to the Solvency Capital Requirement of that subsidiary being no longer complied with, it shall be subject to a declaration by the parent undertaking of the necessary level of group support and acceptance by the group supervisor.

3. Before accepting any new declaration made in accordance with paragraph 2, the group supervisor shall verify that the conditions laid down in Article 246 are met.

However, where any transfer is carried out in accordance with paragraph 1, the group supervisor shall verify that the group continues to have sufficient eligible own funds to cover its group Solvency Capital Requirement. Where this requirement is no longer satisfied, the group supervisor shall take appropriate measures to ensure that the necessary actions are taken by the group within an acceptable period of time.

### **Article 250**

#### *Subsidiaries of an insurance or reinsurance undertaking: disclosure*

The existence of declarations of group support, and any use thereof, shall be publicly disclosed by both the parent undertaking and the subsidiary concerned.

### **Article 251**

#### *Subsidiaries of an insurance or reinsurance undertaking: end of derogations for a subsidiary*

1. The derogations provided for in Articles 245, 246 and 247 shall cease to apply in the following cases:

(a) the condition referred to in Article 243(a) is no longer complied with;

(b) the condition referred to in Article 243(b) is no longer complied with and the group does not restore compliance with this condition in an appropriate period of time.

In the case referred to in point (a) of the first subparagraph, where the group supervisor decides no longer to include the subsidiary in the group supervision it carries out, it shall immediately inform the supervisory authority concerned.

For the purposes of point (b) of the first subparagraph, the parent undertaking shall be responsible for ensuring that the condition is complied with on an on-going basis.

In the event of non-compliance, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

Without prejudice to the third subparagraph, the group supervisor shall verify at least once a year, on its own initiative, that the condition referred to in Article 243(b) continues to be complied with. The group supervisor shall also perform such

verification upon request from the supervisory authority concerned, where the latter has significant concerns related to the ongoing compliance with this condition.

Where the verification performed identifies weaknesses, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

If the group supervisor determines that the plan referred to in the third or fourth subparagraph is insufficient or subsequently that it is not being implemented within the agreed period of time, the group supervisor shall conclude that the condition referred to in Article 243(b) is no longer complied with and it shall immediately inform the supervisory authority concerned.

2. When the derogations provided for in Articles 245, 246 and 247 cease to apply, the supervisory authority having authorised the subsidiary shall regain full responsibility for setting the Solvency Capital Requirement of the subsidiary and taking appropriate measures to ensure that it is adequately met by own funds eligible under Article 97(4). The parent undertaking shall however not be released from the commitments resulting from the most recent declarations accepted in accordance with Articles 246, 247 and 249.

## **Article 252**

### *Subsidiaries of an insurance or reinsurance undertaking: end of derogations for all subsidiaries*

1. In addition to the cases referred to in Article 251, the derogations provided for in Articles 245, 246 and 247 shall cease to apply in the following cases:

(a) any of the conditions referred to in the third paragraph of Article 246 are no longer complied with and compliance is not restored within an appropriate period of time as set out in paragraph 2;

(b) the group no longer has sufficient eligible own funds to cover the minimum consolidated group Solvency Capital Requirement referred to in Article 237(2).

2. In the case referred to in point (a) of paragraph 1, the parent undertaking shall be responsible for ensuring that all conditions are complied with on an on-going basis.

In the event of non-compliance with any of these conditions, it shall inform the group supervisor and the supervisor of the subsidiary concerned without delay. The parent undertaking shall present a plan to restore compliance within an appropriate period of time.

Without prejudice to the first subparagraph, the group supervisor shall verify at least once a year, on its own initiative, that the conditions referred to in the third paragraph of Article 246 continue to be complied with. Where the verification performed identifies deficiencies, the group supervisor shall require the parent undertaking to present a plan to restore compliance within an appropriate period of time.

If the group supervisor determines that the plan referred to in the first or second subparagraph is insufficient or subsequently that it is not being implemented within the agreed period of time, the group supervisor shall conclude that the conditions referred to in

the third paragraph of Article 246 are no longer complied with and it shall immediately inform the other supervisory authorities concerned.

In the case referred to in point (b) of the first paragraph, the group supervisor shall immediately inform the other supervisory authorities concerned.

3. When the derogations provided for in Articles 245, 246 and 247 cease to apply, the supervisory authorities having authorised any subsidiary to which the rules laid down in Articles 245 to 250 apply shall regain full responsibility for setting the Solvency Capital Requirement of these subsidiaries and taking appropriate measures to ensure that it is adequately met by own funds eligible under Article 97(4). The parent undertaking shall however not be released from the commitments resulting from the most recent declarations accepted in accordance with Articles 246, 247 and 249.

4. Where the group has restored sufficient eligible own funds to cover the minimum consolidated group Solvency Capital Requirement referred to in Article 237(2), the derogations provided for in Articles 245, 246 and 247 shall be applicable only if the parent undertaking submits a new application and obtains a favourable decision in accordance with the procedure set out in Article 244.

### **Article 253**

#### *Subsidiaries of an insurance or reinsurance undertaking: reduction of group supports*

1. Where several requests to transfer eligible own funds are addressed to the parent undertaking and the group supervisor in accordance with Articles 247 or 248, and the group does not have sufficient eligible own funds to meet all of those together, the amounts resulting from the most recent declarations accepted shall be reduced where necessary.

The reduction shall be calculated for each subsidiary with a view to ensuring that each subsidiary is subject to the same ratio between the sum of its available assets and any transfer from the group on the one hand and the sum of its technical provisions and its minimum capital requirement on the other hand.

2. Member States shall ensure that liabilities resulting from insurance contracts entered into by the parent undertaking are not treated more favourably than liabilities resulting from insurance contracts entered into by any subsidiary which is subject to the rules laid down in Articles 245 to 250.

### **Article 254**

#### *Subsidiaries of an insurance or reinsurance undertaking: implementing measures*

In order to ensure the uniform application of Articles 243 to 253, the Commission shall adopt implementing measures relating to the following:

(a) specifying the criteria to be applied when assessing whether the conditions stated in Article 243 are satisfied;

(b) specifying the criteria to be applied when verifying that the requirements stated in Article 246 are met;

(c) specifying the means to be used when disclosing the information referred to in Article 250;

(d) specifying the procedures to be followed by supervisory authorities when exchanging information, exercising their rights and fulfilling their duties in accordance with Articles 244 to 249 and Articles 251, 252 and 253.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 313(3).

### **Article 256**

#### *Subsidiaries of an insurance holding company*

Articles 243 to 255 shall apply mutatis mutandis to insurance and reinsurance undertakings which are the subsidiary of an insurance holding company.

### **Article 259**

#### *Supervision of the system of governance*

1. The requirements set out in TITLE I, Chapter IV, Section 2 shall apply mutatis mutandis at the level of the group.

Without prejudice to the first subparagraph, the risk management and internal control systems and reporting procedures shall be implemented consistently in all the undertakings included in the scope of group supervision pursuant to points (a) and (b) of Article 220(2) so that those systems and reporting procedures can be controlled at the level of the group.

2. Without prejudice to paragraph 1, the group internal control mechanisms shall include at least the following:

(a) adequate mechanisms as regards group solvency to identify and measure all material risks incurred and to appropriately relate eligible own funds to risks;

(b) sound reporting and accounting procedures to monitor and manage the intragroup transactions and the risk concentration.

3. The systems and reporting procedures referred to in paragraphs 1 and 2 shall be subject to supervisory review by the group supervisor, in accordance with the rules laid down in Chapter III.

4. Member States shall require the participating insurance or reinsurance undertaking or the insurance holding company to undertake at the level of the group the assessment required by Article 44. 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 participating insurance or reinsurance undertaking or the insurance holding company so decides, and subject to the agreement of the group supervisor, it may undertake any assessments required by Article 44 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.

Where the group exercises the option provided in the second subparagraph, it shall submit the document to all supervisory authorities concerned at the same time.

Exercising this option shall not remove from the subsidiaries concerned the obligation to ensure that the requirements of Article 44 are met.

## **Article 261**

### *Rights and duties of the group supervisor – Coordination arrangements*

1. The rights and duties assigned to the group supervisor with regard to group supervision shall comprise the following:

(a) coordination of the gathering and dissemination of relevant or essential information for going concern and emergency situations, including the dissemination of information which is of importance for the supervisory task of a supervisory authority;

(b) supervisory review and assessment of the financial situation of the group;

(c) assessment of compliance of the group with the rules on solvency and of risk concentration and intra-group transactions as set out in Articles 225 to 258;

(d) assessment of the system of governance of the group, as set out in Article 259, and of whether the members of the administrative or management body of the participating undertaking meet the requirements set out in Article 42 and Article 270;

(e) planning and coordination, through regular meetings or other appropriate means, of supervisory activities in going concern as well as in emergency situations, in cooperation with the supervisory authorities concerned;

(f) other tasks, measures and decisions assigned to the group supervisor by this Directive or deriving from the application of this Directive, in particular leading the process for validation of any internal model at group level as set out in Articles 238 and 240 and leading the process for permitting group support as set out in Article 244.

2. In order to facilitate group supervision, the group supervisor and the other supervisory authorities concerned shall have coordination arrangements in place.

Those coordination arrangements may entrust additional tasks to the group supervisor and may specify, without prejudice to any measure adopted pursuant to this Directive, the procedures for the decision-making process among the supervisory authorities concerned as referred to in Articles 220(3), 221(2), 222(2), 223, 224, 226, 227(2), 228(2), 234(2), 245, 257, 258, 260 (3) and (4), 263, 272 and 273 and for cooperation with other supervisory authorities.

3. The Commission shall adopt implementing measures for the coordination of group supervision for the purposes of paragraphs 1 and 2.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 313(3).

## **Article 262**

### *Cooperation and exchange of information between supervisory authorities*

1. The authorities responsible for the supervision of the individual insurance and reinsurance undertakings in a group and the group supervisor shall cooperate closely, including in cases where an insurance or reinsurance undertaking encounters financial difficulties.

Without prejudice to their respective responsibilities, those authorities, whether or not established in the same Member State, shall provide one another with any essential or relevant information which may allow or facilitate the exercise of the supervisory tasks of the other authorities under this Directive. In this regard, the supervisory authorities concerned and the group supervisor shall communicate on request all relevant information and shall communicate on their own initiative all essential information.

Information referred to in the second subparagraph shall be regarded as essential if it could materially influence the assessment of the financial soundness of an insurance or reinsurance undertaking.

2. The Commission shall adopt implementing measures determining the items which are, on a systematic basis, to be gathered by the group supervisor and disseminated to other supervisory authorities concerned or to be transmitted to the group supervisor by the other supervisory authorities concerned.

The Commission shall adopt implementing measures specifying the items essential or relevant for supervision at group level with a view to enhancing convergence of supervisory reporting.

The measures referred to in the first and second subparagraphs designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 313(3).

## **Article 271**

### *Enforcement measures*

1. If the insurance or reinsurance undertakings in a group do not comply with the requirements referred to in Articles 225 to 259 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, the following shall require the necessary measures in order to rectify the situation as soon as possible:

(a) the group supervisor with respect to the insurance holding company;

(b) the supervisory authorities with respect to the 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 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.

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

2. Without prejudice to their criminal law provisions, Member States shall ensure that penalties or measures may be imposed on insurance holding companies which infringe laws, regulations or administrative provisions enacted to implement this Title, or on the person effectively managing those companies. The supervisory authorities shall cooperate closely to ensure that such penalties or measures are effective, especially when the central administration or main establishment of an insurance holding company is not located at its head office.

3. The Commission may adopt implementing measures for the coordination of enforcement measures referred to in paragraphs 1 and 2.

Those measures designed to amend non-essential elements of this Directive by supplementing it shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 313(3)

## **Article 318**

### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 1, 2, 4, 6 to 10, 13 to 15, 17, 18, 23, 26 to 31, 34 to 55, 65, 66, 69, 70, 72, 73 to 136, 138 to 143, 145, 149, 152, 159 to 164, 169, 170, 183, 197, 199, 204, 217 to 277, 289, 308, 313, 318- to 321 and Annexes III and IV by 31 October 2012 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the directives repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. 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.