



MIXED TECHNICAL GROUP
On the supervision of financial conglomerates

Secretariat

**Implementation and interpretation of Directive 2002/87/EC - the Financial
Conglomerates Directive¹**

Issues Schedule

This schedule sets out questions relating to the implementation and interpretation of the Directive, and the agreements reached in the Mixed Technical Group on the appropriate way to deal with these issues.

These conclusions will facilitate the transposition of the Directive into Member State legislation, but it should not be expected that the wording on these issues will be identical from one Member State to another.

¹ Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

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Item	Article(s)	Query	Answer
1.	2(8)	Should mixed financial holding companies be treated as a financial sector in their own right? Our industry has argued that Article 2(8) suggests that they should. If they should, then they would also fall to be considered under the formula in Article 3(2).	No. The definitions in the Directive effectively exclude the idea that mixed financial holding companies are a financial sector in their own right. This is because a mixed financial holding company must comprise elements of the other sectors - see the definition of mixed financial holding company in Article 2(15) – and, more importantly, by definition can only exist where there is a financial conglomerate. So, for the tests in practice, there are only three financial sectors, and banking and investment are considered together.
2.	2(8)	Several of our groups have asked whether insurance intermediaries (and by extension mortgage brokers) are part of the financial sector and, if so, which sector (insurance or banking/investment) should they be allocated to for the threshold calculations? On the basis of Article 2(8) of the directive (definition of financial sector) we do not think insurance intermediaries are part of the financial sector. They are clearly neither insurance/reinsurance institutions, nor credit institutions nor investment firms and it is unlikely that they would fall under the definition of financial institution. We also think mortgage broking falls outside the definition of financial sector. Therefore we do not think, in principle, these activities should influence the decision on whether a group is a conglomerate or not.	Insurance intermediaries should not be included in the threshold calculations.
3.	2(12)	Can the Commission and Member States agree that a regulated entity and its participation (e.g., 20 % of shares and votes) in a financial entity shall form a financial conglomerate, even in a case where the regulated entity has no subsidiaries	Agreed.

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		at all (neither financial nor non-financial) provided that the criteria (d) and (e) in Article 2(14) are met?	
4.	2(14)	<p>When a group satisfies the conditions of Article 2(14)(a) or (b), (d), (e) and Article 3(2), is it necessary for that group, in order to qualify as financial conglomerate, to meet threshold 1 (in Article 3(1))as well?</p> <p>Example:</p> <p>A bank is at the head of the group and conditions of Article 2(14)(d), 2(14)(e) and Article 3(2) are fulfilled. Has the group to meet, in addition, threshold 1 (>40%), in order to be considered as a financial conglomerate?</p>	No, it may not be necessary. Assuming the bank at the head of the group is an EEA regulated entity, then Article 2(14)(c) and the threshold in Article 3(1) do not apply.
5.	2(18)	<p>Intra-group transactions are defined as transactions by which a regulated entity relies upon another undertaking within the group for the fulfilment of an obligation. The wording suggests that only obligations towards a third party, whether an undertaking outside the group or another member of the group, are to be covered. In our opinion, however, movements of assets between two members of the group should also be covered.</p>	<p>The Directive is deliberately drafted in a broad way, with the intention of covering all intra-group transactions. Obligations towards a third party outside the group are clearly not covered – they cannot be intra-group transactions, by definition.</p>
6.	3	<p>The text appears to be somewhat unclear as to whether all financial institutions should be included in the calculation of the share of the banking and investment sector (even if a financial institution is a subsidiary of a insurance undertaking) or only those financial institutions which are included in those sectors for the purpose of consolidated supervision of credit institutions and investment firms. The wording seems to imply that the</p>	<p>Agreed, except for "purpose of determining that sector's significance".</p>

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		<p>balance sheets of all financial institutions, regardless of whether they belong to a banking or insurance sub-group or are direct subsidiaries of a mixed financial holding company, as well as the mixed financial holding company itself, should be included in the banking and investment sector, while only the capital requirements on financial institutions included in the consolidated supervision of credit institutions or investment firms could be included, as there are no sectoral capital requirements for other financial institutions (e.g., the mixed financial holding company and its direct subsidiaries). It may, however, be difficult to argue for such an interpretation, as it may not correspond to the general conception of the two sectors.</p> <p>Is it correct to conclude that all financial institutions, whether included in the consolidated supervision of credit institutions or investment firms or not, will be included in the banking and investment sector in the calculation of the thresholds (for the purpose of determining the share of the more significant sector), including the mixed financial holding company if it meets the general definition of a financial institution?</p>	
7.	3	<p>We believe it is necessary to clarify (a) whether the threshold calculations should be undertaken using consolidated balance sheet or individual accounts; (b) the data sources that would be needed to measure the market share; (c) the 'exceptional' cases where additional criteria may be used (Article 3(5)); and (d) principles for ongoing monitoring of the threshold and the use of the lower criteria for the three year period intended to avoid regime shifts.</p>	<p>A number of groups meeting the €6 billion threshold could potentially benefit from the derogation provided by Article 3(3), and as a consequence be disregarded as a financial conglomerate. In order to implement this provision consistently among member states, the MTG is of the opinion it would be helpful to identify relevant data sources in this regard, in particular for the calculation of a group's market share.</p>
8.	3(1)	<p>It may be useful to define the minimum period of time in which</p>	<p>No need to define a minimum period of time for which the</p>

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		<p>the activities of a group must satisfy the threshold given in Article 3(1) before a group is formally defined as a financial conglomerate. For instance, if the ratio set out in Article 3(1) exceeds the given threshold of 40%, but only for a period of one month it might not be meaningful to formally qualify this group as a financial conglomerate.</p>	<p>activities of a group must satisfy the threshold referred to in Article 3(1), before a group is defined as a financial conglomerate. According to Article 3(7), the threshold calculation for a particular group shall be on the basis of the annual accounts of the group's entities, and it does not provide for a (minimum) reference period. If a group's ratios would fall below the thresholds as defined in Article 3, the directive provides for sufficient flexibility to avoid a sudden regime shift, by giving Member States room to use a three year reference basis as defined in Article 3(6).</p>
9.	3(2)	<p>Can the sentence be reflected in terms of ratio in the following way?</p> $\frac{[\text{BS least important financial sector} + \text{solvency margin least important sector}]}{[\text{BS financial sector} + \text{solvency requirement financial sector}]} / 2 > 10\%$	<p>Yes, but applies to each sector, not only 'least important'. So the formula is as shown below.</p> $\frac{[\text{Balance sheet total of that financial sector} + \text{Solvency requirement of that financial sector}]}{[\text{Balance sheet total of the financial sector entities in the group} + \text{Total solvency requirements of the financial sector entities in the group}]} / 2 > 10\%$
10.	3(2)	<p>What is meant by the term 'average'? Is it that the average within one year should be taken in order to eliminate fluctuations especially at the year-end or is it meant that the average of several preceding years has to be taken? If yes of which years? Or does the term average refer to anything else?</p>	<p>The term "average" simply relates to the formula, i.e., the two items (balance sheet ratio and solvency requirement ratio) are added and then divided by two.</p>
11.	3(2) & 3(3)	<p>Do both of the criteria set by Article 3(2) and 3(3) need to be met to regard a group's activities in a certain financial sector as</p>	<p>No, it is not necessary to meet both the conditions in 3(2) and 3(3) to be regarded as a conglomerate.</p>

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		significant within the meaning of Article 2(14)(e)?	
12.	3(3)	Is it to be understood that indents (a) and (b) allow the group not to be regarded as a conglomerate even if the smallest financial sector in the group has a total balance sheet exceeding €6 billion?	The MTG is of the opinion that the limits set out in Article 3(3)(a) and (b) do not create a derogation that applies automatically.
13.	3(3)	<p>The extent of the derogation is not clearly defined. However, exact figures appear in the text as examples. It seems obvious that the legal powers of the competent authorities to grant exceptions cannot be based on examples. Two options, therefore, remain for the national implementation: either to define those powers by the qualitative criteria laid down in the Article only or to include the exact quantitative figures in the national law as absolute limits.</p> <p>Can we conclude that the exemplary figures in Article 3(3) need not be transposed into national law?</p>	Each Member State will need to decide how to transpose Article 3(3) into national legislation. What is needed at the end of this process is that the national legislation provides a sufficient legal basis for the competent authorities to take the decisions described in the article.
14.	3(3)	<p>Under Article 3(3), the aforementioned authorities may, if the group does not reach the threshold referred to in paragraph 2, decide "not to regard the group as a financial conglomerate, or not to apply the provisions of Articles 7, 8 or 9."</p> <p>The alternative "or" permits the interpretation that the application of Article 7, 8 or 9 is not linked to the status as conglomerate. Contrary to the indications in Articles 7(1) and 8(1), the alternative "8 or 9" leaves room for further interpretations. It should be made clear here that the Directive extends the application of Articles 7, 8, 9 (sic) only to conglomerates and that the wording "Articles 7, 8 or 9" also covers the cumulative application of Articles 7 and 9 and of</p>	The wording in Article 3(3), 2 nd sentence, "(...) relevant competent authorities may decide (...) not to apply the provisions set out in Articles 7, 8 or 9 (...)", allows the competent authorities for a particular financial conglomerate to waive the application of either one or a combination of Articles 7, 8, 9. The application of the waiver effectively results in the application of a kind of 'light' financial conglomerate statute.

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		Articles 8 and 9.	
15.	3(3)	<p>Apart from the requirements relating to participations, the balance-sheet total is the key variable for verifying the status of conglomerate. However, when it comes to calculating balance-sheet totals in practice, it has been found that, unlike in the case of individual accounts, only the balance-sheet totals of the undertakings within the scope of consolidation are taken into consideration for the purpose of the consolidated accounts. In particular, the question arises here as to how undertakings valued "at equity" are to be dealt with. Our view is that, in principle, the group accounts should be taken into consideration. In order to ensure that the groups of undertakings captured based on individual accounts are not placed at a disadvantage, only participations above a certain size – measured in terms of the balance-sheet total, should be included.</p>	<p>According to Article 3(7), the calculations regarding the balance sheet should be made on the basis of the aggregated balance sheet total of the entities of the group according to their annual accounts. Where an entity of the group is held for less than 100%, the entity's balance sheet total should be taken into account for the proportional share held by the group in that entity. Where the consolidated accounts have to be used according to Article 3(7), the calculations regarding the balance sheet total should be made correspondingly. So if an entity is translated in the consolidated accounts using the equity method, it will also be for the calculations regarding the balance sheet total.</p>
16.	3(3)	<p>A group's "market share", as referred to in Article 3(3)(b), should be calculated separately for each financial sector, banking/investment sector on the one hand and insurance sector on the other hand.</p> <p>However, the MTG noticed that the drafting of (b) lacked clarity as to whether the text refers to "the market share in a particular financial sector in a Member State not exceeding 5%" or "the market share in each financial sector not exceeding 5% in that Member State".</p>	<p>The MTG agreed on the interpretation of Article 3(3)(b), stating that if the <i>market share of the smallest financial sector</i> in any member state is greater than 5%, then the supervisory authorities should not disregard the group as a financial conglomerate referring to the insignificance of cross-sectoral activity.</p>
17.	3(3) last	<p>"Decisions taken in accordance with this paragraph shall be notified to the other competent authorities concerned"</p>	<p>The relevant competent authorities can decide that a group should not be regarded as a conglomerate, for the reasons</p>

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	sentence	In this sentence what does "other competent authorities concerned" mean?	set out in Article 3(3). If they decide this, then they (the relevant competent authorities) must notify <u>all other</u> EU competent authorities responsible for a legal entity within the group.
18.	3(4)	In accordance with indent (b), the relevant competent authorities may take into account compliance with the thresholds for three consecutive years. In the event of significant changes in the group's structure, such compliance may be disregarded. In our opinion, this is simply a clarification along the following lines: even if a decision is taken to require compliance with the thresholds for three years, before supplementary supervision within the meaning of the Directive applies, immediate supplementary supervision can be required - by way of a corresponding decision - in the event of a significant structural change if the preconditions are provided by the structural change.	Agreed. The competent authorities can, under this provision, require supplementary supervision immediately if structural change justifies this. But see Items 19 and 20 below for more on the application of these provisions.
19.	3(4)(b)	MTG members had a different understanding as to whether Article 3(4)(b) only applies to groups that have already been identified in the past as financial conglomerates or to all groups, whether or not they have already been identified as such. When does one year of figures apply? When are three years of figures needed?	The intention of the Directive is to apply supplementary supervision where this is appropriate. This favours an interpretation of inclusion rather than exclusion. The MTG agreed that the practical way forward was for the paragraph to apply to firms once they have been provisionally identified as a conglomerate using one year's accounts.
20.	3(4)(b)	Article 3(4)(b) of the Directive states that for the application of Article 3(1) to (3), the relevant competent authorities may, by common agreement, take into account compliance with the thresholds envisaged in Article 3 (1) and (2) for three	This could work in one of two ways. A group could not be a conglomerate, then through a major acquisition become a conglomerate. The text appears to allow supervisors to decide not to treat that group as a conglomerate until they

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		consecutive years so as to avoid sudden regime shifts and disregard such compliance if there are significant changes in the group's structure. What is meant by this paragraph?	<p>have met the tests for three years; however, the MTG decided that this interpretation was not in keeping with the spirit of the directive, so this interpretation should not be used in such a case.</p> <p>The opposite case is where a group already is a conglomerate, then through a sale falls below the thresholds. The text allows supervisors to continue to apply supplementary supervision to this group for a further two years (assuming no further acquisitions or divestments), so until the group has three years of not being a conglomerate. The supervisors have to agree that continuing to apply supplementary supervision is appropriate.</p>
21.	3(5)	What is meant by "income structure"?	<p>The MTG is of the opinion that the term "income structure" in Article 3(5) should be understood as referring to the relative share of each financial sector in the composition of a group's total income according to its profit and loss account for a particular financial year. The Directive does not provide for a definition of the term "income structure", allowing for some interpretation margin by the relevant competent authorities when applying this Article and which seems to match perfectly with Article 3(5)'s objectives. It is up to the relevant competent authorities to decide to what extent they want to take into account extraordinary profits or losses in a particular financial year. However, there seems to be some logic in using "net income", i.e., gross income minus charges.</p> <p>As regards the term "exceptional cases" referred to in Article 3(5), MTG members were of the opinion that it would be very difficult to identify in advance all exceptional cases that could or would merit the application of the alternative</p>

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			parameters listed in Article 3(5).
22.	3(5)	<p>The relevant competent authorities are allowed to replace the threshold criteria (balance sheet and capital requirement) by other parameters. A decision to change the parameters may have significant financial, organisational, etc., consequences to groups where the share of the smaller sector is not even near the 10% in terms of balance sheet and capital requirement. It should be possible to ensure a sufficient level of legal predictability for such groups, when they plan their structure and activities. Such predictability may be particularly difficult to achieve in the proposed system, which require joint decision making of several competent authorities from different Member States. It should, therefore, be possible to lay down more accurate principles for the use of alternative criteria in the national legislation. This in turn would lead to a situation where the national legislation of a Member State may significantly limit the application of the possibility to derogate from the main criteria.</p> <p>Is it reasonable to conclude that Member States may implement more detailed rules for the use of alternative criteria referred to in Article 3(5) and, consequently, the derogation from the main criteria will be possible only to the extent allowed by the national legislation of all the competent authorities involved?</p>	<p>See Item21.</p> <p>The Directive is deliberately drafted broadly because it is not realistic to identify in advance all possible scenarios and the measures that may be appropriate in all situations. National legislation should not unreasonably restrict the possibility to apply Article 3(5).</p>
23.	3(5)	<p>Firms could be identified as conglomerates because of ISD asset management activity. The example given was of an ISD asset manager which owns a small insurance company and the balance sheet tests show that the thresholds are met to be included as a conglomerate. It was suggested that this could</p>	<p>The MTG agreed that UCITS asset management activity could be included in either the banking/investment or insurance sector, as appropriate. It is important that asset management activity is included appropriately.</p>

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		<p>be a case where Article 3(5) should be applied, and an income measure used instead of the balance sheet measure. This seems more appropriate given the nature of the businesses, and would give a more accurate picture of the relationship between the different parts of the group.</p> <p>Where should UCITS asset management activity be included?</p>	
24.	3(5)	<p>The parameter of “income structure” as alternative parameter for defining a financial agreement needs further illustration. Also, the “exceptional cases” in which the alternative parameters intend to be introduced should be further defined to ensure consistent application within the EU.</p>	See Item 21 above.
25.	3(6)	<p>Is it to be understood that the 35% and 8% ratios can apply only to groups already regarded as conglomerates in order to ensure that they do not fall outside the scope of the Directive, but not to groups that have never been regarded as conglomerates?</p>	<p>The MTG is of the opinion that the lower ratios and threshold referred to in Article 3(6) apply to groups that already have been identified as a financial conglomerate, and therefore already are subject to supplementary supervision in accordance with the Directive.</p>
26.	4	<p>In identifying a conglomerate, the competent authorities are to cooperate; the coordinator is to inform the parent undertaking at the head of the group that the group has been identified as a financial conglomerate. Accordingly, in our view, the requirements arising from the Directive apply to the undertakings only if a corresponding decision has been taken by the coordinator. Normally, provisions apply independently of corresponding decisions taken by the supervisory authority. If application of the provisions is conditional on the decision, the latter would thus have not only declaratory elements regarding legal certainty but also constitutive character within the meaning of a determining administrative act from the entry into force of whose the provisions apply to the conglomerate.</p>	<p>Article 4(1) provides for the process to identify a financial conglomerate, whereas Article 4(2) provides for a procedure to inform the parties involved once a financial conglomerate has been identified. The MTG noticed that Article 4(1), however, does not require the competent authorities involved to decide by common agreement on the identification of a financial conglomerate. The relevant group will be informed of its identification as a financial conglomerate through the obligatory notification procedure as prescribed by Article 4(2). The MTG is of the opinion that the identification by a competent authority of a particular group as a financial conglomerate, which must be notified according to Article 4(2), is an administrative action that generates legal consequences for that group (rights</p>

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			and obligations) and against which recourse/appeal by the group is possible. Any such recourse/appeal should be initiated against the notifying competent authority (the coordinator).
27.	4	<p>Text from Directive</p> <p>2. The coordinator appointed in accordance with Article 10 shall inform the parent undertaking at the head of a group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of the appointment of the coordinator. The coordinator shall also inform the competent authorities which have authorised regulated entities in the group and the competent authorities of the Member State in which <u>the</u> mixed financial holding company has its head office, as well as the Commission.</p> <p>The way in which this sentence is written, in our view, presupposes that each financial conglomerate is headed by a mixed financial holding company. The use of the definite article before “mixed financial holding company” would at least seem, prima facie, to allow for no other interpretation. In our view the insertion of the words “of a group identified as a financial conglomerate” after the word “company” would be a more accurate construction. This would allow for the possibility for a financial conglomerate to be headed by a regulated as well as a non-regulated entity.</p>	<p>The first sentence of the paragraph does not presume that any particular entity is at the head of the financial conglomerate.</p> <p>The second sentence is intended to impose a notification requirement, but clearly only in those cases where the relevant entities exist. If there is no mixed financial holding company, then no notification is required and, by definition, a mixed financial holding company is part of a financial conglomerate, so there are no cases where there is a mixed financial holding company but not a financial conglomerate. So the additional text suggested should not be necessary, but is not problematic.</p>
28.	4	There is a need to (a) establish the list of financial	Agreed. A list of conglomerates subject to supplementary

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		conglomerates that fall under the scope of the directive, (b) map the composition and structure of those groups, (c) have at one's disposal the list of all competent authorities involved (including the relevant competent authorities and the coordinator).	supervision will be published in 2005.
29.	5(2) 1 st subpar	In relation to points (a), (b) and (c), are all the companies in the group concerned?	The MTG agreed that all companies are covered
30.	5(2) 2 nd subpar	<p>What is meant by "the latter group" [the French language text refers to "second conglomerate"]?</p> <p>Is this provision designed to ensure that, where there is a "second conglomerate", the Member States may decide that the provisions relating to supplementary supervision apply only to the broadest group, in other words, that the general rule where a subgroup exists is that the provisions relating to supplementary supervision apply both to the subgroup and to the extended group?</p>	<p>The 'latter group' is the parent group of a sub-group.</p> <p>No, only the extended group.</p>
31.	5(4)	What is meant by "cooperative group" and by "public financial commitment"? What is the purpose of this paragraph?	The terms were introduced into the Directive by the European Parliament; they have no specific meaning in financial sector legislation. The MTG agreed that member state legislation will need to take account of groups linked by cooperative agreements, or any specific features in their markets applicable to cooperative groups.
32.	5(4)	Do Member States intend to limit the scope of application of this paragraph, e.g., by further defining the notion of "capital ties"? Or shall they retain the possibility of applying the law to any grouping of entities which are linked to each other by	Consensus was reached that the Directive was deliberately drafted in a way to give wide discretion to the competent authorities, and this should not be restricted in the

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		capital ties of any kind or amount, if the criteria (d) and e) of Art.2.14 are met?	transposition.
33.	5(4)	The existence of significant influence without holding participation or capital ties could be defined in more detail.	Partly addressed by earlier question. MTG agreed nothing further necessary.
34.	6(1) (7(1), 8(1))	What is meant by "without prejudice to the sectoral rules"?	Additive, doesn't replace.
35.	6(4)	What is meant by "extent"? The scope of consolidation?	Don't do extra consolidation.
36.	6(5)	The term "negligible interest" may need further clarification. The same applies with the "inappropriate" or "misleading" inclusion of an entity with respect to the objectives of supplementary supervision as well as to the inclusion of entities of negligible interest when "collectively are of non-negligible interest".	These terms are already well-established in the sectoral legislation and supervisors are familiar with their application. No further clarification is felt to be necessary at this stage.
37.	7(4)	What is meant by "if any"? Since there are no rules in the insurance sector on risk concentration, is it to be understood that, if the insurance sector is the most important in the financial conglomerate, no concentration rule is applicable?	It was recognised that there are difficult issues here, which need further review. The MTG agreed that there are no concentration rules for insurance holding companies, but there are sectoral rules for subsidiaries. Part of the role of the coordinator will be to get firms to look at this qualitatively
38.	10	Article 10(2)(b)(ii), first subparagraph "where more than one regulated entity with a head office in the Community have as their parent the same mixed financial holding company, and one of these entities has been authorised in the Member State	Agreed.

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		<p>in which the mixed financial holding company has its head office, the task of the coordinator shall be exercised by the competent authority of <u>the</u> regulated entity authorised in that Member State.”</p> <p>Article 10(2)(b)(ii) second subparagraph “where <u>more than one</u> regulated entity being active in different financial sectors have been authorised in the Member State, in which the mixed financial holding company has its head office, the task of the coordinator shall be exercised by the CA of the regulated entity active in the most important financial sector”.</p> <p>Is it reasonable to conclude the following:</p> <p>In a situation, where there is a mixed financial holding company in Member State A and a regulated bank subsidiary and a regulated insurance subsidiary both in the Member State A and Member State B, the coordinator is determined according to Article 10 (if not agreed otherwise by the relevant competent authorities) as follows:</p> <ul style="list-style-type: none"> - the coordinator is in any case a competent authority of Member State A; - if there are separate supervisors for banks and insurance companies in Member State A, the coordinator shall be the bank supervisor of Member State A if the financial conglomerate as a whole is more active in the financial sector according to the criteria laid down in Art.3.2, and by the insurance supervisor of Member State A, if the financial conglomerate as a whole is more active in that financial sector? 	
39.	10 & 30	Can the supervisor of only the asset management company entities of the conglomerate be the coordinator	There was general agreement that asset management activities, in isolation, cannot 'generate' a financial

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			<p>conglomerate. But once the existence of a conglomerate is established, the position of asset management companies within that needs to be considered, and it is theoretically possible that the asset management company supervisor could be the coordinator. As noted in Item 23, it is important that asset management activity is included appropriately</p>
40.	10	<p>Some additional clarifications may be needed in respect of implementing the provisions of the Directive dealing with the procedures for [...] the nomination and exercise of supervision of a coordinator. [...] It could be of interest to further define the concrete steps, also in terms of time, in [...] the nomination of its coordinator. [...] The period for the nomination of the coordinator could be subject to a commonly agreed maximum time limit, in order to ensure an expeditious process in initiating the exercise of supplementary supervision. Third, the nomination of coordinator should be based, to the extent possible, on objective criteria. In view of consistent implementation and ensuring that the objective criteria would prevail over the discretionary ones, the circumstances that, according to Article 10(3), would permit the competent authorities to waive the criteria referred to in Article 10(2) as of inappropriate application should be better defined.</p> <p>With the aim of more efficient implementation, it may be useful to agree on an indicative period of time that should be pursued from the moment that a financial conglomerate is identified to the appointment of the coordinator. It may also be desirable to appoint the coordinator for a specified minimum period of time (it may not be regarded as efficient way forward to change coordinator every time there is a change in the regulated entity with the largest balance sheet total). Further clarification may also be needed on the fact that the national legislation</p>	<p>MTG members discussed, but did not feel a need (yet) to fix time limits for the appointment of a co-ordinator or a minimum time period for which a co-ordinator may be appointed. Furthermore, the MTG believed that it would be difficult to define in advance the particular cases under Article 10(3) that would allow relevant competent authorities to waive the criteria defined in Article 10(2). The MTG was of the opinion that a pragmatic approach should prevail in this regard in order to come up with workable solutions for supervisors. The MTG can however see some merit in a fact finding exercise in the medium term on the particular cases that will have been identified by competent authorities.</p>

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		governing the supplementary supervision is that of the coordinator.	
41.	10	The MTG recognised the need to establish a forum where competent authorities involved in the supervision of financial conglomerates and/or the supervision of regulated entities in a financial conglomerate could meet to discuss relevant issues regarding the supervision of identified financial conglomerates and the Directive's implementation. In this regard, one MTG member referred to the Helsinki Protocol regarding insurance groups as a possible way forward.	The MTG concluded that the issue should be seen in relation to the procedural decisions to be taken by the European Financial Conglomerates Committee on how to deal with issues in the supervision of financial conglomerates.
42.	10(2)(b)(ii) third sub-paragraph	Is there not lacking in the second half of the sentence the idea that, if regulated enterprises belong to different sectors, the coordinator's task will be exercised by the authority competent for the regulated entity in the most important financial sector <u>with the largest balance sheet total</u> ?	Agreed.
43.	13	The Directive does not stipulate the supervisory authority that is responsible for the holding company. If the holding company is at the head of the group, the competent authority should normally be determined based on Article 10.	Not necessarily. Article 10 provides criteria only for the identification of the coordinator. Member States should define provisions for the identification of the competent authorities responsible for specific components of the group.
44.	13	The requirement that persons who effectively direct the business of a mixed financial holding company are of sufficiently good repute and have sufficient experience to perform those duties signifies, in our opinion, that the controlling shareholders of a mixed financial holding company	Members have differing views on the extent of control required over controlling shareholders or managers of mixed financial holding companies. There was general agreement that managers of mixed financial holding companies should meet stricter standards than more

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		<p>must meet more extensive requirements than the controlling shareholders of a legal person within the context of shareholder control. In particular, the intention to appoint such a shareholder must be announced beforehand and the appointment must be approved by the competent supervisory authority.</p>	<p>general company managers. Supervisors need to have the authority to object to appointments and all appointments should be notified to the supervisory authority. National legislation should enable this.</p>
45.	16	<p>Enforcement</p> <p>a) do Member States intend to provide one of their competent authorities with the powers:</p> <ul style="list-style-type: none"> - to regulate a mixed financial company situated in that Member State (e.g., laying down group level reporting and internal control requirements); and - to enforce the mixed financial holding company to comply with the requirements imposed on the mixed financial holding company by the Directive (e.g., reporting requirements, and quality of management and internal control in the mixed financial holding company) regardless of where the regulated subsidiaries are situated and regardless of who the coordinator is? <p>b) If it cannot be ensured that efficient enforcement measures can be taken against mixed financial holding companies in all Member States by its competent authorities, is it considered possible to require in the national law, as a precondition for the authorisation of regulated subsidiaries, that the competent authorities of the home Member State of a non-regulated parent undertaking have sufficient legal powers (e.g., equal to those laid down in the national law of the regulated entity) to supervise and enforce such parent undertaking?</p>	<p>National legislation needs to address the application of requirements to mixed financial holding companies, either directly or indirectly. As a minimum, national legislation needs to allow action to be taken where a national supervisor is the coordinator.</p> <p>The consensus amongst MTG members was that putting in place effective transposition measures in all Member States would prevent problems of this sort arising.</p>

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		<p>c) Shall the sectoral competent authorities be in a position to take the same measures against the regulated entities, which fail to meet the requirements of this Directive, as against the regulated entities which fail to meet similar requirements laid down in the sectoral directives (e.g., withdrawal of the authorisation)? What other measures do the Member States intend to implement vis-à-vis regulated subsidiaries of a financial conglomerate in order to enforce compliance at group level?</p>	<p>National legislation needs to permit the same range of measures as are available in the sectoral directives.</p>
46.	18	<p>Which authority shall verify the equivalence of a third country's regime: the coordinator or the competent authorities?</p>	<p>The competent authority which would be the coordinator is responsible for the verification of the equivalence of a third country's supervisory regime, according to Article 18(1). Equivalence verification has to be made on a case by case basis for each group, taking into account any guidance issued under Article 18(1) or 29(11).</p>
47.	18	<p>Should activities of third country groups, in or outside the EU, be taken into account for the calculation of ratios and the identification of the coordinator of EU sub-groups of such third country groups?</p>	<p>For the purposes of identifying the 'coordinator' for a group with a third country parent:</p> <ul style="list-style-type: none"> - activities outside the EU should not be taken into account; - activities of EU branches of these groups should also not be taken into account; and - activities of EU subsidiaries should be taken into account. <p>For the purposes of establishing whether that group is a conglomerate, then you do need to consider activities inside and outside the EU.</p>

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48.	18	<p>It would be helpful to discuss:</p> <ul style="list-style-type: none"> - how the mechanical threshold criteria operate by analogy for non-equivalent groups, and in particular the geographical scope of the numerator and the denominator of the calculations; and - principles for the form of coordination between third country supervisors and EU coordinators concerning groups which are equivalently supervised 	<p>The clarification of certain technical issues regarding the application by analogy of the threshold criteria and the geographical scope of the numerator and the denominator of the calculations referred to in Article 18(1), could best be done on a case-by-case basis using the group's organogram, given the possible diversity and complexity of group structures.</p> <p>There is a need to start in 2005 reflections on the form and the principles that should underpin the co-ordination agreements between EU coordinators/supervisors and third country supervisors.</p>
49.	18(3)	<p>Further reflection should also be given to the "other methods" that Member States' competent authorities may apply in accordance with Article 18(3). Its objective should not be to come up with a restrictive list of alternative methods, but to think about alternative methods that could meet the supervisory objectives as defined in this Article and further clarified in the recitals of the Directive. In this regard, it may be useful to check whether methods could be identified in the sectoral regulations that may be eligible for these purposes. As an example, the Commission services referred to the 'ring fencing' technique in the Basel Concordat for banking groups.</p>	<p>Agreed.</p>
50.	22, 23, 29	<p>Through Articles 22(2), 23(2) and 29(4) the existing sectoral rules for credit institutions, insurance undertakings and investment firms are amended in order to avoid regulatory arbitrage. In particular, the intersectoral holdings as well as other elements of the own funds will be deducted from own funds of the holding institution. As an alternative to the deduction of the items referred to above, the Member States</p>	

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		<p>may allow their institutions to apply methods 1, 2, 3 of Annex I of the Directive.</p> <p>The elimination of double gearing is a requirement for the application of this alternative? That alternative will be carried through the integral application of the methods foreseen in the Directive?</p> <p>For example: the application of the accounting consolidation method implies the elimination of the participation and the inclusion of the capital requirements of the subsidiary, or the proportion of the capital requirements of a company in which a participation is held.</p>	<p>Yes to both questions.</p>
51.	27 & 29	<p>In Articles 27 and 29, a cross reference referring to insurance undertakings according to Article 1a and b of Directive 98/78/EC is made. The new cross-references in Article 34 of Directive 2000/12/EC refer to insurance undertakings, reinsurance undertakings and insurance holding companies according to Article 1a, b, c and i of Directive 98/78/EC. As these wordings relate to each other, it seems confusing if different wordings are used. Have these wordings been intended or should the wording “insurance company” in Article 27 and 29 also include reinsurance companies, other than in Article 2(2) of Directive 2002/87/EC?</p>	<p>The wording is deliberately different as the 'scope' of the two articles is different.</p> <p>The amendments of Articles 27 and 29 refer to the competent authorities responsible for the supervision of regulated entities - being insurance undertakings. By definition, there are no competent authorities responsible for the supervision of unregulated entities, such as reinsurance undertakings. <i>The scope is regulated insurance undertakings.</i></p> <p>Article 34 of the Banking Directive, on the other hand, has a different scope: it refers to deductions off investments in the insurance sector, i.e., investments in both regulated and unregulated insurance companies. <i>The scope is regulated and unregulated insurance undertakings.</i></p>
52.	Sectoral directive amendme	<p>As far as we understand when calculating the solo solvency margin of an insurance company, the company has to deduct each participation in companies of the financial sector, where</p>	<p>The MTG felt that, although the possibility for supervisory arbitrage does exist, In practice this should not prove to be a substantial issue. Furthermore, supervisors are aware of</p>

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	nts	<p>the term participation is defined to be a participation within the meaning of Article 17 of the fourth company directive as well as each participation of more than 20% (Articles 22 and 23 last sentence of 2002/87/EC). In the insurance sector, therefore, each participation in a credit institution, insurance company and investment firm within the meaning of Article 17 of the fourth company directive as well as each participation of more than 20% in these companies have to be deducted. An insurance company's participation in a credit institution of less than 20% has to be deducted as long as it fulfils the criteria of Article 17 of the fourth company directive.</p> <p>However, in the banking sector credit institutions only have to deduct participations in banks of more than 10% (see Article 29(4)). For consolidated supervision, the definition of participation is identical with that of the insurance sector. But for the solo supervision of credit institutions, it is obviously not.</p> <p>It is difficult to understand why an insurance company having a 9 % participation in a bank has to deduct this participation, whereas a credit institution having also a 9 % participation in that bank does not have to deduct this participation when calculating the solo solvency margin. This might lead to supervisory arbitrage.</p>	<p>the issue and have other tools to use should this prove to be a problem.</p> <p>Further harmonisation of the sectoral requirements should be addressed at a later point (see also Item 56).</p>
53.	29(4)	<p>With the amendment of Article 34(2) of Directive 2000/12/EC (items of the unconsolidated own funds of credit institutions) the provision of the own funds of all credit institutions are changed, without consideration if these credit institutions are part of a financial conglomerate or not. Article 1 of Directive 2002/87/EC is in contrast to that amendment as it sets the objective to lay down rules for entities which are part of a financial conglomerate. Our approach would be to apply the provisions of Article 34(2) only to credit institutions which are</p>	<p>The amendment of Directive 2000/12 is intended to apply to the own funds of all credit institutions, whether part of a financial conglomerate or not.</p>

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		part of a financial conglomerate. Could the Commission and the member states agree with that interpretation?	
54.	32	Does the 2 nd sub-paragraph mean that, from that date, competent authorities will have to start calculations for identifying a financial conglomerate? Or does it mean that, from that date, a financial conglomerate will have to meet the requirements of the directive (and be subject to subsequent prudential supervision)? This latter would mean that any calculation will have to be done before 2005.	Formal identification of conglomerates should be performed from 11 August 2004 making use of the latest annual accounts available, and verified, as necessary, against the latest figures that are available on the first day of their financial year starting in 2005.
55.	Annex I	<p>In Annex 1, the rules on the choice of methods appear to be subject to different interpretations, particularly with regard to cross-border groups headed by an unregulated entity. We would like to hear the views of other Member States and the Commission on the following two alternatives for interpreting the first three paragraphs of the Annex or whether Member States intend to apply the rules in some other way.</p> <p>Alternative I</p> <p>Based on the second paragraph, it is possible to limit the number of applicable methods to only one method (e.g., full consolidation) in the national legislation of a Member State (Member State A) for groups under its jurisdiction (e.g., groups where the parent undertaking and one regulated entity is situated in Member State A). In such a case, the coordinator would be from Member State A and, consequently, subject to the legislation of that Member State so that the coordinator would have to require the (one) method allowed by that legislation.</p> <p>In this case the significance of the second sentence of the third</p>	National legislation must allow coordinators in other Member States the full range of options.

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		<p>paragraph is that the legislation of any other Member State (Member State B), where there are regulated subsidiaries belonging to the group, must allow any method required by a foreign coordinator (whether on a-case-by case basis or on the basis of the national law of the coordinator) to be applied to the supplementary supervision of the regulated in Member State B.</p> <p>Alternative II</p> <p>The national law of Member State A must allow any of the three methods to be applied and give the coordinator the powers to always decide on a-case-by-case basis, which method should be applied in a particular group.</p>	
56.	Annex I	<p>According to Annex I, competent authorities shall take into account the effectiveness of the transferability and availability of the own funds across the legal entities in the group. A similar rule is included in the insurance directives but apparently not in the banking directives. The banking directives, for instance explicitly allow minority interest to be included in the consolidated own funds without restrictions. It is also difficult to see how subordinated debt and other Tier II elements issued by a group company to third parties could ever be effectively transferable and available across the group.</p> <p>We would therefore like to hear the views of other Member States and the Commission as to how the principle of transferability and availability of own funds could be applied consistently in the sectoral rules and at the conglomerate level, particularly with regard to minority interests (in a parent undertaking), capital loans or other hybrid instruments and subordinated loans, to the extent they cannot be used to cover the solo capital requirements of the same entity (e.g., in a case of a unregulated group undertaking, which is not subject to any</p>	It is not practical for the MTG to seek to harmonise the sectoral rules.

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		<p>solo capital requirement). Since such items may constitute a significant part of the capital base of a group, we consider it necessary from the point of view of legal certainty and level playing field that the interpretation of this provision be discussed in the MTG as a transposition issue.</p>	
57.	Annex I Method I	<p>The Directive text says “the own funds of the financial conglomerate calculated on the basis of the consolidated position of the group; the elements eligible are those that qualify in accordance with the relevant sectoral rules”.</p> <p>Should we consider that, as long as the specific own funds are eligible within the sectoral limits (e.g., comparison to available capital and reserves) and that they do not exceed the amount of the sectoral solvency requirements, there is no reason not to take them into account in the calculation of the own funds of the conglomerate? Or should we consider that the ceiling is established at the level of the conglomerate, which could lead to a reduction in own funds available?</p>	<p>It is the consolidated position of the conglomerate (including those situations where the parent undertaking is a mixed financial holding company) that is the most important factor. So the second answer is correct - the limits that are to be applied in terms of available capital and reserves are those based on the consolidated accounts.</p>
58.	Annex I Method I	<p>How should sectoral limits be accounted for when defining trans-sectoral capital? If some sort of liabilities (say, undated subordinated debt) are accounted for as own funds in each sectoral regulation, should we consider them as trans-sectoral capital? If so, should we take into account each sectoral limit depending on where the own funds are coming from? Or, should we apply the most restrictive limit of each regulation?</p>	<p>To count as trans-sectoral capital, the own funds elements must meet each of the sectoral rules. So if there is a limit in one sector, and a higher limit in another sector, then only the lower limit can count as trans-sectoral capital because it needs to meet all the rules. So you apply all the limits, with the end result that it is the most restrictive limit/sectoral rule that is important in calculating trans-sectoral capital.</p>